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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 297

[Docket ID: OPM–2023–0035]

RIN 3206–AO16

Social Security Number Fraud Prevention Act Requirements

AGENCY: Office of Personnel Management.

ACTION: Direct final rule.

SUMMARY: The Office of Personnel Management (OPM) is publishing this direct final rule to implement the requirements of the Social Security Number Fraud Prevention Act of 2017 (Act). In accordance with the Act, OPM is amending its privacy procedures to prohibit the inclusion of Social Security numbers (SSNs) on any document sent through the mail unless the Director of OPM deems it necessary. This rule also establishes requirements for safeguarding SSNs sent through the mail by partially redacting SSNs where feasible and prohibiting the display of SSNs on the outside of any package or envelope sent by mail.

DATES: This rule is effective on June 26, 2024, without further action unless significant adverse comments are received by June 11, 2024. If significant adverse comments are received, OPM will withdraw this direct final rule and publish a proposed rule.

ADDRESSES: You may submit comments for this direct final rule using the following method:

- *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.

All submissions received must include the agency name and docket number for this direct final rule. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *https://www.regulations.gov* as they are received, without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Kirsten J. Moncada, Executive Director, Office of the Executive Secretariat, Privacy, and Information Management, 202–936–0251.

SUPPLEMENTARY INFORMATION: The Social Security Number Fraud Prevention Act of 2017, Public Law 115–59, 42 U.S.C. 405 note, restricts the inclusion of SSNs on documents sent by mail unless the head of the agency determines that the inclusion of the SSNs on the documents is necessary. The Act also directs agencies to issue regulations that specify when inclusion of an SSN is necessary and include requirements for the safeguarding of SSNs by partially redacting SSNs where feasible and prohibiting the display of SSNs on the outside of any package or envelope sent by mail.

To implement the Act, OPM is adding new subpart F, titled ''Protecting Social Security Numbers in Mailed Documents,'' to its privacy procedures at 5 CFR part 297. The new requirements in subpart F prohibit the inclusion of SSNs on any document OPM program offices send through the mail unless the Director of OPM, on the advice of the Senior Agency Official for Privacy, deems it necessary and precautions are taken to protect the SSNs. In addition, subpart F includes requirements for OPM program offices to partially redact SSNs where feasible and specifically prohibits the display of complete or partial SSNs on the outside of any package or envelope sent by mail or through the window of an envelope or package. Subpart F applies to all OPM office activities and written or printed documents OPM sends by mail that include a complete or partial SSN.

OPM is also amending 5 CFR 297.102 to add the definitions of ''document,'' and ''mail'' to make explicit OPM's meaning of the terms in this new subpart F. For the purposes of this rule, a document is a record of some information that can be used as an authority or for reference, further analyses, or study. This includes all records OPM maintains and uses to identify, track, and correspond with agencies, Federal employees, contractors, and annuitants, among others. Mail is defined as artifacts used to assemble letters and packages that are sent or delivered by the United States Postal Service or other commercial letter or parcel delivery services.

Direct Final Rule Justification

This rule of agency organization, procedure, or practice is exempt from the prior public notice and comment requirements of the Administrative Procedure Act. See 5 U.S.C. 553(b)(3)(A). This rule will not have any effect on the rights, obligations, or interests of any affected parties, as it is merely procedural and reflects a statutory requirement that is already in effect. The rule restricts and safeguards the inclusion of SSNs in documents that are mailed to prevent unauthorized disclosure of SSNs and protect individual privacy. Accordingly, OPM for good cause finds that the notice and comment requirements are unnecessary. See 5 U.S.C. 553(b)(3)(B).

This rule is also suitable for direct final rulemaking because it is non-controversial and consistent with Federal law and policy regarding the appropriate handling and protection of SSNs. The provisions of the rule will be beneficial to members of the public and Federal employees because it protects their personally identifiable information. Because this non-substantive rule makes no changes to the legal obligations or rights of any affected parties (*i.e.,* reflects a statutory requirement that is already in effect) and because it is in the public interest to have this rule be effective as soon as possible, OPM does not expect to receive any significant adverse comments.

This rule will be effective June 26, 2024, without further action unless significant adverse comments are received. A significant adverse comment is one that explains: (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published. If no such comments are received, this direct final rule will become effective 15 days after the comment period expires. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, OPM will consider whether the

comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice and comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

Expected Impact of This Direct Final Rule

SSNs are used as unique identifiers by government agencies, businesses, and other entities. The theft and fraudulent use of SSNs can result in significant repercussions for the SSN holder, as well as the entities from which SSNs were stolen. This direct final rule formalizes in regulation OPM's current practice of safeguarding SSNs in mailed documents and will support efforts to protect individual privacy. In accordance with the E-Government Act (2002), OPM currently applies encryption technology and other security controls, such as password protection, to minimize the risk of unauthorized disclosure of SSNs. OPM program offices are also required to conduct proper assessments to minimize the use of SSNs and the impact to individual privacy as a result of their inclusion in any document. This rule supplements these procedures and is beneficial because it protects individual privacy and standardizes OPM's procedures for mailing documents with SSNs. There are no alternatives to this rule because it is required by statute.

Regulatory Review

Executive Orders 13563, 12866, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

Regulatory Flexibility Act

The Director of OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because it is a procedural rule that only applies only to OPM.

E.O. 13132, Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, OPM has determined that this direct rule does not have federalism implications that require preparation of a federalism summary impact statement.

E.O. 12988, Civil Justice Reform

OPM has determined that this rule meets the relevant standards of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, or the private sector of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA) (5 U.S.C. 801, *et seq.*) requires rules to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this rule before its effective date, as required by 5 U.S.C. 801. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by the CRA (5 U.S.C. 804).

Paperwork Reduction Act of 1995

This regulatory action will not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 5 CFR Part 297

Privacy.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

For reasons stated in the preamble, OPM amends 5 CFR part 297 as follows:

PART 297—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

■ 1. The authority citation for part 297 is revised to read as follows:

Authority: 5 U.S.C. 552a; Pub. L. 115–59, 113 Stat. 1152 (42 U.S.C. 405 note).

■ 2. Amend § 297.102 by adding in alphabetical order the definitions for ''Document'' and ''Mail'' to read as follows:

§ 297.102 Definitions.

* * * * *

Document means a piece of written or printed matter that provides information or evidence or that serves as official record.

Mail means artifacts used to assemble letters and packages that are sent or delivered by the United States Postal Service or other commercial letter or parcel delivery services.

* * * * *

■ 3. Add subpart F, consisting of §§ 297.601 and 297.602, to read as follows:

Subpart F—Privacy and Social Security Number Fraud Prevention

Sec.

§ 297.601 Purpose and scope.

The purpose of this subpart is to implement the requirements of the Social Security Number Fraud Prevention Act of 2017 to limit the use of Social Security numbers on documents mailed by the Office of Personnel and Management (OPM). The subpart applies to all written or printed documents that OPM sends by mail that include a complete or partial Social Security number.

§ 297.602 Protecting Social Security numbers in mailed documents.

(a) Social Security numbers must not be visible on the outside of any package OPM sends by mail or displayed on correspondence that is visible through the window of an envelope or package.

(b) A document OPM sends by mail may only include a Social Security number if the Director of OPM determines, on the advice of the Senior Agency Official for Privacy, that the inclusion of a Social Security number on a document sent by mail is necessary and appropriate to meet legal and mission requirements.

(c) The inclusion of a Social Security number on a document sent by mail is necessary when—

(1) Required by law; or

(2) Necessary to identify a specific person and no adequate substitute is available.

(d) Social Security numbers must be partially redacted in documents sent by mail whenever feasible to mitigate any risks to privacy.

[FR Doc. 2024–07750 Filed 4–11–24; 8:45 am]

BILLING CODE 6325–67–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 300, 362, and 410

[Docket ID: OPM–2023–0020]

RIN 3206–AO25

Pathways Programs

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing this final rule to align the Pathways Programs with the Federal Government's needs for recruiting and hiring interns and recent graduates. Robust Pathways Programs, with appropriate safeguards to promote their use as a supplement to, and not a substitute for, the competitive hiring process, are essential to boosting the Federal Government's ability to recruit and retain early career talent.

DATES: This rule is effective June 11, 2024. Agencies must be in full compliance with this final rule not later than December 9, 2024.

FOR FURTHER INFORMATION CONTACT: Katika Floyd at (202) 606–0960 or by email at *employ@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background Information

The authority for the Pathways Programs in their current form was set forth on December 27, 2010, with the issuance of E.O. 13562 (75 FR 82585) pursuant to 5 U.S.C. 3301 and 3302. The Pathways Programs became effective on July 10, 2012, following OPM's issuance of a final rule (77 FR 28194) implementing E.O. 13562. The Programs are designed to provide students and recent graduates with the opportunity for Federal internships and potential careers in the Federal Government through three components:

- The Internship Program exposes current high school students, undergraduate students, including those enrolled in community and technical colleges, and graduate students to the work of Government by providing paid opportunities to work in agencies and explore Federal careers while still in school.
- The Recent Graduates Program (Recent Graduates) provides opportunities for individuals who have received qualifying degrees or certificates within the previous two years (up to six years for qualifying veterans) to obtain entry-level developmental experience designed to lead to a career in the Federal Government after successfully completing the Program, which is generally one year in length and in certain cases may be two years in length.
- The Presidential Management Fellows (PMF) Program promotes careers in the Federal Government by offering leadership development opportunities to individuals who have received advanced degrees within the preceding two years.

On August 16, 2023, OPM published a proposed rule with request for comments in the **Federal Register** at 88 FR 55586 proposing to modify the existing regulations for the Pathways Programs for students and recent graduates. Based on agency feedback and OPM's own analysis, OPM proposed several changes aimed at enhancing the robust usage of the Pathways Programs as a key source of early career talent in the Federal Government to supplement, but not substitute for, the competitive hiring process. Overall, the purpose of the changes is to streamline the Pathways regulations, making it easier for agencies to recruit and hire participants in the Pathways Programs and to optimize the Pathways Programs as a tool to recruit and retain diverse and highly qualified early career talent. These changes include:

- Outlining the specific responsibilities of the PMF Coordinator;
- Expanding the time period for converting Pathways Interns from 120 to 180 days;
- Modifying the public notice requirement for job opportunity announcements for Pathways Interns and Recent Graduates;
- Clarifying and streamlining the training and development requirements;
- Allowing Recent Graduates and PMFs to be converted to term or permanent positions in any agency, when appropriate;
- Reducing the frequency of required reporting;
- Allowing the use of part-time work schedules for PMFs in certain situations;
- Clarifying information about the use of developmental assignments for PMFs; and
- Expanding eligibility for the Recent Graduates Program to include those who have completed certain career or technical education programs.

Summary of Comments

During the 45-day comment period between August 16, 2023, and October 2, 2023, OPM received 79 sets of comments from nine Federal agencies, 38 members of the public, and nine professional organizations. At the end of the public comment period, OPM reviewed and analyzed the comments. The comments are summarized in the next section, together with a discussion of the suggestions for revision that were considered and either adopted, or declined, and the rationale therefor. OPM did not address the following suggestions from commenters that are outside the scope of this rulemaking:

- Two comments suggested that OPM should address ways agencies can convert participants in third-party Internships that are not Pathways appointments to permanent positions.
- One comment suggested that OPM pursue legislative changes to the Competitive Service Act to allow for the use of shared certificates for Pathways appointments.
- Several comments addressed issues related to how a specific agency has chosen to use the Pathways Programs or implement various provisions of the programs.
- Comments related to the sharing of recruitment data among agencies that use the Pathways Programs.
- One comment suggested modification to the selection process for the PMF Program.
- Several comments suggested recommendations for workforce planning, recruitment, and marketing activities.
- One comment suggested that OPM remove its ability to place restrictions or caps on the number of Pathways appointments made.
- One comment suggested OPM change the 80 hour per year training requirement for PMFs.
- One comment suggested that Interns should be able to do remote work.
- One comment suggested that OPM allow agencies to share certificates for Pathways hiring actions.
- Several commenters shared information about their personal experiences in the program. The comments ranged from supportive to unsupportive.

In the first section below, OPM addresses general or overarching comments. The sections that follow address comments in response to OPM's requests for comments and data related to specific portions of the proposed rule.

General Comments

OPM received several comments that expressed general support for the proposed regulatory changes. For example, one agency expressed that the proposed updates would help facilitate a better applicant experience, streamline agencies' ability to hire participants in the Pathways Programs, and improve

developmental opportunities for Pathways Program Participants. A professional organization indicated that Pathways Programs are essential on-ramps to recruit and hire talented early-career and career-pivoting professionals of all ages into the Federal Government and applauded the proposed expansion of eligibility requirements and facilitation for participants to transition to permanent Federal employment.

One commenter questioned how the proposed changes might provide or support transparency as an objective of the regulations. Our intent with these regulations is to provide more transparency in those areas where agencies, applicants, and Pathways Participants have shared with us that the existing regulations do not provide adequate information to maximize the effectiveness of the programs. For example, applicants and agencies have asked for more options in sharing information about Pathways opportunities. OPM is modifying the regulations to provide more information to applicants about job opportunities, to Pathways Participants and agencies about conversion opportunities, and to collect information that will allow OPM to monitor the effectiveness of the programs.

One commenter indicated that they felt the proposed rule provided neither encouragement nor affirmative language related to leveraging the Pathways Programs for diverse individuals and those with disabilities as required by Executive Order 14035 of June 25, 2021, ''Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce.'' OPM disagrees with the assessment that affirmative language is required to help leverage Pathways Programs for diverse individuals. The changes in the proposed rule (and finalized here) that expand eligibility criteria to include career and technical education will allow agencies to recruit from a broader spectrum of applicants. This change should support agencies as they work to reach applicants with diverse backgrounds.

One commenter indicated that the application of veterans' preference may impact the diversity of Pathways appointments and lead to Pathways appointments that reflect the diversity of the veteran community and not that of the American public. This commenter suggested OPM should monitor the impact of veterans' preference on diversity. Although OPM may continue to monitor the impact of veterans' preference, E.O. 13562 requires agencies to apply veterans' preference when making appointments to fill Pathways positions.

One commenter expressed support for the use of paid internship opportunities. OPM agrees that the use of paid early career opportunities is mutually beneficial to students, recent graduates, and Federal agencies. These paid opportunities offer students and recent graduates a chance to demonstrate their talents and potential while offering agencies time to evaluate their skills, abilities, and contributions. All appointments under the Pathways Programs are paid opportunities. Pathways Participants are appointed to Federal positions and earn a salary commensurate with the grade level of the position. Additionally, Pathways Participants may also be eligible for benefits such as health insurance, life insurance, and retirement coverage depending on their work schedule and length of appointment.

One commenter indicated that OPM should require agencies to implement the use of exit interviews, surveys, and/or other similar processes to ensure that agencies capture information about participant program experiences and use it to improve Pathways Programs in the future. OPM recognizes that exit interviews and surveys are valuable tools to measure employee engagement and the effectiveness of programs such as the Pathways Programs. OPM has determined that information on the use of such tools is more appropriate in guidance to agencies than in this final rule. OPM will consider whether to provide guidance and tools to help agencies measure employee engagement and program effectiveness.

A commenter provided suggestions related to supporting agencies' ability to provide high quality experiences for participants. These suggestions included change management support such as communications, office hours, and training and establishing a Pathways Board to continuously assess and approve improvement recommendations, identify talent innovations, and encourage the hiring of early career talent. OPM intends to provide agencies with support as they implement the changes to the regulations through written guidance and a variety of outreach activities such as webinars, information sessions, office hours, and question and answer sessions. OPM receives feedback and provides support to agencies on the use of the Pathways Programs through the Chief Human Capital Officers Council and its working groups and communities of practice. For this reason, it would be duplicative to establish a Pathways Board.

One commenter suggested that OPM clarify that Interns may be converted to permanent excepted service positions. OPM is not adopting this suggestion. As provided in E.O. 13562, the Pathways Internship authority is used as an exception to fill positions that would normally be filled through a competitive process. Accordingly, non-competitive conversion means assignment to a position in the competitive service. The Pathways Programs E.O. and implementing regulations do not provide for conversion to an excepted service position for an Intern.

Responses to Requests for Comments and Data

1. Whether Recent Graduates and PMFs Should Be Able To Convert to Positions at a Different Agency

The existing regulations at 5 CFR 362.107 for conversion of Recent Graduates and PMFs to positions in the competitive service limits conversion to positions in the employing agency. OPM proposed to modify these provisions to allow conversion at other agencies.

We received many comments on the provisions to allow Recent Graduates and PMFs to convert to positions at other agencies. Most comments were supportive of this change. Some commenters also questioned how agencies would share opportunities and how Recent Graduates and PMFs who are unable to be converted at their employing agency would find information about potential opportunities. Two commenters also recommended that OPM facilitate this process. OPM is currently developing tools to assist participants and agencies in this process. We will provide additional guidance on this process as we develop and launch these tools.

2. Limitations on Conversion of Recent Graduates and PMFs to Positions at Different Agencies

The existing regulations for conversion of Recent Graduates and PMFs to positions in the competitive service limits conversion to positions in the employing agency. As discussed in the preceding section, OPM proposed to allow conversion at other agencies; however, OPM proposed that this new flexibility be limited to situations when the employing agency is unable to convert the Recent Graduate or PMF in 5 CFR 362.305 and 362.409. OPM received comments about how the conversion to another agency should occur. Comments were evenly split between those who supported conversion to a position at another agency under limited conditions and those who supported conversion at another agency for any reason. In this

final rule, OPM maintains the conditions to allow conversion at another agency when the agency is unable to convert the Recent Graduate or PMF to a position in the competitive service in the employing agency due to unforeseen circumstances or other appropriate reasons.

Some Federal agencies and individuals indicated that conversion should be limited to certain situations because the agency has invested considerable resources into the recruitment, training/development, and mentorship of the employee. Other commenters suggested that limiting the conditions for when conversion at other agencies could occur was not recommended because it reduced flexibility and choice for Pathways Participants. One commenter also suggested that these limits on conversion would create a burden on agencies. One commenter suggested that limiting conversion at other agencies may lead to dissatisfaction and possibly contribute to PMFs or Recent Graduates leaving Federal service.

Many commenters suggested that Recent Graduates and PMFs should be able to choose where they are converted. Some of these commenters expressed that not allowing this type of choice for Recent Graduates and PMFs could lead to resignations for those who have a bad experience or are in roles that do not align with their career goals. OPM reminds readers that there are opportunities for Recent Graduates and PMFs to move into different positions within the Federal Government before and after their conversion deadline if they are not satisfied with their Pathways experience. For example, Recent Graduates and PMFs can request a transfer to a different agency partway through their program. Once an individual is converted to a permanent position in the competitive service, the individual can seek to transfer to another agency (the same as anyone else hired into a permanent competitive service job). In this way, Recent Graduates and PMFs are not disadvantaged compared to other applicants for Federal jobs.

A commenter recommended standardizing a conversion time period across agencies. They suggested that after a set period, the Recent Graduate should be able to reach out to other agencies to facilitate Federal employment and avoid attrition if the opportunity is not available at their agency. Another commenter suggested that an agency should be required to provide a Recent Graduate or PMF with a written notice of intent to convert or not convert 90 days before their program ends. Further the commenter indicated that only a Recent Graduate or PMF who receives a notice that the agency will not convert may then be converted to a different agency. OPM does not agree that an agency should be required to provide written notice 90 days before the program ends. But OPM does agree that the notice should be given at least 60 calendar days prior to the end of an appointment and that the notice may be either written or unwritten. While OPM encourages agencies to have conversations with Recent Graduates and PMFs about whether the agency intends to convert the employee as early as possible, OPM recognizes that unforeseen circumstances (such as a budgetary shortfall or uncertainty) may prevent an agency from doing so.

The intent of these Programs is to help agencies meet their early career hiring needs by allowing the hiring agency to convert an eligible Pathways Participant who successfully completes program requirements assuming the agency is able to do so. Therefore, at a minimum as a part of the agency's workforce planning, OPM encourages managers to make determinations about whether the resources are available to convert Recent Graduates and PMFs at regular intervals prior to the end of a Recent Graduate's or PMF's program period. OPM also encourages agencies to inform Recent Graduates and PMFs as soon as possible after the agency makes determinations about the agency's ability to convert the Recent Graduates or PMFs. Such a determination must be communicated to the Recent Graduate or PMF no later than 60 calendar days prior to the end of their appointment. OPM recognizes that to ensure that such conversations and determinations are made in a timely manner this issue should be addressed in an agency's Pathways Policy. For this reason, OPM is modifying § 362.104(a) in this final rule to require agencies to include provisions in their Pathways Policies that address procedures and criteria for determining if an agency will be able to convert Recent Graduates and PMFs and communicating those determinations to the employee. A conversion to a position in the competitive service must occur within the Recent Graduate's one- or two-year program period plus any approved extension or within the PMF's two-year program period plus any approved extension.

The purpose of the Pathways Programs is to allow agencies to recruit student and recent graduates to support agency workforces needs while also offering them a pathway to a Federal career. OPM expects that agencies will continue to hire Recent Graduates and PMFs with the intention of converting them in the agency to which they were appointed and that the need to convert at another agency will be rare. This means the ability to convert at other agencies must balance the agency's need to meet its workforce goals using available resources against the participants' desires to build a meaningful career. OPM believes that allowing conversion at another agency under certain situations related to unforeseen circumstances provides the needed balance and maintains the intent that the programs are to be used to support agency workforce planning goals. It also preserves the investment the Government has made in the individual Recent Graduate or PMF.

One commenter suggested that those eligible for conversion should be able to apply to merit promotion announcements. OPM is not adopting this suggestion. Agencies use merit promotion announcements to promote or reassign career or career-conditional employees as allowed by 5 CFR part 335 and agencies' policies for internal movements of employees. Recent Graduates and PMFs serve in excepted service positions and generally lack prior service in competitive service positions or career or career-conditional status to meet the eligibility criteria to apply to merit promotion announcements for competitive service positions. Recent Graduates and PMFs who have obtained career or career-conditional status from prior Federal appointments may apply to merit promotion announcements for competitive service positions. Similarly, once converted to competitive service positions, Recent Graduates and PMFs obtain career or career-conditional status through the Pathways Program and may apply to merit promotion announcements.

3. Structure of the Intern Conversion Process

In the existing regulations in § 362.204, an agency may convert an Intern to a position in the competitive service when the Intern has met the OPM qualification standard for the position to which the Intern will be converted, completes a course of academic study from a qualifying educational institution, completes a minimum of 640 hours of work experience while in the Internship Program, and receives a favorable recommendation by an official of the agency. OPM requested comments on how OPM could modify the Pathways Intern conversion process to maximize the Federal enterprise's ability to recruit

and retain qualified interns following the conclusion of their internship.

One commenter suggested that OPM look to industry best practices when considering feasible reasons for conversion, but the commenter did not provide any examples. Another commenter suggested that, instead of a work hours requirement, OPM should ensure agencies are providing clear performance objectives and feedback throughout an Intern's tenure in the position to allow agencies to make conversion decisions based on performance and skills, rather than an hour requirement. While OPM is not adopting this specific suggestion, we note that the intent of the Internship Program is for the Intern to develop necessary skills while allowing the employing agency to train and then assess the performance of the Intern to fill agency workforce needs. The Internship Program achieves this through eligibility conditions required for conversion. One of the existing requirements for conversion is that the Intern receive a favorable recommendation for appointment by an official of the agency or agencies in which the Intern served. Additionally, Interns are subject to the agency's policies for performance and conduct. The recommendation from the Intern's supervisor in conjunction with the agencies' use or application of effective performance management practices ensures that performance is considered when an agency determines that the Intern meets the requirements for conversion. The requirement for a minimum number of hours provides the Intern with sufficient time to learn about the agency and Federal employment and to develop the necessary skills while also allowing the agency time to evaluate the Intern's work performance before offering permanent employment. OPM encourages agencies to recruit Interns as early as possible in the Intern's academic career to maximize the full benefit of the program.

A professional organization recommended a number of best practices for retaining Interns and converting them to full time, including hosting networking events with fellow Interns and agency leaders to help Interns and leaders build networks and contacts, offering programs and experiences that allow Interns to learn about Federal employment and its benefits, and aligning internship opportunities to in-demand skills or emerging professions. Another professional organization suggested several areas of focus for all Federal internships such as improved onboarding efforts, standardization of program quality criteria, and increased strategic planning for recruitment and hiring of entry level talent. OPM agrees and encourages agencies to consider these types of strategies to improve the Intern experience. OPM plans to use some of these activities in its Intern Experience Program to assist agencies in their efforts to create meaningful experiences for all Interns.

4. Strengthen the Provisions That Allows Agencies To Waive or Credit Up to Half of the Interns' 640-Hour Service Requirement

The existing regulations at 5 CFR 362.204(d) include a waiver provision and a credit provision for up to half of the 640-hour service requirement prescribed in 5 CFR 362.204(b). The waiver provision allows an agency to waive up to half (320 hours) of the 640-hour service requirement for any Intern who performs work directly related to the Intern's academic field of study or career goals, and who demonstrates outstanding academic achievement and exceptional job performance. The existing credit provision allows an agency to credit up to half of the 640 work hours for time served in a comparable non-Federal internship at a Federal agency. OPM requested comments on ways to modify these provisions to provide additional and appropriate flexibility for agencies and Interns.

One commenter expressed support for allowing agencies to credit or waive up to half of the hours from a Registered Apprenticeship Program or time served in the U.S. Department of Labor's Job Corps that was completed prior to the Internship appointment.

The proposed rule included an example of an agency waiving half of the 640-hour requirement for an Intern who spent time at Job Corps two years before the Internship appointment. One commenter interpreted this example to mean the agency could only credit the time from Job Corps service if it occurred within the preceding two years. This is incorrect; an agency may waive time served with Job Corps that has occurred at any time prior to the Internship appointment. The agency is not limited to considering the two-year period prior to the Internship appointment.

OPM received several comments related to alternative criteria for waiver or crediting provisions. One commenter suggested that credit or a waiver could be given for internships that received class credit, as shown on transcripts, or work experiences that were required for the relevant industry-recognized certification/state license. Another commenter suggested crediting up to 320 hours for both Federal and non-Federal experience toward an intern's 640-hour service requirement to attract and convert qualified talent with in-demand skills. That same commenter suggested that OPM should consider accepting internship and apprenticeship experience from non-Federal organizations (such as private organizations or workforce centers) and career/technical education for programs that are focused on skills/careers in a current or emerging profession (*e.g.,* cyber, artificial intelligence (AI), technology) to help fulfill demand, depending on type, level, and time of experience. An agency suggested that agencies should be able to waive up to half of the hours when certain agency-determined experience options are met. The agency did not provide example of the options. That same agency also suggested that guidance would be needed on the types of documentation that could be used to verify the outside experience. OPM is not adopting these suggestions. While the proposed alternatives presented in the comments may be viable and may hold promise, OPM believes more research is needed before making such changes to ensure program administration viability and employment equity.

Some commenters also suggested the regulations allow agencies to credit time spent in non-Federal internships toward all or part of the work hour requirement. One commenter expressed that agencies should be able to credit all non-Federal internship or volunteer experience towards the 640 hours requirement, or alternatively, to use evidence of successful participation in such programs to justify immediate step increases upon conversion. OPM is not adopting this suggestion. The minimum number of hours required for conversion gives the employing agency sufficient time to evaluate the intern before converting the individual into the agency's permanent workforce. Crediting non-Federal experience or volunteer service for all or more than half of the work-hour requirement would neither provide the agency sufficient time to evaluate the intern for purposes of permanent employment nor would it give an Intern sufficient time to learn about the agency and Federal employment in general. OPM is concerned that non-Federal internships may lack the structure, consistency, and developmental opportunities offered by Federal internships. This proposal could also be abused, allowing agencies to hire Interns for brief periods of time

before conversion to a permanent position. Experience gained through a non-Federal internship or volunteer activity, however, could be creditable for purposes of qualifying for an initial Pathways appointment.

One commenter also expressed that Interns should be able to use evidence of successful participation in non-Federal internship or volunteer experience programs to justify step increases upon conversion. OPM is not adopting this suggestion. A step increase or within grade increase is earned when the employee's performance is at an acceptable level of competence, the required waiting period for advancement to the next higher step has been completed, and the employee has not received an ''equivalent increase'' in pay during the waiting period. If the Intern has met the waiting period and other requirements for a step increase at the time of conversion, then an agency may process a step increase at the time of conversion. If the Intern has not met the requirements for a step increase, then the agency does not have the ability to give the Intern a step increase unless it is awarding a Quality Step Increase (QSI). A QSI is a faster than normal within-grade increase used to reward employees a who display high quality performance and may be awarded to an employee in accordance with an agency's awards policy. This comment may also be referring to the mistaken idea that, if an agency is considering a promotion at the time of conversion, then the agency is not able to consider non-Federal internship or volunteer experience programs when determining whether the Intern is qualified for a higher grade level. When determining whether an Intern (or any other employee) is qualified for a promotion, an agency should review all available information about the Intern's qualifications and competencies, including non-Federal and volunteer experience.

One commenter suggested that it may be in the Government's best interest to have the entire work-hour requirement met through the Pathways appointment. OPM disagrees. A longstanding feature of Federal student programs such as the prior Student Career Experience Program and the current Pathways Program has been to allow Interns to credit work that was done in, but not for, a Federal agency. OPM believes such provisions are appropriate because these opportunities allow Interns to explore the culture of the agency and the agency has had a chance to observe the Intern's work even though they were not a Federal employee.

One commenter suggested that any waiver provisions should be applied consistently across agencies, which would benefit situations when Interns convert at other agencies. OPM agrees that the use of the waiver provision should be applied consistently across agencies. However, OPM recognizes that waivers may not be needed by all participants and the number of waivers approved by agencies may vary. OPM encourages the approval of a waiver for situations where waiver may be needed and the criteria for a waiver and the additional criteria for conversion have been met. That same commenter also questioned how the waived or credited hours affect creditable service for leave accrual or retirement and time-in-grade. The waiver or crediting of hours is only creditable for the purpose of meeting the work-hour requirement. Hours waived or credited do not impact creditable service for purposes of leave accrual, service credit towards retirement, or time-in-grade requirements.

A commenter stated that the work hour requirement should not be waived; however, if it is waived, OPM needs to provide a standardized form for use of all employing agencies that would require specific documentation. Several commenters suggested that OPM specify what documentation is required for an agency to waive a portion of the required work hours. When approving a waiver, an agency needs documentation to support its determination. For example, to document academic achievement, the agency may accept a transcript or other written confirmation of class standing from the educational institution or written confirmation of induction into a nationally recognized scholastic honor society. For exceptional job performance an agency could use a copy of the Intern's performance appraisal or other documentation of the rating of record. OPM may provide additional information about examples of documentation for these provisions in guidance. Given that agencies have been using the waiver provisions for many years without incident, OPM does not believe implementing a standardized form is necessary.

One commenter suggested that, if an Intern met the work-hour requirement with or without a waiver, that the agency should be able to convert the intern to a term or permanent position before they completed their educational program. OPM disagrees and is not adopting this suggestion. Completion of the Intern's educational program is an integral part of the Pathways Programs, and its predecessor programs, and helps ensure the Intern meets his or her academic goals and aspirations. OPM noted in the original Pathways proposed rule (76 FR 47495, August 5, 2011) that ''. . . it is difficult for many recent graduates or expected graduates to compete for government jobs through the competitive hiring system [because they] do not have the experience necessary to compete . . . .'' The proposed rule further stated, ''Internship programs are essential to addressing these issues.'' The E.O. also states that many students are unable to successfully compete for a Federal job solely on the basis of possessing an academic degree because the Federal hiring process is structured to favor those with significant work experience. Completion of the educational program is a fundamental or foundational basis for this excepted service program and helps to ensure interns qualify for these positions and placement in the competitive service.

One commenter suggested that agencies should be able to determine if up to half of the required work hours may be waived and for what types of work; agency policies should establish the process and criteria for making these determinations. OPM agrees that agencies should have the discretion to determine if a waiver or crediting of other experience is allowable. Agencies may put in place procedures that outline how the discretion to approve waivers may be made consistent with the criteria OPM has established in regulation.

OPM's existing regulations apply a two-prong test to determine eligibility for a waiver. An intern must demonstrate ''high potential'' through both ''outstanding *academic* achievement'' and ''exceptional job performance.'' 5 CFR 362.204(d) (emphasis added). Further, outstanding academic achievement is defined in terms of grades, class standing, and honors societies. Id. With the proposed rule, OPM intended to expand the qualifying educational programs beyond traditional academic institutions to include career and technical education programs. As described in the proposed rule, OPM did not intend for Interns attending a qualifying technical education program to have their ability to participate curtailed in any way. However, our review of the comments related to the waivers and the existing waiver provision showed that the existing requirement for outstanding academic achievement (necessary for approval of a waiver) could not be applied to career and technical education programs where grades or other academic standards such as grade point average and class rankings may

not be used. For example, participants in a Registered Apprenticeship Program may be required to take classroom or online training classes where completion is graded as pass/fail and letter or numerical grades (or grade points) are not assigned. In such instances an Intern in a Registered Apprenticeship Program that did not also have class ranking or an associated honor society induction would have no way to qualify for a waiver. For this reason, OPM has modified the waiver provision to introduce a new option of the submission of a recommendation letter from an instructor or program administrator as a way for the Intern to demonstrate high potential in their academic or career and technical education program. This new option ensures that interns in career and technical education programs where traditional indicia of high performance are not available will be eligible for waivers consistent with the intent of the proposed rule. Specifically, OPM reorganized the two-prongs to remove references to academic programs but retained the concept that an intern must demonstrate high potential in both the Federal internship and in the educational component of the qualifying program. The Intern participating in a career or technical education program must demonstrate exceptional job performance just as an Intern enrolled in a qualifying educational institution, so OPM determined that no change to that provision is needed apart from the reorganization of the paragraph.

5. Changing the 640-Hour Requirement for Conversion of an Intern

Under the current regulation in § 362.204, one of the requirements that an Intern must meet for conversion is the completion of 640 hours of employment under a Pathways Internship appointment. OPM requested comments on whether OPM should consider making a change to the 640-hour service requirement that must be met for conversion of an Intern and indicated that it would consider adopting a different hourly requirement in the final rule. Additionally, OPM requested information regarding best practices and asked that any suggestions for an alternative work-hour requirement describe the advantages and disadvantages of the suggested length of the internship.

Some commenters suggested that the 640-hour requirement should be reduced. Two agency commenters suggested the requirement should be reduced to 480 hours to allow more flexibility in hiring and converting Interns who are hired closer to their graduation date. One commenter suggested that OPM's 640-hour requirement is rigid, unrealistic, arbitrary, and burdensome and is longer than what is used in many industries. This same commenter suggested that more emphasis should be put on meaningful experience focused on skills, performance objectives and accomplishments. The commenter explained that compliance with an hour-based requirement is not the best way to obtain early career talent with demonstrated skills. Another commenter suggested that the work hour requirement should be reduced to 420 hours to better align with a typical summer internship period for students. Some commenters argued that OPM should consider private sector practices and indicated that private sector internships were generally shorter than the existing prescribed minimum of 640 work hours. Other commenters expressed support for the 640-hour requirement and indicated that it should not be changed or waived.

OPM agrees that an intern's performance on-the-job is the most important factor as to whether an intern should be converted into a permanent position, but OPM believes that some minimum amount of time in an agency is necessary for the agency to evaluate that performance. As suggested by two agencies, OPM agrees that a 480-hour internship can provide agencies with the information they need to determine if a high-performing intern can be converted. OPM notes, however, that the shorter time frame–from 640 to 480–in no way suggests that an intern should have an expectation of conversion. By contrast, agencies should only convert interns when their performance indicates that they are well prepared to add value to the Federal Government as permanent employees. Accordingly, OPM is revising the minimum work hours to 480.

OPM further notes that another agency expressed the view that 640 hours was a reasonable timeframe to assess an intern's performance. Agencies can set the minimum for their programs higher than 480, including setting higher minimums for different types of positions. OPM also notes that § 362.105(i) requires an agency to place each Intern on a performance plan, establishing performance elements and standards that are directly related to acquiring and demonstrating the expected competencies, as well as the elements and standards established for the duties assigned. Interns are not eligible for conversion unless they have performed satisfactorily during their internships.

6. Public Notification

The existing regulations at 5 CFR 362.203(a) and 362.303(a) require that an agency must post opportunities for positions in the Internship and Recent Graduates Programs on *USAJOBS.gov.* OPM proposed to modify the provisions for meeting public notice options for filling positions under the Internship Program and Recent Graduates Program. In addition to allowing agencies to post searchable job opportunities at USAJOBS, OPM also proposed to allow agencies to post job information with a link to a USAJOBS custom posting on their agency websites, with OPM providing a centralized place where applicants can be directed to those postings on the agency websites. OPM requested comments on these changes and whether the changes will enable agencies to recruit and retain early career talent more effectively than the current process.

One commenter indicated that they did not think the updated public notification requirement would help agencies or potential candidates but was not opposed to offering multiple options for advertising the opportunities. Another commenter indicated the changes would not yield much additional benefit. Another commenter felt the additional options just added more steps and could possibly extend the length of the hiring process. Public notification for Pathways positions is required by E.O. 13562 to ensure that agencies uphold the merit system principle of fair and open competition for the Program's opportunities. OPM's intention is to provide agencies with multiple options to communicate about available opportunities, while still making sure that such options are available and open to all. The options provided will allow agencies to choose which options best match their recruitment and outreach approaches and meet the core Federal employment principle of fair and open competition.

One commenter questioned how allowing agencies to link to a USAJOBS custom posting on the agency's public career or job information web page would be advantageous when many agencies already have links to USAJOBS announcements on their websites. OPM recognizes that some agencies may already provide links to USAJOBS announcements on their websites, but many do not. Using a USAJOBS custom posting in concert with an announcement on the agency's website allows an agency to provide fair and open competition while focusing its recruitment efforts. Specifically, adding this alternative to the regulations

ensures that agencies have the use of all available tools to spread information about Pathways opportunities.

A commenter suggested that agencies should be required to have internship announcements stay open for at least 3–4 weeks. OPM disagrees with this suggestion. Agencies need the flexibility to open and close announcements in a manner that allows for a sufficient pool of applicants to apply. In certain situations, such as when an agency is attending a job fair or conducting other strategic recruiting activities, the agency may identify a sufficient pool of applicants using a shorter application period. The public notification period used by an agency will depend on several factors which include: the type of job and grade level of the position being filled, the availability of candidates in the location where the job will be performed, and the breadth of outreach and recruitment conducted by the agency.

Two commenters expressed that custom postings would be helpful in recruiting early career and diverse talent. OPM agrees with this assessment. Another commenter, while supportive of the proposed changes, made several recommendations pertaining to outreach. The commenter stated:

> We recommend expanding recruitment marketing for Pathways positions to establish and improve the Pathways program's brand, promote open positions, and highlight benefits and attract/source talent through high-yield platforms (digital and social media (Facebook, Google, etc.), jobs boards (Indeed, Handshake, etc.). OPM and individual agencies should consider the development of talent network site to source leads for the Pathways program during and outside of hiring windows and should bolster their careers sites with information about different Pathways opportunities.[1]

OPM agrees and is working with our agency partners to develop tools and resources for applicants to learn about Pathways opportunities. For instance, in 2022, OPM introduced the Federal Internship Portal[2] as part of a strategy to improve marketing and outreach to potential applicants for early career positions.

A professional organization recommended that agencies create separate announcements for Pathways Programs between a public announcement and Federal/status announcement to ensure qualified veteran and non-veteran candidates are selected in a timely manner and reduce applicant dropout rates for non-veterans. OPM is not adopting this recommendation. Announcements for Pathways Programs are open to all who meet the eligibility criteria regardless of whether the applicant is a current Federal employee, or an individual entitled to veterans' preference. Veterans' preference also applies to positions filled in the excepted service. Having separate announcements for current Federal employees would not remove the requirement to apply veterans' preference and is not likely to impact whether students or recent graduates complete the hiring process.

This final rule adopts the proposed changes to public notification in §§ 362.203(a) and 362.303(a) without change.

7. Clarifying the Role of the Presidential Management Fellows Coordinator

Under the existing regulations, the Agency Presidential Management Fellows Coordinator (PMF) Coordinator is broadly defined as ''an individual, at the appropriate agency component level, who coordinates the placement, development, and other Program-related activities of PMFs appointed in his or her agency.'' 5 CFR 362.401. The existing regulations also indicate that the PMF Coordinator is responsible for administering the PMF Program and serving as a liaison with OPM. OPM proposed to clarify the role of the PMF Coordinator by outlining the specific responsibilities of the role. Additionally, OPM proposed to require that the employee filling the role of the coordinator must be in a position at the agency's headquarters level of a departmental component, or sub-agency level, in a position at or higher than grade 12 of the General Schedule (GS) (or the equivalent under the Federal Wage System (FWS) or another pay and classification system).

Many commenters were supportive of the proposal to define and clarify the role of the PMF Coordinator. One commenter indicated that outlining minimum grade level requirements as well as the necessarily collaborative nature of the assignment are appropriate steps. OPM appreciates these comments.

One commenter suggested that OPM specify that the changes to the PMF Coordinator role should include facilitating the assignment of a mentor for each agency PMF. While OPM agrees that a PMF Coordinator has a role in facilitating a PMF's search for a mentor, the role could also be filled by others in the agency such as the PMF's supervisor or an agency training manager. For this reason, OPM is not adopting this suggestion.

One commenter suggested that OPM should clarify how PMF Coordinator positions interact with agency roles for managing other early career talent programs. This commenter also stated it is unclear whether the PMF Coordinator role is intended to be separate from similar positions used to manage other early career talent programs. OPM recognizes that many factors such as the agency's size and their utilization of the PMF program and other early career talent programs may impact whether the PMF coordinator role is separate from other roles. OPM believes that agencies need the flexibility to determine whether the PMF coordinator role can be combined with agency roles that manage other early career talent programs. OPM believes the discussion of this issue is best addressed in guidance to agencies and declines to incorporate this suggestion into the regulatory text in this final rule.

One commenter suggested that OPM should require annual training and development for PMF Coordinators to ensure that PMFs are getting the same quality of program coordination regardless of which agency employs them. Another commenter suggested that OPM implement user-centered design to collect feedback from current PMF Coordinators and program applicants to better understand challenges and to develop the tools and resources needed to strengthen the PMF experience. A commenter also suggested that OPM standardize the required training for the role and establish quarterly meetings with all PMF Coordinators to provide support and ensure consistency of the program across agencies. OPM's PMF Program Office currently provides Agency PMF Coordinators with resources and technical assistance to encourage agency use of the PMF Program and to provide necessary technical guidance. Resources include an Agency Brochure, Participant Handbook, Onboarding Toolkit, Checklists, Timelines, FAQs, Sample Position Descriptions, PMF Forms, and Templates.[3] The PMF Program Office also conducts monthly meetings with all Coordinators, facilitates an Agency PMF Advisory Board, and sponsors a mentoring program for new PMF Coordinators. The PMF Program Office uses feedback from all stakeholders to create and update these offerings to assist Agency PMF Coordinators in implementing the PMF Program.

A commenter suggested that PMF Coordinators should play a more hands-

[1] Comment 0072 available at *https://www.regulations.gov/comment/OPM-2023-0020-0072.*

[2] *https://www.opm.gov/intern/prospective-interns/* and *https://intern.usajobs.gov/.*

[3] These resources are available online at *https://www.pmf.gov/agencies/resources/.*

on role in onboarding new PMFs to agencies and focus on the employee experience. OPM agrees that an agency may find it beneficial for PMF Coordinators to have an active role in a PMF's agency orientation. Agencies should have the discretion to determine how that is handled. OPM also provides PMF Coordinators with resources to help them create successful onboarding activities. OPM is not making changes to the regulatory text based on this suggestion. Instead, it will continue to provide guidance and resources to PMF Coordinators on effective onboarding.

One commenter indicated the provisions for the PMF Coordinator limit the placement of coordinators to the headquarters level of the employing agency. This commenter added that agencies should have the flexibility to place coordinators at other levels as appropriate. OPM believes it is important for at least one PMF Coordinator to be at the headquarters level of a department or agency to ensure there is agency-wide coordination for the implementation of the PMF program in the agency. This requirement to have a PMF Coordinator at the headquarters level does not prohibit an agency or department from having additional roles at other levels of the organization. OPM has clarified the language at § 362.104(a)(8) to state this more clearly.

8. Inclusion of Technical and Career Education Programs

The existing regulations at 5 CFR 362.202 and 362.302 limited eligibility for the Internship and Recent Graduate Programs to those in qualifying educational programs. OPM proposed to revise the eligibility criteria for the Internship and Recent Graduate Programs to include career and technical education programs, consistent with E.O. 13562. OPM also requested comments on whether to include non-Federal programs in the definition of career and technical education programs.

OPM also asked for information on types of criteria and documentation that could be used to justify why those who complete such programs should be eligible for the Recent Graduates Program. OPM did not receive any comments that provided substantive and measurable ways to evaluate non-Federal programs for inclusion in the eligibility criteria for the Recent Graduates Program. While OPM agrees that it could be valuable to include non-Federal programs, we also recognize that more research is needed to identify the best way to evaluate the programs to determine if the programs should be considered eligible. For this reason, OPM is not including non-federally administered programs in the definition of career and technical educational programs.

Many commenters supported the inclusion of Registered Apprenticeship Programs in the definition of career and technical educations programs and as meeting the eligibility criteria for the Recent Graduate Program. A professional organization commented that the provision should be expanded to include apprenticeship programs that are not Registered Apprenticeship Programs or non-government apprenticeships. Registered Apprenticeship Programs are industry-vetted, approved, and validated by the U.S. Department of Labor or a State Apprenticeship Agency and may be sponsored by a Federal agency, a State, local, or Tribal government organization, or private sector organization. These programs must meet specific standards that address the mentorship, pay, education, and on-the job training of apprentices. Non-registered apprenticeships may not meet these standards and agencies may not have a way to validate that a program meets industry-recognized standards. In addition, credentialing and certification may vary widely among non-registered apprenticeships, making it difficult for agencies to determine whether the standards these certifications represent are of a similar nature and rigor as those obtained via Registered Apprenticeship Programs. Some non-registered programs may not operate through a structured program designed to ensure participants receive an organized and systematic form of instruction designed to provide the participant with legitimate job skills. OPM believes Registered Apprenticeship Programs provide a measure of standardization that ensure the participant is receiving meaningful training, guidance, and work experiences needed to prepare the individual for employment in a specific job, trade, or career field. For these reasons, OPM is not including non-registered apprenticeship programs in the definition of career and technical education. To clarify, those who complete Registered Apprenticeship Programs with any organization (either a Federal agency, a State, local, or Tribal government organization, or private sector organization) will meet the eligibility criteria for the Recent Graduates Program.

OPM received three comments related to including industry-recognized credentials in the definition for certificate programs. One commenter indicated that including ''industry-recognized credentials'' or state licensing programs as options for being eligible for Pathways would greatly improve agencies' ability to recruit and retain candidates in the trade professions. Another commenter questioned whether reputable sources to verify technical programs exist to determine if technical programs are accredited or meet accreditation standards in a similar manner that is used for accreditation of degree programs. A different commenter urged OPM to allow individual Federal agencies to establish low-burden processes to vet and certify certificate programs as eligible entities for the purposes of their Pathways Programs, such as by providing documentation of industry recognition or a third-party evaluation of a certificate program's efficacy.

Another commenter suggested that, in addition to including programs such as Registered Apprenticeship Programs, Job Corps, Peace Corps, and AmeriCorps, OPM should develop criteria that include conditions similar to those outlined for a ''qualified youth or conservation corps'' under the Public Land Corps Act (16 U.S.C. 1723). Qualified youth or conservation corps programs must provide meaningful, full-time, productive work; a mix of work experience, basic and life skills, education, training, and support services; and an opportunity to develop citizenship values and skills through community service. 16 U.S.C. 1722(11). These programs generally should implement projects that provide long-term benefits to the public, instill a work ethic and sense of public service, be labor intensive, and provide academic, experiential, or environmental education opportunities. 16 U.S.C. 1723(e). OPM will provide additional guidance to agencies and applicants to help them determine which types of programs meet the definition of career and technical education. OPM has also added clarifying language to the definition of career and technical education programs in § 362.102. Specifically, OPM has added an explanation that federally administered [4] career or technical education programs that will qualify for the Internship and Recent Graduates Programs must operate under the oversight of a Federal agency (or component thereof). The purpose of this oversight is to ensure that the program

[4] In the proposed rule, OPM used the phrases ''federally administered'' and ''administered by a Federal agency'' to capture the same intended meaning. For better clarity and consistency, in this final rule and in the adopted regulatory text, OPM uses the phrase ''federally administered.''

is achieving educational outcomes and is being operated in accordance with criteria specified by the agency to ensure participants develop high-demand skills. These criteria must include the nature and scope of work to be performed by participants, the types and scope of training to be provided to participants, the types of skills participants will gain from the program, the mentoring that will be provided, and the specific metrics by which the program's fulfillment of the educational purpose will be evaluated. Programs operated under a cooperative agreements or other agreements that require programmatic oversight by the partnering or funding Federal agency may meet this criteria.

OPM notes that not all programs funded or ''administered by a Federal agency'' in a colloquial sense will meet these criteria; although OPM is expanding the range of eligible programs, OPM also intends to ensure that qualified programs provide commensurate education/training to those OPM reviewed as part of this rulemaking process. Accordingly, these criteria, along with Federal oversight, will ensure that participants in other federally administered programs will receive the quality of training and experience similar to that received by participants in Job Corps, Peace Corps, and AmeriCorps.

Accordingly, OPM is not adopting the suggestions to expand the definition of career and technical education programs to include non-federally administered programs even if accredited credentials are awarded. The Recent Graduates Program eligibility criteria will continue to require a certificate or industry-recognized credential to meet the eligibility criteria only when the certificate or credential has been awarded from a qualifying educational institution or qualifying career or technical education program as defined in the revised § 362.102. Industry-recognized credentials vary widely by occupation and each occupation may have one or more entities that accredit or certify the programs. OPM is aware that some industry-recognized credentials may be accredited through programs like those offered by the American National Standards Institute National Accreditation Board (ANAB), National Commission for Certifying Agencies (NCCA), or other industry-specific accreditation organizations. Additionally, the Department of Labor Career One Stop offers a certification finder to help identify a variety of industry-endorsed certifications. However, even with these disparate resources there is not a centralized way for vetting individual programs to verify that they provide participants with the skills and competencies to adequately prepare them for Federal employment. Agencies may find it challenging to determine if a credential has been accredited or is formally endorsed or accepted as being industry-recognized by a specific industry. We believe limiting the definition to federally administered programs reduces the potential for participants to be eligible through programs that do not provide an appropriate level of training or technical education, and also ensures that participants receive an organized and systematic form of instruction designed to provide the participant with legitimate job skills while performing a defined public service. For this reason, OPM has chosen not to expand the definition of qualifying career and technical education programs beyond those that are a part of federally administered, organized educational programs, a Registered Apprenticeship Programs, or federally administered local, State, national, or international volunteer service programs.

A professional organization, while supportive of the inclusion of career and technical education programs, expressed that limiting the definition to those programs administered through a Federal agency is unclear and likely unnecessarily restrictive. A different professional organization suggested that OPM broaden the definition of career and technical education programs to align with how and where these programs operate at the state level. OPM is not adopting these suggestions. OPM recognizes that there are many private sector and state-run career and technical education programs. However, as with industry recognized credentials, these programs lack a centralized way for vetting individual programs to verify that they provide participants with the skills and competencies to adequately prepare them for Federal employment. Also, students who complete private sector programs that are a part of an academic program at a qualifying education institution such as a vocational or trade school may meet the eligibility criteria. OPM has added clarifying language to the definition of career and technical education in § 362.102 to make it easier for agencies and applicants to understand which types of programs will meet the eligibility criteria.

Several commenters were supportive of the change to include participants in federally administered local, state, national, or international volunteer service programs such as AmeriCorps and Peace Corps in the definition of career and technical programs. They indicated that it would be a substantial benefit to participants in these programs. Additionally, a commenter indicated that inclusion of these programs under the Pathways umbrella provides agencies with other avenues for recruiting high quality candidates from a variety of backgrounds. One commenter suggested that, while the inclusion of these programs may be beneficial, these participants may need additional support in building foundational skills to be successful in the Federal Government. OPM appreciates these comments and agrees with the sentiment that all students and recent graduates may benefit from support to build foundational work and leadership skills.

Other commenters were skeptical of including these types of volunteer programs. One commenter suggested that it was unclear whether these programs have the same level of rigor as graduation from a formal academic or technical training program with clearly defined areas of study and a methodology for validating sufficient assessment standards (*e.g.,* accreditation). One commenter requested that OPM clarify why AmeriCorps and Peace Corps are included in the definition for career and technical education programs when alumni of these programs already benefit from noncompetitive eligibility for appointment under existing law. OPM has included these programs because the participants in these programs gain relevant technical skills and competencies that are similar to those developed in more formal programs such as apprenticeships. Use of the Pathways Programs for AmeriCorps and Peace Corps participants are not intended to replace the use of the non-competitive hiring authority that currently exists for those programs. It is important to note that the non-competitive hiring authority is limited in scope and not available to all participants. The use of the Pathways Recent Graduate authority provides an alternative for those participants who are not eligible for the non-competitive authority. Agencies are encouraged to continue to use the non-competitive hiring authority to appoint participants from the AmeriCorps and Peace Corps programs.

One commenter supported the inclusions of career and technical education programs but was concerned that this inclusion would be applied to applicants for the PMF Program. Completion of a career and technical education program will now fulfill one of the requirements for the Internship

and Recent Graduates Programs; however, career and technical education program do not satisfy the requirements for the PMF program.

Responses to Comments on the Regulations

In addition to receiving comments that were responsive to OPM's specific requests for comments in the NPRM, as discussed above, OPM also received comments on a number of other issues. Below we discuss those comments with respect to specific sections of the Pathways regulations.

Part 300 Employment (General)

Section 300.301 Authority To Detail an Employee

The existing regulations at 5 CFR 300.301 require that an agency must obtain approval from OPM to detail employees appointed under the Pathways Programs (Schedule D of the excepted service) to positions in the competitive service. OPM proposed to modify 5 CFR 300.301(b) to remove this requirement.

We received three comments related to the proposed change to allow agencies to detail employees appointed under the Pathways Programs (Schedule D of the excepted service) to positions in the competitive service without approval from OPM. A commenter asked what it means to detail an employee. A detail is a temporary assignment of an employee to a different position for a specified period, with the employee returning to their regular duties at the end of the specified period. One commenter indicated that it may help with retention of Pathways Interns by offering them the opportunity to get additional specialized experience.

An agency commented that it was concerned about allowing agencies to detail Interns and Recent Graduates to another position while serving a trial period. The same agency commented that details should only be allowed after Interns and Recent Graduates are converted to term or permanent positions. OPM disagrees, noting that Interns and Recent Graduates should be allowed to be detailed while serving a trial period in the same way as other Federal employees. Internship and Recent Graduate positions are developmental in nature, and details are an appropriate tool for facilitating employee development and training. The same agency also expressed that allowing such details may require negotiating the option with their union partners. This change provides an option to agencies to use in appropriate situations in accordance with agency policy, any applicable collective bargaining agreements, and applicable collective bargaining obligations.

Part 362 Pathways Programs

Subpart A General Provisions

Section 362.102 Definitions

OPM proposed to revise the definitions of advanced degree and certificate program in § 362.102 and also added definitions for terms related to career and technical education. These terms are: certificate of completion of a Registered Apprenticeship Program; industry-recognized credential; qualifying career or technical education program; recognized postsecondary credential; and Registered Apprenticeship Program. These definitions support the changes to the eligibility criteria for the Internship and Recent Graduate Programs.

One commenter recommended that OPM include a list of the types of documentation that an agency may accept as proof that an applicant has completed a program at a qualifying educational institution. OPM agrees that agencies and applicants may need additional detail or examples of the types of documentation appropriate for determining eligibility. For example, an agency may accept a transcript (official or unofficial), a copy of the diploma, or other written documentation from the educational institution for the purposes of determining eligibility. OPM may provide additional examples of documentation that may be used to determine eligibility in guidance.

An agency asked for clarification on the typical duration of a certificate program. Specifically, the agency wanted to know if a program of three months would meet the criteria. The comment did not specify if the question was directed to certificates from a qualifying educational institution or from a qualifying career and technical education program. A certificate from a qualifying educational institution must have length that is equivalent to one academic year of full-time study. Many educational institutions measure the length of an academic year based on the number credit hours completed, and this number varies by institution. To determine if the certificate program meets the criteria, the applicant will need to provide the agency with information about the number of credit hours that constitutes an academic year at the educational institution that awarded the certificate and the number of hours that were completed to attain the certificate. The proposed rule did not specify the length of the program for certificates from qualifying career or technical education programs. For clarity OPM has modified the regulatory text in this final rule to indicate that programs should be at least one year (12 months) in length similar to the requirement that qualifying volunteer service must be one year in length.

As previously discussed (Responses to Requests for Comments and Data—8. Inclusion of technical and career education programs), OPM has added clarifying language that explains the term federally administered in response to comments related to the definition of career and technical education.

In the proposed rule, OPM expanded the definition of a certificate program to include a qualifying career or technical education program of at least one year that awards a recognized postsecondary credential or industry recognized credential. An industry recognized credential is a type of post-secondary credential. For additional clarity, OPM is modifying that part of the definition of certificate program to remove the term industry recognized credential in the final rule.

In the proposed rule, the definition of recognized postsecondary credential included a reference to an industry recognized certificate or certification. The terms industry recognized certificate or certification and industry recognized credential can be used interchangeably. In the final rule, we replaced the term industry recognized certificate or certification with industry recognized credential.

Section 362.104 Agency Requirements

A. Removing the Requirement for a Pathways Memorandum of Understanding

The final rule replaces the requirement for an agency to execute a memorandum of understanding (MOU) with OPM before using the Pathways Programs with a requirement that an agency must have a Pathways Policy to make Pathways appointments.

OPM received two comments regarding the removal of the requirement for agencies to enter into a memorandum of understanding (MOU) to use the Pathways Programs. One comment was in support of replacing the use of an MOU with a requirement that an agency must have a Pathways Policy. The other comment suggested replacing the MOU requirement with a reporting requirement. This comment also mentioned that the use of the MOU created an unnecessary administrative burden. OPM agrees that the agency development of a policy will be a less burdensome method to ensure an agency has the necessary structures in

place to use the Pathways Programs than the current requirement for an MOU. Therefore, OPM is adopting the proposed change to replace the MOU with a Pathways Policy. There is an existing reporting requirement in § 362.109 that provides OPM with information on agency use of the Pathways Programs.

As previously discussed (Responses to Requests for Comments and Data—2. Limitations on conversion of Recent Graduates and PMFs to positions at different agencies), OPM has modified this section to also require agencies to include provisions in their policies that address procedures and criteria for determining if an agency will be able to convert Recent Graduates and PMFs and communicate those determinations to the employee.

In reviewing the comments on this section, we recognized that in ending the MOU process we inadvertently also removed the way that agencies informed OPM about the staff who filled the roles of the Pathways Program Officer and PMF Coordinator. For this reason, OPM is adding a provision in § 362.104(a)(6)(v) to require agencies to provide OPM with the names of the agency's Pathways Programs Officer and Presidential Management Coordinator.

Agencies must establish their Pathways Policies in accordance with the criteria listed in § 362.104 by no later than December 9, 2024. Until that date, an agency with an existing Pathways MOU [5] may continue to use the Pathways Programs subject to the new regulations in lieu of an updated Pathways Policy while it develops and updates its policies in accordance with the new regulations. Agencies with MOUs that expire within 240 days of the publication date of this final rule may request an extension of the MOU. Agencies without an existing Pathways MOU must establish a Pathways Policy before they begin making Pathways appointments. All Pathways MOUs will expire on December 9, 2024, unless OPM has approved an extension. OPM will issue implementing guidance that provides additional details about creating Pathways Policies. OPM has modified § 362.104(b) to reflect these timelines.

OPM did not propose that agency Pathways Policies would require OPM approval. Because an agency does not require OPM review of its Pathways Policy, OPM is replacing the proposed requirement to submit Pathways Policies to OPM with a requirement to make these policies available for review upon request by OPM, applicants, Pathways Participants, and agency employees. OPM expects that this requirement will lower the potential administrative burden for agencies relative to the proposed rule.

In the proposed rule when revising the text in § 362.104 to replace the requirement to have an MOU with an agency policy, we inadvertently removed the provision that contained OPM's authority to revoke an agency's ability to use the Pathways Programs when the agency usage is inconsistent with the regulations. That was not our intent, and we did not request or receive any comments on such a change. For this reason, this final rule retains OPM's authority to revoke an agency's use of the Pathways programs when OPM has found that an agency's use of the Programs is inconsistent with the regulations or an agency's Pathways policy in § 362.104(c).

OPM is also adding a requirement for agency policies to identify the minimum service-hour requirement that must be completed by an Intern for conversion. This is a conforming change based on changes in § 362.204.

B. Presidential Management Fellowship Coordinators

As previously discussed (Responses to Requests for Comments and Data—7. Clarifying the Role of the Presidential Management Fellows Coordinator), the existing regulations at 5 CFR 362.104(c)(8) require an agency to identify a Presidential Management Fellows (PMF) Coordinator. OPM proposed to clarify the role of a PMF Coordinator by outlining specific responsibilities, and the final rule includes those specific responsibilities of the PMF Coordinator.

One agency suggested that the provision for PMF Coordinators be modified to indicate that collaboration is required between the PMF Coordinators when an agency or sub agency designates multiple PMF Coordinators. OPM agrees this is a good idea and is adopting this suggestion.

Section 362.107 Conversion to the Competitive Service

The existing regulations at 5 CFR 362.107 allow a Recent Graduate or PMF who successfully completes program requirements to be converted to a position within the employing agency. OPM also proposed to allow conversion to a position in another agency within the Federal Government when the employing agency is unable to convert the Recent Graduate or PMF.

Two agencies suggested that conversion at other agencies should only occur when the employing agency was unable to convert due to budgetary constraints (including not having a permanent position available). One commenter suggested that the regulations should allow for programs with interagency missions and goals to forgo the process by which an agency must provide proof of refusal for financial or mission-related reasons in order to streamline career mobility. To ease administrative burden, OPM is removing the requirement to provide documentation of this situation. As previously described (Responses to Requests for Comment and Data—2. Limitations on conversion of Recent Graduates and PMFs to positions at different agencies), OPM has added a requirement for agencies to specify the procedures for how conversion at another agency may occur in their Pathways Policy.

Section 362.108 Program Oversight

Under the current regulation, agencies must enter into an MOU to participate in Pathways. As discussed above (Section 362.104 Agency requirements), OPM proposed to replace the MOU requirement with a requirement for agencies to create a Pathways Policy. As proposed, this final rule removes the reference to a Pathways MOU in § 362.108 and replaces it with a reference to the agency's Pathways Policy in accordance with the proposed change at § 362.104.

Section 362.109 Reporting Requirements

The existing regulations at 5 CFR 362.109 require agencies to provide information on workforce planning strategies and their use of the Pathways Programs on an annual basis to OPM. As proposed, this final rule modifies the requirement so that agencies will report to OPM on a fiscal year basis every three years.

A professional organization encouraged OPM to collect and share trend data on the utilization of the Pathways Programs. They also encouraged OPM to use this data to help prioritize future participant outreach and make program adjustments as needed. OPM appreciates this suggestion and will formulate a strategy for sharing Pathways data with agencies and the general public.

[5] A sample MOU is available online in the Pathways Transition and Implementation Guidance at *https://www.opm.gov/policy-data-oversight/hiring-information/students-recent-graduates/reference-materials/pathways-transition-andimplementation-guidance.pdf.*

Section 362.111 Severability

This final rule adds a new § 362.111 to address the issue of severability. OPM received no comments on this section.

Internship Program

Section 362.202 Definitions

This final rule adds a definition for the term ''Intern not-to-exceed (Intern NTE),'' which is not included in the existing regulations, and modifies the definition of a student to include individuals who are ''enrolled or accepted for enrollment in a qualifying career or technical education program that awards a recognized postsecondary credential.''

OPM received no comments on this section.

Section 362.203 Filling Positions

A. Public Notification

The existing regulations at 5 CFR 362.203(a) require agencies to provide OPM with information about opportunities to participate in their Internship Programs. OPM proposed adding clarifying text regarding the public notice requirement for posting Intern positions and options for agencies to meet the public notice requirement. In addition to including information about the position title, series, grade, and geographic location where the position will be filled, which is required under current regulation, OPM proposed adding the following announcement requirements: appointment length, salary information, qualifications, promotion potential, and conversion information. As previously discussed (Responses to Requests for Comments and Data—6. Public Notification), this final rule adds an option for agencies to meet the public notice requirement.

One commenter suggested that OPM clarify that an agency can post an internship opportunity both on its own site and on USAJOBS—not just on one or the other. OPM agrees and encourages agencies to post opportunities in multiple locations. The regulatory text for this suggestion indicates that an agency may use either or both of the options. OPM believes that agencies should have the discretion to recruit for positions in a manner that best supports and implements their agency workforce plans.

One agency indicated that, while it did not object to the additional option of posting on its agency website, it was not likely to use that option. OPM encourages agencies to use both options whenever necessary to ensure that it can source a sufficient number of applicants to meet its needs and to use all available tools to attract broad applicant pools. This final rule adopts the proposed changes to public notification in § 362.203(a) without change.

B. Promotion of Interns

The existing regulations at 5 CFR 362.203(e) generally state that an agency may promote any Intern who meets the qualification requirements for the position. As OPM proposed, this final rule revises § 362.203(e) to reflect that those Interns whose appointments are expected to last more than one year without a not-to-exceed date [6] may be promoted when they meet the qualification requirements for a higher-graded position. The change also provides that Interns NTE (on temporary appointments not-to-exceed one year) are not eligible for promotions.

One commenter suggested that OPM should provide information about the impact of time-in-grade (TIG) restrictions on promotions at the time of conversion as well as promotions based on superior academic achievement. Another commenter suggested that OPM should reconsider the TIG restrictions on Interns. The TIG restrictions in 5 CFR part 300, subpart F, do not apply to promotions of excepted service employees being promoted to an excepted service position. However, some agencies may have policies pertaining to excepted service promotions similar to their competitive service policies. Assuming an agency does not have policies similar to TIG for the excepted service or other policy restrictions, then upon completion of degree and prior to conversion, the Intern may be promoted to any grade level for which they qualify as allowed by agency policy. An agency wishing to promote an Intern should do so prior to conversion. This is because, once the employee is converted to the competitive service, the Intern is subject to all competitive service provisions, including TIG. The agency may also use the superior academic achievement provisions when determining the appropriate grade level for promotion.

C. Required Developmental Activities

The existing regulations at 5 CFR 362.104(c) include a general requirement for agencies participating in the Pathways Internship Program to provide Interns with meaningful developmental work and to set clear expectations regarding the work experience of the Intern. OPM proposed to add a specific requirement in § 362.104 that provides more detail about training and development opportunities that should be provided for Interns. The final rule includes this change and requires agencies to provide Interns with meaningful onboarding activities and training and development opportunities.

A professional organization suggested OPM should provide further guidance, tools, and resources for Intern training and professional development. Another professional organization suggested that OPM should standardize training requirements for program participants and coordinators at the agency level; advise agencies as to the number of employees and budget required to commit to a successful program; and require specific reporting practices to capture effectiveness of each agency's programs. OPM launched the Intern Experience Program this year to provide agencies with additional training and development resources for Interns. OPM provides a variety of resources such as webinars and quarterly Pathways Program Officer meetings to support agency Internship coordinators. Agencies hire Interns as a part of implementing their agency workforce plans which will inform the number and budget commitments for successful Internship Programs. OPM does not believe it is appropriate to prescribe staffing and budget requirements for internship programs. OPM will continue to support agencies and Interns by providing resources and guidance and will help them identify appropriate training and professional development resources.

D. Corrections

As proposed, this final rule removes a reference in § 362.203 to a Pathways MOU and replaces it with a reference to the agency's Pathways Policy in accordance with the change at § 362.104 described above. This final rule corrects the regulatory text in the proposed rule, which inadvertently included a reference relevant to the Recent Graduates program and maintains the existing citation to § 213.3402(a).

In revising § 362.203, OPM determined that the definition for agency provided in paragraph (a)(1) is unnecessary as it is duplicative with the definition already provided in § 362.102, which applies for the purposes of part 362. However, OPM also identified a typographical error in § 362.102. Specifically, the definition for agency states that the term has the meaning of ''agency'' as defined in 5 U.S.C. 105, but 5 U.S.C. 105 defines the term ''Executive agency.'' Accordingly,

[6] The Internship Program does not allow the use of time-limited appointments (*i.e.,* initial appointments of more than one year made with an NTE date).

this final rule corrects the defined term (referencing 5 U.S.C. 105) to be ''Executive agency.''

Section 362.204 Conversion to the Competitive Service

A. 180-Day Period for Conversion of an Intern

The existing regulations at 5 CFR 362.204(b) require that an Intern may be converted to a permanent or term position in the competitive service within 120 days of completing a course of study. OPM proposed to lengthen this period. The final rule changes the time period allowed for conversion of an Intern from 120 days to 180 days after the completion of a degree.

Several commenters expressed support for increasing the time allowed to convert an Intern to a permanent or term position from 120 days to 180 days. Many of the comments that were in support of a longer period for conversion came from former Internship participants, who also referenced their agency-specific experiences and how they felt that the additional time would improve the opportunity and experiences of current and future Internship participants.

Some commenters offered alternative suggestions to the proposed change of the time period from 120 to 180 days or indicated support for a period of more than 180 days. An agency expressed support for a period of more than 180 days but did not indicate a specific length. One professional organization expressed opposition to the extended timeline and suggested that the extension to 180 days should only be allowed for specific agencies identified in the regulation and only for those times when background investigations and adjudications are likely to take longer than 120 days and alternative resolutions are unavailable or impractical. Another agency suggested that a timeline of greater than 180 days should be an option in rare circumstances and agencies should be authorized to determine when rare cases should allow conversion past the 180-day requirement. Agencies are well aware of the time it takes in the agency to complete these processes and can plan to begin the process at a time that would allow completion within 180 days of completing a degree. For this reason, OPM is not adopting these suggestions to allow a timeline of greater than 180 days.

Two commenters incorrectly equated the proposed 180-day time period for conversion with the service period required for conversion available under other hiring authorities, such as the Veterans Recruitment Authority (VRA) hiring authority, where an individual appointed under the authority must be converted to the competitive service after successfully completing two years of service on the VRA appointment. The conversion period, or window, in the Internship Program is strictly for administrative purposes—*i.e.,* it is time for the employee and agency to collect and process all documentation relating to the conversion of the Pathways employee. The conversion period is not for deciding whether to convert a Pathways participant, for purposes of qualifying the employee, or to be used as a de facto probationary or trial period. For this reason, OPM is not adopting the suggestion to extend the conversion period to two years for Interns; OPM is adopting the proposed 180-day conversion period based on agency input requesting additional administrative time.

One commenter also suggested that the proposed 180-day period should be extended to allow Interns the opportunity to explore other endeavors before starting a full-time job with the Federal Government. OPM is not adopting this suggestion. The purpose of the Pathways Programs is to provide early career talent an avenue to Federal employment that would otherwise be unavailable to them if these individuals were required to compete with the general public for a Federal job, and to assist agencies in developing a pipeline for individuals with skills and knowledge needed to perform the work of an agency. Interns accept positions with the awareness that conversion upon completion of their educational program is a possibility.

As previously stated, the purpose of the 180-day period is to allow students time to provide documentation that they have successfully completed their degree or educational programs and to allow agencies time to complete additional background investigations and adjudications. OPM is not adopting the suggestions for extending the period allowed for conversion beyond 180 days.

B. Work Hour Requirement for Conversion of an Intern

As previously discussed in ''Responses to Requests for Comments and Data—5. Changing the 640-hour requirement for conversion of an Intern,'' OPM has revised the provision in § 362.204(b)(1) to reduce the minimum number of hours required for conversion from 640 hours to 480 hours. OPM reminds readers that an agency may require more than the minimum of 480 hours for conversion based on agency specific training and development or other Internship program requirements. An agency must identify the minimum number of hours required for conversion of an Intern in the agency's Pathways Policies.

C. Crediting and Waiver Provisions

The existing regulations at § 362.204(c) and (d) allow an agency to waive or provide credit for up to half of the work hours required for conversion in § 362.204(b). OPM is maintaining the ability of an agency to waive or provide credit for a portion of the hours-based requirement. OPM expects that agencies using the new 480 minimum for service hours will not need to apply the waiver provision; however, agencies adopting higher service-hour requirements may still find situations in which waiving some portion of time is necessary to hire a highly qualified student with superior performance in their academic or training program. Based on the comments received, OPM finds insufficient justification for lowering the minimum service-hours below 320 hours (half of the prior 640 service-hour requirement). Therefore, OPM has modified § 362.204(c) and (d) to allow agencies to waive or approve credit for up to half of the minimum required service hours subject to a limitation that an Intern must complete at least 320 hours under a Pathways Intern appointment to be eligible for a waiver. For example, if the agency requires a minimum of 480 work hours for conversion, then the agency may waive up to 160 hours (480 − 320 = 160). Consistent with the existing regulation at § 362.204(e), an agency may not credit and/or waive more than 320 hours. Therefore, for example, an agency that requires the completion of 800 hours may waive up to 320 hours.

OPM has also modified the criteria for approving a waiver in § 362.204(d) to introduce a new option of the submission of a recommendation letter from an instructor or program administrator as a way for the Intern to demonstrate high potential in their academic or career and technical education program. (This change was previously discussed in ''Responses to Requests for Comments and Data—4. Strengthen the provisions that allows agencies to waive or credit up to half of the Interns' 640-hour service requirement.'')

OPM has also modified § 362.204(e) to reflect the changes in § 362.204(b) through (d).

Section 362.205 Reduction in Force and Termination

The existing regulations at 5 CFR 362.205(b) require that an Intern appointment may be terminated 120 days after the completion of a degree unless the Intern is converted to a position in the competitive service. Consistent with the proposed rule, this final rule changes the time period for termination of an Intern appointment from 120 days to 180 days after the completion of a degree. This conforming change is based on the change in § 362.204(b)(2) pertaining to the conversion window described above. Changes in this section were also made to incorporate the new term Intern not-to-exceed (NTE) appointment.

One commenter requested clarification on what is meant by selected for conversion and if an offer letter is required. Selected for conversion means that the agency has determined that the Intern has successfully completed all program requirements including their educational program, and it will convert the employee. The agency should provide the Intern with all the necessary information about the position to which the Intern will be converted. The same commenter also asked if an Intern on a not-to-exceed (Intern NTE) appointment may have their appointment extended beyond the date they completed their degree. The appointment of an Intern NTE may be extended to accommodate the 180-day period. However, the agency must process the extension prior to the Intern completing their educational program.

Recent Graduate Program

Section 362.301 Program Administration

The proposed rule removed references to Pathways MOU and replaces it with a reference to the agency's Pathways Policy in accordance with the change at § 362.104 described above. OPM is finalizing this section as proposed.

Section 362.302 Eligibility

The existing regulations at 5 CFR 362.302 limited eligibility for the Recent Graduate Program to those in qualifying educational programs. OPM proposed to modify the eligibility criteria. This final rule adopts the proposal to expand the eligibility criteria for the Recent Graduate Program to include those who have completed qualifying career or technical education programs.

One commenter indicated that the criteria should be changed to allow individuals in trade or technical schools or with associate degrees and high school diplomas to meet the eligibility criteria for the Recent Graduate Program. Another commenter also advocated for the inclusion of those who completed a two-year undergraduate degree. Since the inception of the Recent Graduate Program, the eligibility criteria included those with degrees from qualifying post-secondary vocational and technical schools or associate degrees. This criterion has not changed.

We received many comments related to using skills-based hiring provisions instead of completion of educational programs for eligibility. One commenter indicated that OPM should include skills-based hiring provisions in this rule to be on par with State governments who are establishing such provisions. Another commenter recommended using a skills-based approach for eligibility criteria. A different commenter indicated that the inclusion of career and technical education programs as meeting the eligibility criteria for the Recent Graduates Program did not seem to be an appropriate use of OPM's authority to establish excepted service authorities. This commenter expressed that apprenticeship and other experiential learning programs are designed to teach specific skills and were not similar to academic degrees. Additionally, they felt that the proposed regulations suggested including skills-based programs because people with limited skills and experience cannot compete with those who have more skills and experience. A professional organization encouraged OPM to allow Pathways applicants to meet minimum qualifications solely by passing a skills-based assessment as a co-equal method to qualifying with education and/or experience.

OPM is actively working to incorporate skills-based hiring across Government as required by E.O. 13932, ''Modernizing and Reforming the Assessment and Hiring of Federal Job Candidates,'' dated June 26, 2020. For the Pathways Programs, however, using skills-based hiring must be balanced with the requirements in E.O. 13562 that limits the use of the Pathways Programs to students and recent graduates. Given that E.O. 13562 does not contemplate skills-based hiring, it is not appropriate for OPM to include skills-based hiring provisions as a substitute or alternative eligibility criteria in place of formal educational programs. OPM is not adopting these suggestions.

Many commenters had favorable comments and supported the inclusion of programs such as Job Corps, AmeriCorps, and Peace Corps. Two commenters questioned why eligibility for AmeriCorps participants was limited to only those who had completed one year of service when some AmeriCorps programs have a required period of service of less than one year (10 to 11 months). One of these commenters specifically requested that we clarify that the one-year requirement for volunteer programs such as AmeriCorps is the completion of a service year with no regard to the number of calendar months taken to complete the term. OPM recognizes that these programs provide valuable career and technical education. Our review of these programs indicates that only those programs of at least one year in length provide career and technical education that is equivalent in scope and rigor to other programs that meet the Recent Graduate Program eligibility criteria. It is OPM's understanding that, in some of the programs offered by AmeriCorps and similar programs, participants are required to fulfill at least 1700 work hours within a 12-month period and those who meet this requirement within 10 or 11 months are considered to have successfully completed the program. For this reason, we have modified the criteria for volunteer service programs in the definition of qualifying career and technical education programs to indicate than a volunteer must have completed either at least one year of volunteer service or at least 1700 work hours when the length of volunteer service is less than 1 year. For programs of at least a year, an applicant could meet the eligibility criteria by serving in one volunteer program for 12 consecutive months, or by completing a total of 52 weeks of service during multiple periods of service. For programs of less than a year, a volunteer would need to complete at least 1700 work hours during one or multiple periods of service. When the volunteer has participated in multiple periods of service, the periods of service do not need to be consecutive. However, the most recent period of service must have been completed within 2 years of applying for a Pathways Recent Graduate appointment.

One commenter suggested OPM should provide clear guidance on the types of programs that will meet eligibility criteria. As discussed in detail in ''Responses to Requests for Comments and Data—8. Inclusion of technical and career education programs,'' OPM has added clarifying language to the definition of career and technical education. OPM plans to provide additional guidance to assist

agencies and applicants in understanding the types of programs that will meet the eligibility criteria.

One commenter requested clarity on the eligibility period for individuals who served in the Peace Corps, AmeriCorps, or other volunteer programs that will now be included as qualifying career or technical education programs. The length of the eligibility period for the Recent Graduate Program for participants in Peace Corps, AmeriCorps or other volunteer programs is two years.

One commenter recommended increasing the eligibility period for non-veterans to three years to widen the talent pool. E.O. 13562 specifically limits the eligibility period for the Recent Graduates Program to two years for non-veterans. OPM does not have the discretion to make such a change.

As discussed, OPM proposed to expand the eligibility criteria to include career and technical education programs. To that end, the proposed rule included modifications to paragraph (a) of § 362.302 only. This was an oversight as § 362.302(b) also needs to be modified to reflect that career and technical education programs are now qualifying programs. For this reason, OPM has modified § 362.302(b) to include references to career and technical education programs.

Section 362.303 Filling Positions

The existing regulations at 5 CFR 362.303(a) require that an agency must post opportunities for positions in the Recent Graduates Programs on *USAJOBS.gov*. OPM proposed to modify the provisions for meeting public notice options for filling positions under the Recent Graduates Program. In addition to allowing agencies to post searchable job opportunities at USAJOBS, OPM also proposed to allow agencies to post job information with a link to a USAJOBS custom posting on their agency websites, with OPM providing a centralized place where applicants can be directed to those postings on the agency websites. As previously discussed (Responses to Requests for Comments and Data—6. Public Notification), this final rule incorporates the proposed changes to public notification without change in § 362.303(a).

Section 362.305 Conversion to the Competitive Service

The existing regulations at 5 CFR 362.305 allow a Recent Graduate who successfully completes program requirements to be converted to a position within the employing agency. OPM proposed to allow conversion to a term or permanent position in a different agency when the employing (or losing) agency is unable to convert the Recent Graduate to a term or permanent position in the competitive service in the current organizational unit of the employing agency or another component within the same Department or agency. OPM received a number of comments, which are discussed in sections 1 and 2 of ''Responses to Requests for Comments and Data'' and address two questions OPM asked regarding flexibility to convert Recent Graduates and PMFs Management Fellows to positions at different agencies. In this final rule, OPM has adopted the proposed conditions to allow conversion at another agency when the agency is unable to convert the Recent Graduate to a term or permanent position in the competitive service in the current organizational unit of the employing agency or another component within the same Department or agency due to unforeseen circumstances or other appropriate reasons.

OPM had also proposed to require agencies to document the reason for conversion in another agency. OPM has removed that requirement and, instead, is requiring agencies to outline the procedures for how conversion at another agency may occur in their Pathways Policy in § 362.104. OPM expects this to be a less burdensome approach to ensuring that conversion at other agencies is accomplished in accordance with this final rule.

An agency requested that the revised regulation clarify the grade level to which a Recent Graduate can convert when conversion occurs at a different agency. Specifically, the agency wanted to know if the Pathways Participant is limited by the grade level mentioned in the announcement the prior agency used to make the initial appointment and if that limitation is binding for conversion at the new agency. OPM confirms that, when the Pathways Participant is converted to a position in another agency, the new agency may only convert them to a position at a grade level that is within the career ladder or promotion potential that was specified in the announcement used to recruit the Pathways Participant. For example, Agency A advertises and appoints a Recent Graduate to a GS–7 Accountant position with a career ladder to the GS–12 level. If the Recent Graduate is going to be converted to a position in another agency, the position identified for conversion may not have a career ladder that exceeds the GS–12 level, and the Recent Graduate may be promoted prior to conversion assuming they meet the qualification requirements for the higher-graded position.

Presidential Management Fellows Program

Section 362.401 Definitions

OPM proposed to update the definition of Agency PMF Coordinator from the existing general description to add specific responsibilities. This conforming change is necessary due to the change in § 362.104(a)(8).

OPM is finalizing this provision with slight modifications from the proposed rule. The modifications should provide better clarity but do not change the meaning from the proposed rule.

Section 362.404 Appointment and Extension

Consistent with the proposed rule, this final rule revises § 362.404(a)(1) and (b) to remove the existing regulatory references to an agency's MOU and replace each with a reference to the agency's Pathways Policy. This conforming change is necessary due to the change in § 362.104.

OPM also proposed a new paragraph (e) to allow an agency the discretion to approve a part-time work schedule for a limited period of up to 6 months during the program if the agency and PMF have determined that it would not negatively impact the PMF's ability to meet all program requirements by the expiration of the PMF's appointment. Several commenters supported the flexibility for an agency to approve a part-time work schedule. One commenter suggested that OPM should clarify that agencies can approve or disapprove requests for part-time work schedules, including the duration of the modified schedules. OPM agrees and has revised the language of this provision to indicate that the PMF may request a part-time schedule and that an agency may approve the request but that a PMF is not entitled to an approval of the request.

One commenter suggested incorrectly that time on a part-time schedule would delay ''time-in-grade/promotion eligibility.'' While on a PMF appointment, a PMF must meet the qualification requirement of one year of specialized experience at the next lower grade level to be eligible for promotion. Part-time work is prorated in crediting experience. For example, an employee working 20 hours per week for a 6-month period should be credited with 3 months of experience. Given that part-time work schedules for PMFs are voluntary and limited to periods of six months or less, there would be a minimal delay for a promotion. This is

a factor that a PMF should consider before requesting a part-time work schedule. In contrast, the time in grade (TIG) restrictions in 5 CFR part 300, subpart F, do not apply to promotions of excepted service employees being promoted to an excepted service position. However, some agencies may have policies pertaining to excepted service promotions similar to their competitive service policies. Unless an agency limits promotions of excepted service employees based on TIG, time spent in a part-time work schedule would not affect a PMF's eligibility on the basis of TIG.

A commenter suggested that, while the part-time schedule flexibility was welcomed, OPM should also explore other flexibilities such as remote work for PMFs who may be experiencing a long-term illness or injury. OPM is not adopting this suggestion as a regulatory provision is not needed. As agency employees, PMFs already are eligible for reasonable accommodations and agency work-life programs and benefits such as telework and remote work, consistent with applicable law and the agency's policies.

Section 362.405 Development, Evaluation, Promotion, and Certification

A. Individual Development Plans for PMFs

The existing regulations at 5 CFR 362.405(a) require that an agency must approve an Individual Development Plan (IDP) for a PMF within 45 days of appointment. OPM proposed to lengthen the time allowed to create and have an IDP approved. OPM received several comments regarding the timeframe to develop an IDP.

One commenter suggested that the time period to create an IDP should be increased to 120 days instead of 90 days to give the PMF and mentor additional time in situations when it takes most of the 90-day period to identify a mentor. Another commenter also suggested additional time of either 105 or 120 days to create an IDP. OPM is not adopting these suggestions. OPM encourages agencies and PMFs to treat the IDP as a living document that should be discussed between the PMF and their supervisor throughout the year. Once an IDP is in place, it is typically reviewed during the initial, mid-year, and annual performance discussions between the PMF and their supervisor and may be updated or changed as necessary throughout the PMF's program. While the IDP is individually tailored to the PMF's position and learning objectives, agencies can proactively plan and provide information and guidance to PMFs to assist them in completing the initial IDP within 90 days of appointment. Given these flexibilities, OPM believes 90 days is sufficient to both find a mentor and prepare an initial IDP that may be changed or updated at any time. Accordingly, this final rule modifies the time frame to have an approved IDP from within 45 days of appointment to within 90 days of appointment, as proposed.

One commenter indicated that extending the deadline to have an IDP in place would be helpful as it gives PMFs more time to discuss their goals with their mentor and supervisor. This commenter also suggested that it may be helpful to provide more guidance to remind PMFs and their supervisors that the IDP may be changed as needed. OPM's PMF Participant Handbook [7] provides PMFs with guidance on creating an IDP and explains that it is a working document that should be updated as requirements are completed.

OPM also received comments on several other issues related to IDPs. One commenter suggested that there should be additional clarity around who is responsible for ensuring each PMF has a mentor and an IDP at the employing agency. The selection of a mentor and the development of the IDP is a collaborative process between the PMF, the PMF's supervisor, the Agency PMF Coordinator, and the mentor. The supervisor, the PMF Coordinator, and the mentor can provide valuable insight to help the PMF select appropriate training and development activities. Ultimately it is the PMF's responsibility to ensure that the PMF meets all program requirements. The other parties are there to provide advice and guidance. OPM has revised the existing regulation at 5 CFR 362.405(a) to remove the passive voice and make clear that the responsibility for developing the IDP rests with the PMF with the assistance of the PMF's supervisor, the Agency PMF Coordinator and/or the PMF's mentor. OPM will ensure that available guidance on the creation and use of the IDP clearly identifies the responsibilities of the PMF, supervisor, the PMF Coordinator, and mentor.

Another commenter suggested that it did not make sense to have the PMF Coordinator involved in the creation of the IDP. OPM disagrees because the PMF Coordinator will be well versed in the PMF Program requirements for training and development and may be able to provide resources and advice to assist the PMF in creating the IDP. For this reason, OPM is not changing the requirement that either the PMF Coordinator or the assigned mentor (or both) be consulted in creating the IDP.

A commenter indicated that many PMFs face challenges in developing an IDP when they have not been able to identify a mentor, or the supervisor is unfamiliar with the PMF Program requirements. OPM recognizes that developing an IDP may be challenging and offers resources to PMFs, supervisors of PMFs, and Agency PMF coordinators on the training and development requirements of the program and IDP creation on the PMF Program website.[8]

B. Required Developmental Activities

The existing regulations at 5 CFR 362.405(b) require that OPM will provide an orientation program for each class or cohort of PMFs and will provide information on available training opportunities known to it. Recent feedback from PMFs indicated that agency-specific orientations were more valuable than general orientations, and PMFs found OPM's longer-term leadership development offerings beneficial. OPM proposed modifying this requirement so that ''OPM will provide leadership development activities and general program resources for each class or cohort of PMFs'' in addition to providing information on available training opportunities, and agencies ''must provide appropriate agency specific onboarding and employee orientation activities.'' This final rule adopts these proposed changes and modifies § 362.405(b)(1) to reflect that OPM will provide leadership development activities and general program resources instead of an orientation program.

One commenter disagreed with the changes regarding orientation programs for PMFs. This commenter indicated that the changes would lead to less support for PMFs in agencies that did not have robust PMF Program specific orientation programs. OPM's orientation program over the years has evolved from one-time annual orientation sessions with general information about the PMF program to providing PMFs with leadership development activities and general program resources that are available throughout the PMF Program. With this update to the regulatory text OPM will continue to provide those activities and resources to PMFs. OPM

[7] The PMF Participant Handbook is available at *https://www.pmf.gov/media/vumhfhkh/pmf-participant-handbook-draft-04-04-2022.pdf.*

[8] *https://www.pmf.gov/current-pmfs/training-and-development/.*

has not made changes to the regulatory text based on this comment.

C. Developmental Assignments

The existing regulations at 5 CFR 362.405(b) require agencies to provide for a minimum of one developmental assignment of 4 to 6 months' duration. They also allow that, as an alternative to this developmental assignment, PMFs may choose to participate in an agency-wide, Presidential, or Administration initiative that will provide experience comparable to the developmental assignment. To improve clarity, OPM proposed replacing language on ''an agency-wide initiative or other Presidential or Administration initiative'' with this language: ''Examples of appropriate developmental assignments may include projects implementing a new Executive order or major piece of legislation, agency reorganization, or cross-agency collaboration on a major administration initiative.'' This final rule provides in § 362.405(b)(4) examples and clarifying information on the types of activities that can be used to provide developmental assignments and rotational assignments for PMFs.

One commenter suggested that OPM add language to the developmental assignment information to specify that the developmental assignment must be completed under a supervisor other than the PMF's usual supervisor (*i.e.,* the PMF's supervisor of record). OPM has adopted this suggestion and has revised the language in § 362.405(b)(4)(ii) to indicate that these assignments will generally be in a different work unit in the PMF's organization, in another component, or another Federal agency.

Other commenters expressed support for the clarifying language around developmental assignments. The commenters also indicated that the clarifying examples were useful. OPM appreciates these comments.

One commenter suggested that PMF Coordinators should be empowered to work across agencies to help PMFs identify developmental assignment. To aid PMFs and agencies identifying developmental assignments, OPM offers the functionality for agencies to post developmental assignment opportunities for current PMFs to search in the PMF Talent Acquisition System.

One agency suggested that § 362.405(b)(4)(ii) and (iii) may limit the opportunities available to PMFs. Specifically, the agency stated that the agency needed to offer opportunities that may be external to Federal Government at state agencies and private industries. An agency may detail an employee to certain non-Federal organizations under the provisions of the Intergovernmental Personnel Act (IPA) Mobility Program. The IPA program provides for the temporary assignment of personnel between the Federal Government and State and local governments, colleges and universities, Indian Tribal governments, federally funded research and development centers, and other eligible organizations. An agency may use the IPA Program to allow a PMF to complete a developmental or rotational assignment at a non-Federal organization.

An agency requested that OPM clarify that the information contained in these paragraphs constitute examples or suggestions and are not required. The PMF Program is the Federal Government's flagship leadership development program for advanced degree holders across all academic disciplines. One of the key features of the program is that all PMFs Government-wide have meaningful developmental opportunities that will help them grow as leaders. To ensure consistency in this effort, all PMFs need to complete developmental assignments with management and/or technical responsibilities consistent with the PMF's IDP. The examples are offered to ensure that all PMFs are given developmental assignments of similar type and scope. OPM also offers additional guidance on developmental assignments in the PMF Participant Handbook.[9] For the sake of clarity, OPM is modifying § 362.405(b)(4)(iii) to include a description of the scope of work that should be included in a developmental assignment in addition to the examples initially proposed.

Section 362.409 Conversion to the Competitive Service

The existing regulations at 5 CFR 362.409 allow a PMF who successfully completes program requirements to be converted to a position within the employing agency. OPM proposed to allow a PMF also to be converted to a position at another Federal agency. OPM received numerous comments on this proposal. Those comments are discussed in ''Responses to Requests for Comment and Data—2. Limitations on conversion of Recent Graduates and PMFs to positions at different agencies.'' After consideration of the comments, this final rule allows conversion to a term or permanent position in a different agency when the employing (or losing) agency is unable to convert the PMF to a term or permanent position in the competitive service in the current organizational unit of the employing agency or another component within the same Department or agency due to unforeseen circumstances or other appropriate reasons.

OPM had also proposed to require agencies to document the reason for conversion in another agency. OPM has removed that requirement and, instead, is requiring agencies to outline the procedures for how conversion at another agency may occur in their Pathways Policy in § 362.104. OPM expects the modified proposal to be a less burdensome approach to ensuring that conversion at other agencies is accomplished in accordance with this final rule.

Part 410 Training

Section 410.306 Selecting and Assigning Employees to Training

The existing regulations at 5 CFR 410.306 contain an outdated reference to the former Student Career Experience Program (SCEP) program. OPM proposed to remove the outdated reference. OPM received no comments on this section. OPM is finalizing this section as proposed.

Expected Impact of This Final Rule

A. Statement of Need

The purpose of this rule is to modify existing regulations for the Pathways Programs for hiring Interns, Recent Graduates, and Presidential Management Fellows. We anticipate that these changes will improve and enhance the effectiveness of the Pathways Programs consistent with E.O. 13562, which requires OPM to support agency use of programs to recruit students and recent graduates. OPM has received qualitative feedback directly from agencies since the Programs' implementation. Between fiscal year (FY) 2012 and FY 2016, OPM hosted monthly office hours meetings with agencies to discuss solutions and recommendations to challenges agencies encountered when using the Pathways Programs. Pathways Programs Officers and PMF Coordinators have continued to contact OPM directly for advice and guidance on using the Pathways Programs since their inception. The Chief Human Capital Officers Council convened a working group to discuss challenges, issues, and successes of using the Pathways Programs during FY 2019. The working group also provided OPM staff with a number of ideas and recommendations for ways that the Programs could be improved. These discussions have identified areas where regulatory updates would allow the

[9] *https://www.pmf.gov/media/vumhfhkh/pmf-participant-handbook-draft-04-04-2022.pdf.*

Programs to recruit students and recent graduates more successfully.

Based on the feedback received from stakeholders over the years, this final rule updates the Pathways Programs to facilitate a better applicant experience, to improve developmental opportunities for Pathways Programs Participants, and to streamline agencies' ability to hire Pathways Program Participants and convert to permanent employment those who have successfully completed their Pathways requirements. Robust Pathways Programs, with appropriate safeguards to promote their use as a supplement to, and not a substitute for, the competitive hiring process are essential to boosting the Federal Government's ability to recruit and retain early career talent.

B. Impact

In fiscal year 2022, agencies made 8,567 new appointments using the Pathways Programs hiring authorities (5,087 Interns, 3,085 Recent Graduates, and 395 Presidential Management Fellows). It is important to note that, while these changes in the program regulations should enhance the way the agencies use the programs, they are only one of several factors impacting whether the number of appointments made will increase or decrease. Other factors not addressed or impacted by these regulations such as agency resources available for hiring and recruiting will also need to be considered when evaluating the effectiveness of the Programs in helping agencies reach their recruiting and hiring goals.

The changes to include career and technical education programs in the eligibility criteria for the Internship and Recent Graduate Programs are a benefit to agencies, students, and recent graduates. Agencies will be able to recruit from a broader spectrum of applicants. Students and recent graduates of career and technical education programs may have more opportunities to more to work in agencies.

OPM removed some administrative burdens of using the Programs for agencies. This final rule replaces the proposed requirement to submit Pathways Policies to OPM with a requirement to make these policies available for review upon the request of OPM, applicants, Pathways Participants, and agency employees. This final rule also replaces the requirement to submit documentation of why a Recent Graduate or PMF is being converted to a position at a different agency with a requirement for agencies to specify the procedures for how conversion at another agency may occur in their Pathways Policy. These changes in the final rule will make it easier for agencies to implement the final rule.

C. Costs

This final rule will affect the operations of over 80 Federal agencies—ranging from cabinet-level departments to small independent agencies. We estimate that this rule will require individuals employed by these agencies to modify policies and procedures to implement the rule and perform outreach and recruitment activities when using the authority. For the purpose of this cost analysis, the assumed average salary rate of Federal employees performing this work will be the rate in 2024 for GS–14, step 5, from the Washington, DC, locality pay table ($157,982 annual locality rate and $89.04 hourly locality rate). We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of $178.08 per hour.

To comply with the regulatory changes in this rule, affected agencies will need to review the final rule and update their policies and procedures. We estimate that, in the first year following publication of the final rule, this process would require an average of 250 hours of work by employees with an average hourly cost of $143.76. This time would result in estimated costs in that first year of implementation of about $35,940 per agency, and about $2,875,200 in total Government-wide. We do not believe this rule will substantially increase the ongoing administrative costs to agencies (including the costs of administering the programs and hiring and training new staff). This is because the rule is modifying existing programs and recruitment of students and recent graduates is an ongoing need.

OPM did not receive any comments on the estimated costs in the proposed rule.

D. Benefits

The final rule will boost the Federal Government's ability to recruit and retain early career talent. For example, modifying the public notification requirement will provide agencies with additional flexibility when recruiting and may also lead to a better applicant experience. Further, the changes to allow the conversion of eligible Recent Graduates and Presidential Management PMFs to competitive service positions in the employing agency or another agency will provide flexibility when resource restrictions would otherwise prevent conversion. When an agency is unable to convert the eligible Recent Graduate or PMF, the agency and the Government lose the expertise and knowledge the participant has gained during the program. The opportunity for conversion at another agency may prevent that loss. The extension of the 120-day period for the conversion of Interns to 180 days provides agencies the benefit of being able to convert those Interns who otherwise would have been separated when the background investigation or vetting process exceeded the 120-day limit.

E.O. 14035 of June 25, 2021, titled ''Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce,'' established a Federal diversity, equity, inclusion, and accessibility (DEIA) initiative. A Government-Wide Strategic Plan to Advance Diversity, Equity, and Accessibility in the Federal Workforce was released in November 2021.[10] This plan directs agencies to prioritize several efforts to support the sustainability and continued improvement on of DEIA matters. These efforts include seeking opportunities to promote paid internships, fellowships, and apprenticeships. The updates to the Pathways Programs regulations will help inform and support agency efforts to use and promote paid internships, in line with the aims of the Federal DEIA initiative.

E. Regulatory Alternative

E.O. 13562 authorized OPM to establish regulations to implement the Pathways Programs. Over the years, OPM has issued guidance in addition to these regulations to assist agencies in using the Programs. However, this rule addresses issues that require a modification of the existing regulations and that cannot be changed by guidance alone. For example, staff in agencies told OPM that agencies need additional flexibility to convert participants in the Recent Graduate and PMF Programs to positions in other agencies. The existing regulations limit the conversion of Recent Graduate or PMFs to positions in the employing agency. OPM has determined that a change to these regulatory provisions is required to provide the additional flexibility agencies requested.

OPM did not receive any comments on the costs, benefits or regulatory alternatives presented in the proposed rule and is finalizing this section of the rule with minimal technical changes.

[10] *https://www.whitehouse.gov/wp-content/uploads/2021/11/Strategic-Plan-to-Advance-Diversity-Equity-Inclusionand-Accessibility-in-the-Federal-Workforce-11.23.21.pdf.*

F. Severability

If any of the provisions of this final rule is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective section(s) and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof. The Pathways Programs encompass three discrete programs with different implementing provisions. Should provisions related to one of the programs be held to be invalid we believe that the other programs should be severable and would not be impacted. Similarly, many of the operational requirements have no bearing on other provisions and are severable. For example, a holding that a hiring provision is invalid should not impact provisions related to conversion. In enforcing the provisions of this rule, OPM will comply with all applicable legal requirements.

OPM did not receive any comments on severability in the proposed rule.

Regulatory Review

OPM has examined the impact of this rule as required by Executive Orders 12866, 13563, and 14094, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). This rule is considered a ''significant regulatory action'' under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

The Director of the Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform

This rule meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*) requires certain rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs has determined this is not a major rule as defined by the Congressional Review Act (5 U.S.C. 804(2)).

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves the following OMB-approved collections of information subject to the PRA:

- USAJOBS 3.0 (OMB Control Number 3206–0219)
- Presidential Management Fellows (PMF) Program Online Application and Resume Builder (OMB Control Number 3206–0082).

OPM believes any additional burden associated with this final rule falls within the existing estimates currently associated with these control numbers. OPM does not anticipate that the implementation of this final rule will increase the cost burden to members of the public. Additional information regarding these collections of information—including all background materials—can be found at *https://www.reginfo.gov/public/do/PRAMain* by using the search function to enter either the title of the collection or the OMB Control Number.

List of Subjects

5 CFR Part 300

Government employees.

5 CFR Part 362

Administrative practice and procedure, Colleges and universities, Government employees.

5 CFR Part 410

Education, Government employees.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

For reasons stated in the preamble, the Office of Personnel Management amends 5 CFR parts 300, 362, and 410 as follows:

PART 300—EMPLOYMENT (GENERAL)

■ 1. The authority citation for part 300 is revised to read as follows:

Authority: 5 U.S.C. 552, 2301, 2302, 3301, and 3302; E.O. 10577, 19 FR 7521, 3 CFR 1954–1958 Comp., p. 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 34 FR 12985, 3 CFR 1966–1970 Comp., p. 803; E.O. 13087, 63 FR 30097, 3 CFR 1998 Comp., p. 191; and E.O. 13152, 65 FR 26115, 3 CFR 2000 Comp., p. 264.

Sec. 300.301 also issued under 5 U.S.C. 3341 and E.O. 13562, 75 FR 82585, 3 CFR 2010 Comp., p. 291.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c).

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

Subpart C—Details of Employees

■ 2. Amend § 300.301 by revising paragraph (b) to read as follows:

§ 300.301 Authority.

* * * * *

(b) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the excepted service to a position in the excepted service and may also detail an excepted service employee serving under Schedule A, Schedule B, Schedule D, or a Veterans Recruitment Appointment to a position in the competitive service.

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PART 362—PATHWAYS PROGRAMS

■ 3. The authority citation for part 362 continues to read as follows:

Authority: E.O. 13562, 75 FR 82585. 3 CFR, 2010 Comp., p. 291

Subpart A—General Provisions

■ 4. Amend § 362.102 by:
■ a. Revising the definitions for ''Advanced degree'' and ''Agency'';
■ b. Adding the definition for ''Certificate of completion of a Registered Apprenticeship Program'' in alphabetical order;
■ c. Revising the definition for ''Certificate program''; and
■ d. Adding the definitions for ''Industry-recognized credential'', ''Qualifying career or technical education program'', ''Recognized postsecondary credential'', and ''Registered Apprenticeship Program'' in alphabetical order.

The revisions and additions read as follows:

§ 362.102 Definitions.

* * * * *

Advanced degree means a master's degree, professional degree, doctorate degree, or other formal degree pursued after completing a bachelor's degree.

Agency means an Executive agency as defined in 5 U.S.C. 105, and the Government Publishing Office.

Certificate of completion of a Registered Apprenticeship Program means the documentation given to individuals who have successfully completed a Registered Apprenticeship Program.

Certificate program means post-secondary education in a:

(1) Qualifying educational institution, equivalent to at least one academic year of full-time study that is part of an accredited post-secondary, technical, trade, or business school curriculum; or

(2) Qualifying career or technical education program of at least one year that awards a recognized postsecondary credential.

* * * * *

Industry-recognized credential means:

(1) A credential or certificate that is developed and offered by, or endorsed by, a nationally or regionally recognized industry association or organization representing a sizeable portion of the industry sector; or

(2) A credential that is sought or accepted by companies within the industry sector for purposes of hiring or recruitment, which may include credentials from vendors of certain products.

* * * * *

Qualifying career or technical education program means:

(1) A federally administered, organized educational program that focuses on providing rigorous academic content and relevant technical knowledge and skills needed to prepare the individual for further education and/or a career in a current or emerging profession and provides technical skill proficiency and a recognized postsecondary credential (which may include an industry-recognized credential, a certificate, or an associate degree). Qualifying programs must require at least one year of substantially continuous participation;

(2) A Registered Apprenticeship Program; or

(3) A federally administered local, State, national, or international volunteer service program or organization designed to give individuals work and/or educational experiences in volunteer programs that benefit the Federal Government or local communities. Qualifying volunteer service must be documented with written information from the federally administered program that the volunteer has completed either:

(i) At least 52 weeks of volunteer service (through one or multiple periods of service); or

(ii) At least 1700 work hours when the period(s) of volunteer service (through one or multiple periods of service) is less than one year in length.

(4) For the purposes of this definition, the phrase *federally administered* means a program or organization that operates under a Federal agency's (or a component within an agency) programmatic oversight, to ensure educational outcomes and compliance with agency-established criteria to provide participants with high-demand skills. Such criteria must describe:

(i) The nature and scope of work to be performed by participants;

(ii) The type(s) and scope of training to be provided to participants;

(iii) The types of skills participants will acquire or develop during the program (*e.g.,* teaching, environmental, business, scientific, public health/health care, languages);

(iv) The level and extent of mentoring participants will receive); and

(v) The metrics that describe successful completion of the program.

* * * * *

Recognized postsecondary credential means documentation (*e.g.,* official record) of an industry-recognized credential, a certificate of completion of a Registered Apprenticeship Program, a license recognized by the State involved or Federal Government, or an associate's or baccalaureate degree.

Registered Apprenticeship Program means a program that meets the requirements in 29 CFR part 29. Registration of a program is evidenced by a certificate of registration or other written documentation provided by the Registration Agency under 29 CFR part 29.

■ 5. Revise § 362.104 to read as follows:

§ 362.104 Agency requirements.

(a) *Agency policy.* To make any appointment under a Pathways authority, an agency must first establish a Pathways Policy. The Pathways Policy must:

(1) Include information about any agency-specific program labels that will be used, subject to the Federal naming conventions identified in § 362.101 (*e.g.,* OPM Internship Program).

(2) State the delegations of authority for the agency's use of the Pathways Programs (*e.g.,* department-wide vs. bureaus or components).

(3) Include any implementing policy or guidance that the agency determines would facilitate successful implementation and administration for each Pathways Program.

(4) Prescribe criteria and procedures for agency-approved extensions for Recent Graduates and PMFs, not to exceed 120 days. Extension criteria must be limited to circumstances that would render the agency's compliance with the regulations impracticable or impossible.

(5) Describe how the agency will design, implement, and document formal training and/or development, as well as the type and duration of assignments.

(6) Include a commitment from the agency to:

(i) Provide to OPM any information it requests on the agency's Pathways Programs;

(ii) Adhere to any caps on the Pathways Programs imposed by the Director;

(iii) Provide information to OPM about opportunities for individuals interested in participating in the Pathways Programs, upon request from OPM;

(iv) Provide a meaningful on-boarding process for each Pathways Program; and

(v) Provide OPM with the names of the agency's Pathways Programs Officer and PMF Coordinator.

(7) Identify the agency's Pathways Programs Officer (PPO), who:

(i) Must be in a position at the agency's headquarters level, or at the headquarters level of a departmental component, in a position at or higher than grade 12 of the General Schedule (GS) (or the equivalent under the Federal Wage System (FWS) or another pay and classification system);

(ii) Is responsible for administering the agency's Pathways Programs, including coordinating the recruitment

and on-boarding process for Pathways Programs Participants, and coordinating the agency's Pathways Programs plan with agency stakeholders and other hiring plans (*e.g.,* merit promotion plans, agency plans pursuant to Executive Order (E.O.) 14035, ''Diversity, Equity, Inclusion, and Accessibility (DEIA) in the Federal Workforce'');

(iii) Serves as a liaison with OPM by providing updates on the agency's implementation of its Pathways Programs, clarifying technical or programmatic issues, sharing agency best practices, and other similar duties; and

(iv) Reports to OPM on the agency's implementation of its Pathways Programs and individuals hired under these Programs, in conjunction with the agency's Pathways Policy.

(8) Identify the agency's PMF Coordinator who:

(i) Must be in a position at the agency's headquarters level, or at the headquarters level of departmental component, or sub-agency level, in a position at or higher than grade 12 of the GS (or the equivalent under the FWS or another pay and classification system). If an agency or sub agency designates multiple PMF Coordinators, they must work collaboratively to administer the agency's PMF Program.

(ii) Is responsible for administering the agency's PMF Program including coordinating the recruitment, on-boarding, and certification processes for PMF Program Participants, and coordinating the agency's PMF Program plan to ensure it is integrated with agency-wide workforce plans.

(iii) Serves as a liaison with OPM by providing updates on the agency's implementation of its PMF Program, clarifying technical or programmatic issues, sharing agency best practices, and other similar duties.

(iv) Reports to OPM on the agency's implementation of its PMF Program and individuals hired under the PMF Program.

(9) Prescribe criteria and procedures on how the agency will determine whether it has the resources available to convert a Pathways Participant to a term or permanent position in the competitive service. These procedures must specify the timeline for making the determination, which must include informing the Pathways Participant no later than 60 calendar days prior to the end of the appointment about whether the agency is able to convert them. If an agency is unable to convert a Pathways Participant, its procedures may include the actions it will take to assist a Participant in pursuing conversion at another agency (when appropriate).

(10) Identify the minimum service-hour requirement that must be completed by an Intern as required by § 362.204.

(11) An agency's Pathways Policy must be maintained and be available for review upon request of OPM, applicants, Pathways Programs participants, or agency employees.

(b) *Implementation of Pathways Policy requirement.* Agencies must establish a Pathways Policy that meets the criteria listed in paragraph (a) of this section not later than December 9, 2024. Upon June 11, 2024, agencies with existing Pathways memorandums of understanding (MOUs) may continue to use the Pathways Programs subject to the regulations in this part in lieu of an updated Pathways Policy while they are developing and updating their policies in accordance with the regulations in this part. Agencies without an existing MOU or an expired MOU on June 11, 2024, must establish an agency Pathways Policy before they begin making Pathways appointments. Agencies with MOUs that expire within 240 days of April 12, 2024, may request an extension of the MOU. All Pathways Programs MOUs will expire on December 9, 2024, unless OPM has specifically approved use of the MOU after December 9, 2024.

(c) *Revocation.* The Director may revoke an agency's authority to make Pathways appointments when agency use of these Programs is inconsistent with E.O. 13562, this part, or the agency's Pathways Policies.

■ 6. Amend § 362.107 by revising paragraph (c)(2) and adding paragraph (c)(3) to read as follows:

§ 362.107 Conversion to the competitive service.

* * * * *

(c) * * *

(2) A Recent Graduate may be converted to a position within the employing agency or any other agency within the Federal Government. Conversion to position at a different agency is subject to § 362.305(c).

(3) A PMF may be converted within the employing agency or any other agency within the Federal Government. Conversion to position at a different agency is subject to § 362.409(c).

* * * * *

■ 7. Amend § 362.108 by revising paragraph (b)(1) to read as follows:

§ 362.108 Program oversight.

* * * * *

(b) * * *

(1) An agency's compliance with its Pathways Policy;

* * * * *

■ 8. Revise § 362.109 to read as follows:

§ 362.109 Reporting requirements.

Agencies must provide information requested by OPM regarding workforce planning strategies that includes:

(a) Information on the entry-level occupations targeted for filling positions under this part in the coming three fiscal years;

(b) The percentage of overall hiring expected in the coming three fiscal years under the Internship, Recent Graduates, and Presidential Management Fellows Programs; and

(c) Every three fiscal years beginning with fiscal year (FY)—2024 (*i.e.,* FY24 and then again in FY27, etc.), for each of the preceding three fiscal years:

(1) The number of individuals initially appointed under each Pathways Program;

(2) The percentage of the agency's overall hires made from each Pathways Program;

(3) The number of Pathways Participants, per Program, converted to the competitive service; and

(4) The number of Pathways Participants.

■ 9. Add § 362.111 to read as follows:

§ 362.111 Severability.

Any provision of this part held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof.

Subpart B—Internship Program

■ 10. Revise § 362.202 to read as follows:

§ 362.202 Definitions.

In this subpart:

Intern not-to-exceed (Intern NTE) means an Intern appointed for an initial period not to exceed one year.

Student means an individual who is:

(1) Accepted for enrollment or enrolled and seeking a degree (diploma, certificate, etc.) in a qualifying educational institution, on a full or half-time basis (as defined by the institution in which the student is enrolled), including awardees of the Harry S.

Truman Foundation Scholarship Program under Public Law 93–842. Students need not be in physical attendance, so long as all other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course-load immediately prior to graduating is still considered a student for purposes of this Program; or

(2) Enrolled or accepted for enrollment in a qualifying career or technical education program that awards a recognized postsecondary credential.

■ 11. Amend § 362.203 by revising paragraphs (a), (d)(1), and (e) and adding paragraph (i) to read as follows:

§ 362.203 Filling positions.

(a) *Announcement*—(1) *Public notification requirement.* An agency must adhere to merit system principles and thus must provide public notification in a manner designed to recruit qualified individuals from appropriate sources in an endeavor to draw from all segments of society. An Executive department may treat each of its bureaus or components (*i.e.,* the first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency but must do so consistent with its Delegated Examining Agreement.

(2) *Meeting the public notification requirement.* An agency may use any of the following options for meeting the public notification requirement:

(i) Posting a searchable announcement on *www.USAJOBS.gov;* or

(ii) Posting job information with a link to a USAJOBS custom job announcement on the agency's public facing career or job information web page. This public facing web page must provide applicants with information about how to apply or seek additional information about the position(s) being filled.

(iii) The agency may also consider whether additional recruitment and advertisement activities to supplement paragraphs (a)(2)(i) and (ii) of this section, such as posting to third-party websites, are necessary or appropriate to further support merit system principles.

(3) *Contents of announcements.* Announcements used to meet the public notification requirement must include:

(i) *Position information.* Position title, series, and grade;

(ii) *Position location.* Geographic location where the position will be filled;

(iii) *Appointment length.* Duration of the appointment;

(iv) *Salary information.* The starting salary of the position;

(v) *Qualifications.* The minimum qualifications of the position;

(vi) *Promotion potential.* Whether the individual in the position will be eligible for promotion to higher grade levels;

(vii) *Conversion information.* The potential for conversion to the agency's permanent workforce;

(viii) *How to apply.* A public source (*e.g.,* a link to the location on the agency's website with information on how to apply) for interested individuals to seek further information about how to apply for Intern opportunities;

(ix) *Equal employment information.* Equal employment opportunity statement (agencies may use the recommended equal employment opportunity statement located on OPM's USAJOBS website);

(x) *Reasonable accommodation information.* Reasonable accommodation statement;

(xi) *Other relevant information.* Any other relevant information about the position such as telework opportunities, recruitment incentives, etc.; and

(xii) *Other requirements.* Any other information OPM considers appropriate.

(4) *Other information.* OPM will publish information on Pathways Internship opportunities in such form as the Director may determine.

* * * * *

(d) * * *

(1) An agency may make Intern appointments, pursuant to its Pathways Policy, using the Schedule D excepted service appointing authority provided in § 213.3402(a) of this chapter.

* * * * *

(e) *Promotion.* An agency may promote an Intern, on an initial appointment expected to last more than one year (without a not to exceed (NTE) date) who meets the qualification requirements for the position. An Intern NTE on a temporary appointment is not eligible for promotion. This paragraph (e) does not confer entitlement to promotion.

* * * * *

(i) *Required developmental activities.* Agencies are required to provide appropriate training and development activities to Interns regardless of the length of the appointment. OPM recommends that agencies ensure, within 45 days of appointment, that each Intern appointed for an initial period expected to last more than 1 year, or an Intern NTE appointed for more than 90 days, documents planned training activities in a training plan, Individual Development Plan (IDP), or the Pathways Participant Agreement that is approved by their supervisor. Documentation of training activities is also recommended for an Intern NTE appointed for an initial period less than 90 days. Appropriate training opportunities may include but are not limited to on-the-job training activities, formal training classes, mentoring sessions, testing products or tools, organizing work activities or functions, and assisting colleagues with projects or tasks.

■ 12. Amend § 362.204 by revising paragraphs (b)(1) and (2), revising and republishing paragraph (c), and revising paragraphs (d) and (e) to read as follows:

§ 362.204 Conversion to the competitive service.

* * * * *

(b) * * *

(1) Completed at least 480 hours of work experience acquired through the Internship Program, except as provided in paragraphs (c) and (d) of this section, while enrolled as a full-time or part-time, degree- or certificate-seeking student or participant in a career or technical education program. (An agency may require a minimum that is higher than 480, including setting varying minimums for different types of positions);

(2) Completed a course of academic study or a career and technical education program, within the 180-day period preceding the appointment, at a qualifying educational institution conferring a diploma, certificate, or degree; or successful completion in a qualifying career or technical educational program;

* * * * *

(c)(1) Subject to the limitations in paragraph (e) of this section, an agency may evaluate, consider, and grant credit for up to one-half of the service requirement in paragraph (b)(1) of this section for comparable non-Federal internship experience in a field or functional area related to the student's target position and acquired while the student:

(i) Worked in, but not for, a Federal agency, pursuant to a formal internship agreement, comparable to the Internship Program under this subpart, between the agency and an accredited academic institution;

(ii) Worked in, but not for, a Federal agency, pursuant to a written contract with a third-party internship provider officially established to provide internship experiences to students that are comparable to the Internship Program under this subpart;

(iii) Served as an active-duty member of the armed forces (including the National Guard and Reserves), as defined in 5 U.S.C. 2101, provided the veteran's discharge or release is under honorable conditions; or

(iv) Worked in a Registered Apprenticeship Program at a Federal Agency (prior to appointment as an Intern).

(2) Student volunteer service under part 308 of this chapter, and other Federal programs designed to give internship experience to students (*e.g.,* fellowships and similar programs) including a Department of Labor Job Corps Program prior to an intern appointment may be evaluated, considered, and credited under this section when the agency determines the experience is comparable to experience gained in the Internship Program.

(d) An agency may waive up to one-half of the minimum service requirement in paragraph (b)(1) of this section provided the Intern has completed at least 320 hours of career-related work experience under an Internship Program appointment with exceptional job performance and demonstrates high potential in an academic or career and technical education program. For purposes of this paragraph (d):

(1) Exceptional job performance means a formal evaluation conducted by the student's internship supervisor(s), consistent with the agency performance appraisal program that results in a rating of record (or summary rating) of higher than Fully Successful or equivalent.

(2) Demonstrates high potential in an academic or career and technical education program means attaining at least one of the following:

(i) An overall grade point average of 3.5 or better, on a 4.0 scale;

(ii) Standing in the top 10 percent of the student's graduating class;

(iii) Induction into a nationally recognized scholastic honor society; or

(iv) A letter of recommendation attesting to the Intern's outstanding program performance from an instructor or program administrator.

(e) An agency may not grant a credit or waiver (or a combination of a credit and waiver) unless the Intern has performed at least 320 hours under a Pathways Internship appointment. An agency may not grant a credit or waiver (or a combination of a credit and waiver) totaling more than 320 hours.

■ 13. Revise § 362.205 to read as follows:

§ 362.205 Reduction in force (RIF) and termination.

(a) *Reduction in force.* Interns and Interns NTE are covered by part 351 of this chapter for purposes of RIF.

(1) *Tenure Groups.* (i) An Intern serving under an appointment for an initial period expected to last more than 1 year is in excepted service Tenure Group II.

(ii) An Intern NTE who has not completed 1 year of service, is in excepted service Tenure Group 0.

(iii) An Intern NTE serving under a temporary appointment not to exceed 1 year, who has completed 1 year of current, continuous service, is in excepted service Tenure Group III.

(2) [Reserved]

(b) *Termination*—(1) *Intern.* As a condition of employment an Intern appointment expires 180 calendar days after completion of the designated academic course of study or career and technical education program, unless the Participant is selected for noncompetitive conversion under § 362.204.

(2) *Intern NTE.* As a condition of employment an Intern NTE appointment expires upon expiration of the temporary internship appointment, unless the Participant is selected for noncompetitive conversion under § 362.204.

Subpart C—Recent Graduate Program

■ 14. Amend § 362.301 by revising paragraph (a) to read as follows:

§ 362.301 Program administration.

* * * * *

(a) Identify in its Pathways Policy the duration of its Recent Graduates Program, including any criteria used to determine the need for a longer and more structured training program that exceeds 1 year;

* * * * *

■ 15. Revise § 362.302 to read as follows:

§ 362.302 Eligibility.

(a) A Recent Graduate is an individual who obtained a qualifying associate's, bachelor's, master's, professional, doctorate, vocational, technical degree or a certificate from a qualifying educational institution or completed a qualifying career or technical education program within the previous 2 years or other applicable period provided in paragraph (b) of this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an individual may apply for a position in the Recent Graduates Program only if the individual's application is received not later than 2 years after the date the individual completed all requirements of an academic course of study leading to a qualifying associate, bachelor's, master's, professional, doctorate, vocational, or technical degree or certificate from a qualifying educational institution or completed a qualifying career or technical education program.

(2) A veteran, as defined in 5 U.S.C. 2108, who, due to a military service obligation, was precluded from applying to the Recent Graduates Program during any portion of the 2-year eligibility period described in paragraph (b)(1) of this section shall have a full 2-year period of eligibility upon his or her release or discharge from active duty. In no event, however, may the individual's eligibility period extend beyond 6 years from the date on which the individual completed the requirements of an academic course of study or a qualifying career or technical education program.

■ 16. Amend § 362.303 by revising paragraphs (a), (b)(1), and (b)(3)(i) to read as follows:

§ 362.303 Filling positions.

(a) *Announcement*—(1) *Public notification requirement.* An agency must adhere to merit system principles and thus must provide public notification in a manner designed to recruit qualified individuals from appropriate sources in an endeavor to draw from all segments of society. For the purposes of this paragraph (a), *agency* means an Executive agency as defined in 5 U.S.C. 105 and the Government Publishing Office. An Executive department may treat each of its bureaus or components (*i.e.,* the first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency but must do so consistent with its Delegated Examining Agreement.

(2) *Meeting the public notification requirement.* An agency may use any of the following options for meeting the public notification requirement:

(i) Posting a searchable announcement on *www.USAJOBS.gov;* or

(ii) Posting job information with a link to a USAJOBS custom job announcement on the agency's public facing career or job information web page. This custom posting must provide applicants with information about how to apply or seek additional information about the position(s) being filled, while also providing information regarding that job announcement to OPM.

(iii) The agency may also consider whether additional recruitment and advertisement activities to supplement

paragraphs (a)(2)(i) and (ii) of this section, such as posting on third-party websites, are necessary or appropriate to further support merit system principles.

(3) *Contents of announcements.* Announcements used to meet the public notification requirement must include:

(i) *Position information.* Position title, series, and grade;

(ii) *Position location.* Geographic location where the position will be filled;

(iii) *Salary information.* The starting salary of the position;

(iv) *Qualifications information.* The minimum qualifications of the position;

(v) *Promotion potential.* Whether the individual in the position will be eligible for promotion to higher grade levels;

(vi) *Conversion information.* The potential for conversion to the agency's permanent workforce;

(vii) *How to apply.* A public source (*e.g.,* a link to the location on the agency's website with information on how to apply) for interested individuals to seek further information about how to apply for Recent Graduate opportunities; and

(viii) *Equal employment information.* Equal employment opportunity statement (agencies may use the recommended equal employment opportunity statement located on OPM's USAJOBS website);

(ix) *Reasonable accommodation information.* Reasonable accommodation statement;

(x) *Other relevant information.* Any other relevant information about the position such as telework opportunities, recruitment incentives, etc.; and

(xi) *Other requirements.* Any other information OPM considers appropriate.

(4) *Other Information.* OPM will publish information on Pathways Recent Graduate opportunities in such form as the Director may determine.

(b) * * *

(1) An agency may make appointments to the Recent Graduates Program pursuant to its Pathways Policy under Schedule D of the excepted service in accordance with part 302 of this chapter.

* * * * *

(3)(i) An agency may make an initial appointment of a Recent Graduate to any position filled under the authority in this section for which the Recent Graduate qualifies, up to the GS–11 level (or equivalent under another pay and classification system, such as the Federal Wage System), except as provided in paragraphs (b)(3)(ii) through (iv) of this section.

* * * * *

■ 17. Amend § 362.305 by adding paragraph (c) to read as follows:

§ 362.305 Conversion to the competitive service.

* * * * *

(c) A Recent Graduate may be converted to a permanent or term position at a different agency when the following conditions are met:

(1) The employing (or losing) agency is unable to convert the Recent Graduate to a term or permanent position in the competitive service in the current organizational unit of the employing agency or another component within the same Department or agency. The reasons for conversion at another agency may include unforeseen budgetary constraints; reorganizations; abolishment of positions; completion of cohort-based Pathways programs; or other appropriate reasons. Such a conversion to another agency may not be due to issues related to misconduct, poor performance, or suitability;

(2) Conversion must occur on or before the end of the agency prescribed Program period, plus any agency-approved extension; and

(3) The position at the new agency must have a full performance level that is equivalent or less than the position they would have been converted to at the prior agency.

Subpart D—Presidential Management Fellows Program

■ 18. Amend § 362.401 by removing the definition for ''Agency PMF Coordinator'' and adding in its place the definition for ''Agency Presidential Management Fellows (PMF) Program Coordinator'' to read as follows:

§ 362.401 Definitions.

* * * * *

Agency Presidential Management Fellows (PMF) Program Coordinator is an individual, at the appropriate agency component level, who coordinates the placement, development, and other Program-related activities of PMFs appointed in his or her agency and fulfills the criteria described in § 362.104(a)(8). The agency Pathways Programs Officer may also serve as the PMF Coordinator.

* * * * *

■ 19. Amend § 362.404 by revising paragraph (a)(1) and adding paragraph (e) to read as follows.

§ 362.404 Appointment and extension.

(a) * * *

(1) An agency may make 2-year appointments to the PMF Program, pursuant to a Pathways Policy, under Schedule D of the excepted service in accordance with part 302 of this chapter.

* * * * *

(e) *Work schedules.* A PMF will generally have a full-time work schedule. A PMF may request a part-time work schedule for a limited period of up to 6 months during the PMF Program. An agency has the discretion to approve or deny a request for a part-time work schedule if the agency and PMF have determined that it would not negatively impact the PMF's ability to meet all Program requirements by the expiration of the PMF's appointment. The agency's approval of the request must include an approval of a specific time period that the agency determines to be appropriate. A PMF is not entitled to approval of a request for a part-time work schedule. An agency's Pathways Policy must specify the conditions under which a part-time work schedule may be authorized. The PMF's Pathways Participant agreement must be updated with the new work schedule information when a part-time work schedule is approved.

■ 20. Amend § 362.405 by revising paragraphs (a), (b)(1), (4), and (5), and (d)(2) and adding paragraph (d)(4)(iii) to read as follows:

§ 362.405 Development, evaluation, promotion, and certification.

(a) *Individual Development Plans.* An agency must approve, within 90 days, an Individual Development Plan (IDP) for each of its PMFs that sets forth the specific developmental activities that are mutually agreed upon by each PMF and their supervisor. The PMF must develop the IDP in consultation with the Agency PMF Coordinator and/or the mentor assigned to the PMF under paragraph (b)(3) of this section, as well as the PMF's supervisor.

(b) * * *

(1) OPM will provide leadership development activities and general Program resources for each class or cohort of PMFs and will provide information on available training opportunities known to it. Agencies must provide appropriate agency-specific onboarding and employee orientation activities.

* * * * *

(4) The agency must provide each PMF with at least one rotational or developmental assignment with full-time management and/or technical responsibilities consistent with the PMF's IDP. With respect to the requirement in this paragraph (b)(4):

(i) Each PMF must receive at least one developmental assignment of 4 to 6

months in duration, with management and/or technical responsibilities consistent with the PMF's IDP.

(ii) The developmental assignment may be within the PMF's organization, in another component of the agency, or in another Federal agency as permitted by the employing agency. These assignments should generally be in a different work unit led by a supervisor other than the usual supervisor of the PMF's current position.

(iii) Developmental assignments must provide challenging work experience of a caliber appropriate for a participant in the Federal Government's flagship leadership development program. Examples of appropriate developmental assignments may include projects implementing a new Executive order or major piece of legislation, agency reorganization, or cross-agency collaboration on a major administration initiative.

(5) The PMF may receive other short-term rotational assignments of 1 to 6 months in duration, at the agency's discretion. A short-term rotational assignment may take place within the PMF's organization, in another component of the agency, or in another Federal agency as permitted by the employing agency.

* * * * *

(d) * * *

(2)(i) The ERB must notify the PMF of its decision regarding certification of successful completion.

(ii) A PMF who receives successful certification is eligible for conversion in accordance with § 362.409.

* * * * *

(4) * * *

(iii) A PMF who is not approved for certification and whose appeal to OPM is denied is not eligible for conversion in accordance with § 362.409.

■ 21. Amend § 362.409 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 362.409 Conversion to the competitive service.

* * * * *

(b) An agency may convert, without a break in service, an ERB-certified PMF to a competitive service term or permanent appointment in any position for which they are qualified.

(c) A PMF who is being converted to a permanent or term position at a different agency is subject to the following conditions:

(1) The employing (or losing) agency must be unable to convert the PMF to a term or permanent position in the competitive service in the current organizational unit of the employing agency or another component within the same Department or agency. These reasons for conversion at another agency may include unforeseen budgetary constraints; reorganizations; abolishment of positions; or other appropriate reasons. Such a conversion to another agency may not be due to issues related to failure to obtain certification from the agency's Executive Resources Board, misconduct, poor performance, or suitability;

(2) Conversion must occur on or before the end of the agency prescribed Program period, plus any agency-approved extension; and

(3) The position at the new agency must have a full performance level that is equivalent to or less than the position to which the PMF would have been converted at the losing agency.

PART 410—TRAINING

■ 22. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 1103(c), 2301, 2302, 4101, *et seq.;* E.O. 11348, 3 CFR, 1967 Comp., p. 275, E.O. 11478, 3 CFR 1966–1970 Comp., page 803, unless otherwise noted, E.O. 13087; and E.O. 13152.

■ 23. Amend § 410.306 by revising paragraph (c) to read as follows:

§ 410.306 Selecting and assigning employees to training.

* * * * *

(c) Subject to the prohibitions of § 410.308(a), an agency may pay all or part of the training expenses of students hired under the Pathways Internship Program (see 5 CFR part 362, subpart B).

[FR Doc. 2024–06810 Filed 4–11–24; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–SC–23–0037]

Pears Grown in Oregon and Washington; Increased Assessment Rate for Processed Pears

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Processed Pear Committee (Committee) to increase the assessment rate established for the 2023–2024 fiscal period and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective May 13, 2024.

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Barry Broadbent, Acting Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, or Email: *DaleJ.Novotny@usda.gov* or *Barry.Broadbent@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, implements an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington. Part 927 referred to as the ''Order'' is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of growers, handlers, and processors of pears operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires Federal

agencies to consider whether their rulemaking actions would have Tribal implications. The AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, pear handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable ''summer/fall'' pears for canning for the 2023–2024 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with the United States Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate for ''summer/fall'' varieties of pears for canning handled under the Order from $7.15 per ton, the rate that was established for the 2018–2019 fiscal period and subsequent fiscal periods, to $7.50 per ton for the 2023–2024 fiscal period and subsequent fiscal periods.

The Order authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs of goods and services in their local area and can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2018–2019 fiscal period and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of $7.15 per ton of ''summer/fall'' varieties of pears for canning handled (83 FR 62451). That rate continues in effect from fiscal period to fiscal period until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on June 8, 2023, and unanimously recommended 2023–2024 fiscal period expenditures of $607,532 and an assessment rate of $7.50 per ton of ''summer/fall'' varieties of pears for canning handled for the 2023–2024 fiscal period and subsequent fiscal periods. In comparison, last year's budgeted expenditures were $594,130. The increased assessment rate of $7.50 per ton is $0.35 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to better fund operations using assessment revenue and to reduce the reliance on reserve funds. The Committee has drawn down its financial reserve in recent years to cover Committee expenses and to reduce the reserve so as to not exceed approximately one fiscal period's budgeted expenses, in conformance with the Order (7 CFR 927.42(a)). The Committee projects handler receipts of 78,000 tons of assessable ''summer/fall'' varieties of pears for canning for the 2023–2024 fiscal period, which is 7,288 more than was projected for the 2022–2023 fiscal period.

The major expenditures recommended by the Committee for the 2023–2024 fiscal period include $492,595 for marketing, promotions, and paid advertising; $73,337 for research; $25,000 for promotion management fees; and $16,600 for Committee administrative expenses. Budgeted expenditures for the 2022–2023 fiscal period were $483,300, $66,530, $25,000, and $21,396, respectively.

Processed pears for canning are marketed throughout the calendar year. The expected 78,000-ton 2023 crop will generate $585,000 in assessment revenue at the increased assessment rate (78,000 tons of assessable ''summer/fall'' varieties of pears for canning multiplied by $7.50 per ton assessment rate). The remaining $22,532 needed to cover budgeted expenditures will come from reserve funds carried over from previous fiscal periods and $100 in interest income. The 2023–2024 fiscal period assessment rate increase will be appropriate to ensure the Committee has sufficient revenue, along with its reserve, to fully fund its recommended 2023–2024 fiscal period budgeted expenditures and maintain a level of reserve funds that the Committee believes is appropriate.

The Committee derived the recommended assessment rate by considering anticipated fiscal period expenses, an estimated 2023 crop volume of 78,000 tons of assessable ''summer/fall'' varieties of pears for canning, and the amount of funds available in the authorized reserve. Income derived from handler assessments ($585,000) and funds from the Committee's authorized reserve ($22,432) along with interest income ($100) will be adequate to cover budgeted expenses ($607,532).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2023–2024 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this rule on small entities. Accordingly, AMS prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,500 growers of pears for processing in the production area and approximately 34 handlers of processed pears subject to regulation under the Order. Small agricultural growers of processed pears are defined by the Small Business Administration (SBA) as those having annual receipts equal to or less than $3.5 million (NAICS code 111339, Other Noncitrus Fruit Farming), and small agricultural service firms are defined as those whose annual receipts are equal to or less than $34 million (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the average annual grower price received for processed pears in Washington and Oregon was $361 per ton (2022). Total production of pears for canning for the 2022 season was reported by the Committee to be 74,131 tons. Using the average grower price from 2022, the most recent years for which there is NASS data, the total 2022 crop value of pears grown for processing in Oregon and Washington was $26,761,291 (74,131 tons multiplied by $361 per ton). Dividing the crop value by the estimated number of growers (1,500) yields an estimated average receipt per grower of $17,841, which is well below the SBA threshold for small growers.

Given the relatively small total farmgate value of pears for processing produced in the production area ($26,761,291), it is probable that most, if not all, of the pear processors regulated by the Order would be considered small entities. Dividing the $26,761,291 estimated crop value by the number of handlers of processed pears (34) equals $787,097. AMS has not identified a direct third-party reference for estimating processed pear manufacturing margins. Without direct third-party information regarding the industry, determination of the number of large and small processors using the SBA's definition would be difficult. However, given the low average crop value of pears for processing ($787,097) it may be assumed that most, if not all, of the handlers of processed pears would have annual receipts below the SBA threshold for small agricultural service firms ($34 million). Therefore, using the above information and assuming a normal distribution, most of the growers and handlers of pears for processing may be classified as small entities.

This rule increases the assessment rate collected from handlers for the 2023–2024 fiscal period and subsequent fiscal periods from $7.15 to $7.50 per ton of Oregon and Washington ''summer/fall'' pears for canning. The Committee unanimously recommended 2023–2024 fiscal period expenditures of $607,532 and an assessment rate of $7.50 per ton of ''summer/fall'' pears for canning. The assessment rate of $7.50 is $0.35 higher than the previous rate. The Committee expects the industry to handle 78,000 tons of ''summer/fall'' varieties of pears for canning during the 2023–2024 fiscal period. Thus, the $7.50 per ton rate will provide approximately $585,000 in assessment income (78,000 tons multiplied by $7.50). The Committee also expects to use $22,532 from its financial reserve and $100 in interest income to cover remaining expenses. Income derived from handler assessments, along with reserve funds, will be adequate to meet budgeted expenditures for the 2023–2024 fiscal period.

The major expenditures recommended by the Committee for the 2023–2024 fiscal period include $492,595 for marketing, promotions, and paid advertising; $73,337 for research; $25,000 for promotion management fees; and $16,600 for Committee administrative expenses. Budgeted expenditures for the 2022–2023 fiscal period were $483,300, $66,530, $25,000, and $21,396, respectively.

In recent years, the Committee has utilized reserve funds to partially fund its budgeted expenditures. The Committee recommended increasing the assessment rate to better fund 2023–2024 fiscal period budgeted expenditures and refrain from excessively drawing down the funds held in its reserve. This action will maintain the Committee's reserve balance at a level that the Committee believes is appropriate and is compliant with the provisions of the Order.

Prior to arriving at this budget and the increased assessment rate, the Committee discussed various alternatives, including maintaining the previous assessment rate of $7.15 per ton and increasing the assessment rate by different amounts. However, the Committee determined that the recommended assessment rate will be able to fund most of the budgeted expenses and avoid drawing down reserves at an unsustainable rate. The assessment rate of $7.50 per ton of Oregon and Washington ''summer/fall'' pears for canning was derived by considering anticipated expenses, the projected volume of assessable pears for canning, the projected monetary balance held in reserve, and additional pertinent factors.

A review of NASS information indicates that the average grower price for the 2022–2023 fiscal period was $361 per ton. Utilizing the assessment rate of $7.50 per ton, assessment revenue for the 2022–2023 fiscal period, as a percentage of total grower revenue, would have been approximately 2.08 percent ($7.50 per ton divided by $361 multiplied by 100).

This action increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The processed pear industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 8, 2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses. One comment was received during the comment period. The comment was seeking clarity on pear varieties and weight specifications, which was not relevant to the subject matter of the rule. Accordingly, AMS made no changes to the rule based on the comment received.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189, Fruit Crops. No changes in those requirements will be necessary because of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large processed pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

A proposed rule concerning this action was published in the **Federal Register** on December 1, 2023 (88 FR 83870). Copies of the proposed rule were provided to all processed pear handlers. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 2, 2024, was provided for interested persons to respond to the proposal. One comment was received during the comment period. The comment was seeking clarity on pear varieties and weight specifications, which was not relevant to the subject matter of the proposed rule. Accordingly, AMS made no changes to the rule. A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, USDA has determined that this final rule is consistent with and will effectuate the purposes of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 927 as follows:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 927.237 by revising the introductory text and paragraph (a) to read as follows:

§ 927.237 Processed pear assessment rate.

On and after July 1, 2023, the following base rates of assessment for pears for processing are established for the Processed Pear Committee:

(a) $7.50 per ton for any or all varieties or subvarieties of pears for canning classified as ''summer/fall'' excluding pears for other methods of processing;

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–07809 Filed 4–11–24; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Doc. No. AMS–SC–23–0058]

Domestic Dates Produced or Packed in Riverside County, California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the California Date Administrative Committee (Committee) to decrease the assessment rate established for the 2023–2024 and subsequent crop years. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective May 13, 2024.

FOR FURTHER INFORMATION CONTACT: Bianca Bertrand, Marketing Specialist, or Barry Broadbent, Acting Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, or Email: *BiancaM.Bertrand@usda.gov* or *Barry.Broadbent@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 202500237; Telephone: (202) 720–8085, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Order No. 987, as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California. Part 987 referred to as the ''Order'' is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and producer-handlers operating within the area of production.

The Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Orders 12866 review.

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California date handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable dates beginning October 1, 2023, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the

petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule decreases the assessment rate for dates handled under the Order from $0.20 per hundredweight, the rate that was established for the 2020–2021 and subsequent crop years, to $0.15 per hundredweight for the 2023–2024 and subsequent crop years.

The Order authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs of goods and services in their local area. Therefore, they can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2020–2021 and subsequent crop years, the Committee recommended, and AMS approved, an assessment rate of $0.20 per hundredweight of dates. That rate continues in effect from crop year to crop year until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on June 27, 2023, and recommended 2023–2024 crop year expenditures of $75,800 and an assessment rate of $0.15 per hundredweight of dates handled for the 2023–2024 and subsequent crop years. In comparison, last year's budgeted expenditures were $77,250. The $0.15 per hundredweight assessment rate is $0.05 lower than the rate in effect prior to this action. The Committee recommended decreasing the assessment rate to better align assessment revenue with budgeted expenses and to keep the Committee's financial reserve within the amount allowed under the Order. The Committee projects that handlers will handle 426,000 hundredweight of California dates for the 2023–2024 crop year, which is the same quantity that was projected for the 2022–2023 crop year. The lower rate will provide sufficient funds to cover most of the 2023–2024 crop year anticipated expenses, with the balance coming from other income and the Committee's financial reserve. Assessments on California dates handled are expected to generate approximately $63,900 in income at the $0.15 per hundredweight assessment rate.

The Committee's budgeted expenditures for the 2023–2024 crop year total $75,800. The Committee's expenses include $48,000 for management services, $16,800 for office administration, and $11,000 for the financial audit. In comparison, the previous crop year's total budget was $77,250, with $48,000 for management services, $19,750 for office administration, and $9,500 for the financial audit.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, the expected volume of dates handled, and the amount of funds available in the operating reserve. Income derived from handler assessments of $63,900 (426,000 hundredweight assessed at the $0.15 per hundredweight assessment rate) should be adequate to cover most of the Committee's budgeted expenses of $75,800, with the balance covered from $5,100 in surplus allocation income and $6,800 from reserve funds. After expending $6,800 from the reserve on budgeted expenses, the ending 2023–2024 crop year balance in the financial reserve fund is expected to be $49,400, which would be less than the average of the annual expenses of the preceding five years, as mandated by the Order in § 987.72(d).

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2023–2024 crop year budget, and those for subsequent crop years, will be reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this final rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 70 producers of dates in the production area and 11 handlers subject to regulation under the Order. Small agricultural producers of dates are defined by the Small Business Administration (SBA) as those having annual receipts of less than $3,500,000 (NAICS code 111339, Other Noncitrus Fruit Farming), and small agricultural service firms are defined as those whose annual receipts are less than $34,000,000 (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), data for the most-recently completed crop year (2022) shows that California date farmers produced 49,200 tons of dates and that the producer price for fresh market California dates was $2,840 per ton. With the estimated 49,200-ton crop, the total farm gate value for California date producers was approximately $139,728,000 (49,200 multiplied by $2,840). Therefore, the average fresh market date revenue for the 70 producers within the production area would be about $1,996,114 ($139,728,000 divided by 70). Thus, it can be concluded that the many of the date producers within the production area could be considered small entities.

Furthermore, USDA Market News reported an average terminal market price of $53.90 per 11-pound carton for the 2021–2022 crop year. With approximately 98,400,000 pounds handled, the industry would have shipped an estimated 8,945,454 11-pound cartons (98,400,000 divided by 11) of packaged dates for a total value of $482,159,971 (8,945,454 multiplied by $53.90). With 11 date handlers within the production area, the average revenue per handler is estimated to be $43,832,724 for the 2021–2022 crop year ($482,159,971 divided by 11). Thus, most California date handlers could be considered large entities.

This final rule decreases the rate of assessment for the 2023–2024 and subsequent crop years from $0.20 to $0.15 per hundredweight of assessable dates. The Committee unanimously recommended 2023–2024 crop year

expenditures of $75,800 and a $0.15 per hundredweight assessment rate. The Committee expects the industry to handle 426,000 hundredweight of assessable dates during the 2023–2024 crop year. Thus, at the $0.15 per hundredweight rate, the Committee anticipates $63,900 in assessment income (426,000 multiplied by $0.15). The Committee also expects to utilize surplus allocation ($5,100) and the Committee's monetary reserve ($6,800) to cover the remaining $11,900 of expenses. Income derived from all sources are expected to be adequate to meet budgeted expenditures for the 2023–2024 crop year. The Committee's reserve balance (approximately $49,400 at the end of the 2023–2024 crop year) will be maintained at a level that the Committee believes is appropriate and is compliant with the provisions of the Order.

The Committee's budgeted expenditures for the 2023–2024 crop year total $75,800. The Committee's expenses include $48,000 for management services, $16,800 for office administration, and $11,000 for the financial audit. In comparison, the previous crop year's total budget was $77,250, with $48,000 for management services, $19,750 for office administration, and $9,500 for the financial audit.

Prior to arriving at the budget and assessment rate, the Committee discussed various alternatives. However, the Committee determined that the assessment rate established herein will be able to reduce the financial burden on the industry without drawing down reserves to an unsustainable rate. The assessment rate of $0.15 per hundredweight of assessable dates was derived by considering anticipated expenses, the projected volume of dates handled, the projected monetary balance held in reserve, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2022 crop year was $2,840 per ton ($142.00 per hundredweight). Utilizing the recommended assessment rate of $0.15 per hundredweight, the estimated assessment revenue as a percentage of total producer revenue will be approximately 0.106 percent ($0.15 divided by $142.00 and multiplied by 100).

This final rule decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The California date industry and all other interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 27, 2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements will be necessary as a result of this action. Should any changes become necessary, they will be submitted to OMB for approval.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

A proposed rule concerning this action was published in the **Federal Register** on December 27, 2023 (88 FR 89327). Copies of the proposed rule were provided to all California date handlers. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 26, 2024, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes have been made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, USDA has determined that this final rule is consistent with and will effectuate the purposes of the Act.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 987 as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ 1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 987.339 to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2023, an assessment rate of $0.15 per hundredweight is established for dates produced or packed in Riverside County, California.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–07768 Filed 4–11–24; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2020–BT–TP–0041]

RIN 1904–AE15

Energy Conservation Program: Test Procedure for Consumer Furnace Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (''DOE'') is amending the test procedure for consumer furnace fans to: clarify the scope of applicability of the furnace fan test procedure; incorporate by reference the most recent versions of industry test methods; establish a test method for furnace fans incapable of operating at the required external static pressure; clarify testing of certain products, including furnace fans with

modulating controls, certain two-stage furnaces that operate at reduced input only for a preset period of time, and dual-fuel furnaces; and make updates to improve test procedure repeatability and reproducibility.

DATES: The effective date of this rule is June 26, 2024. The amendments will be mandatory for product testing starting October 9, 2024.

The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register on June 26, 2024.

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

A link to the docket web page can be found at *www.regulations.gov/docket/EERE–2020–BT–TP–0041.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

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Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–3593. Email: *Kristin.koernig@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE maintains a previously approved incorporation by reference (ASHRAE 41.1–1986 (Reapproved (''RA'') 2006)) and incorporates by reference the following industry standards into 10 CFR part 430:

ANSI/ASHRAE Standard 37–2009 (Reaffirmed 2019), *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,*'' ASHRAE approved June 21, 2019 (''ASHRAE 37–2009 (RA 2019)'').

ANSI/ASHRAE Standard 37–2009 Errata Sheet, *Errata Sheet for ANSI/ASHRAE Standard 37–2009—Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,* ASHRAE approved March 27, 2019 (''ASHRAE 37–2009 Errata Sheet'').

ANSI/ASHRAE Standard 103–2017, *Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,* ANSI-approved July 3, 2017 (''ASHRAE 103–2017'').

2021 ASHRAE Handbook—Fundamentals Inch-Pound Edition, Chapter 1, ''Psychrometrics''; copyright 2021 (''2021 ASHRAE Handbook'').

Copies of ASHRAE Standard 37–2009 (RA 2019), ASHRAE 37–2009 Errata Sheet, ASHRAE Standard 103–2017, and the 2021 ASHRAE Handbook can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE''), 180 Technology Parkway NW, Peachtree Corners, GA 30092,(800) 527–4723 or (404) 636–8400, or online at *www.ashrae.org.*

For a further discussion of these standards, please see section IV.N of this document.

Table of Contents

I. Authority and Background

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to establish and amend energy conservation standards and test procedures for consumer furnace fans. (42 U.S.C. 6295(f)(4)(D)) DOE's energy conservation standards and test procedure for consumer furnace fans are currently prescribed at title 10 of the Code of Federal Regulations (''CFR''), part 430, § 430.32(y), and 10 CFR part 430, subpart B, appendix AA (''appendix AA''), respectively. The following sections discuss DOE's authority to establish a test procedure for consumer furnace fans and relevant background information regarding DOE's consideration of a test procedure for this product.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include consumer furnace fans, the subject of this document. (42 U.S.C. 6295(f)(4)(D))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The testing requirements consist of test procedures that manufacturers of covered products must use as the basis

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including consumer furnace fans, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such a procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (42 U.S.C. 6295(gg)(2)(A)(iii)) Any such amendment must consider the most current versions of the International Electrotechnical Commission (''IEC'') Standard 62301 [3] and IEC Standard 62087 [4] as applicable. (42 U.S.C. 6295(gg)(2)(A))

DOE is publishing this final rule pursuant to the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

As discussed, DOE's existing test procedure for consumer furnace fans appears at appendix AA. Appendix AA provides procedures and calculations to determine the fan energy rating (''FER''), expressed as watts per 1,000 cubic feet per minute of airflow (''W/1000 cfm'').

DOE established the test procedure for consumer furnace fans at appendix AA in a final rule published on January 3, 2014 (''January 2014 Final Rule''). 79 FR 499. The test procedure is applicable to furnace fans used by weatherized and non-weatherized gas furnaces, oil furnaces, electric furnaces, and modular blowers.[5] *See* section 1, appendix AA. For each of these categories, the test procedure covers both mobile home and non-mobile home models. The test procedure is not applicable to non-ducted products, such as whole-house ventilation systems without ductwork, central air-conditioning (''CAC'') condensing unit fans, room fans, and furnace draft inducer fans because a ''furnace fan'' is defined as ''an electrically-powered device used in a consumer product for the purpose of circulating air through ductwork.'' 10 CFR 430.2.

As established in the January 2014 Final Rule, appendix AA incorporates by reference the definitions, test setup and equipment, and procedures for measuring steady-state combustion efficiency from the 2007 version of American National Standards Institute (''ANSI'')/American Society of Heating, Refrigeration, and Air-Conditioning Engineers (''ASHRAE'') Standard 103, ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers'' (''ASHRAE 103–2007''). In addition to these provisions, appendix AA includes provisions for apparatuses and procedures for measuring temperature rise, external static pressure (''ESP''), and furnace fan electrical input power. Appendix AA also incorporates by reference provisions for measuring temperature and ESP from ANSI/ASHRAE 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment'' (''ASHRAE 37–2009''), including its reference in section 5.1 to ASHRAE 41.1–1986 (RA 2006), ''Standard Method for Temperature Measurement.'' Lastly, appendix AA includes a reference to the psychrometric chapter (*i.e.,* chapter 1) in the 2001 *ASHRAE Handbook—Fundamentals* (''2001 ASHRAE Handbook'') for use in calculating the specific volume of dry air at specified operating conditions.

In the January 2014 Final Rule, DOE determined that there is no need to address standby and off mode energy use in the test procedure for consumer furnace fans, as the standby mode and off mode energy use associated with furnace fans is measured by test procedures for the products in which furnace fans are used (*i.e.,* consumer furnaces and consumer CACs and heat pumps). 79 FR 499, 504–505.

On July 7, 2021, DOE published in the **Federal Register** a request for information (''July 2021 RFI'') seeking

[3] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[4] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

[5] DOE defines the term ''modular blower'' in section 2.9 of appendix AA as a product which only uses single-phase electric current, and which is: (a) designed to be the principal air circulation source for the living space of a residence; (b) not contained within the same cabinet as a furnace or central air conditioner; and (c) designed to be paired with heating, ventilating, and air-conditioning (''HVAC'') products that have a heat input rate of less than 225,000 Btu per hour and cooling capacity less than 65,000 Btu per hour.

comments on the existing DOE test procedure for consumer furnace fans to determine whether amendments are warranted for the test procedure for consumer furnace fans. 86 FR 35660. More specifically, DOE requested comments, information, and data about a number of issues, mainly concerning: test settings (including selection of airflow control settings and ESP requirements for airflow settings other than the maximum setting); incorporation by reference of the most recent industry test method; clarifications for testing of certain products, including furnace fans with modulating controls, furnace fans and modular blowers tested with electric heat kits, certain two-stage furnaces that operate at reduced input only for a preset period of time, dual-fuel furnaces, and certain oil-fired furnaces; and issues related to test procedure repeatability and reproducibility. *Id.*

On May 13, 2022, DOE published in the **Federal Register** a notice of proposed rulemaking (''NOPR'') proposing to update appendix AA (''May 2022 NOPR''). 87 FR 29576. Specifically, DOE proposed to: (1) specify testing instructions for furnace fans incapable of operating at the required ESP; (2) incorporate by reference the most recent versions of industry standards, ASHRAE 103–2017 and ASHRAE 37–2009 (RA 2019), in 10 CFR 430.3; (3) define dual-fuel furnace fans and exclude them from the scope of appendix AA; (4) change the term ''default airflow-control settings'' to ''specified airflow-control settings''; (5) add provisions to directly measure airflow; (6) revise the ambient temperature conditions allowed during testing to between 65 degrees Fahrenheit (''°F'') and 85 °F for all units (both condensing and non-condensing); and (7) assign an allowable range of relative humidity during testing to be between 20 percent and 80 percent. 87 FR 29576, 29579. DOE held a webinar related to the May 2022 NOPR on May 19, 2022 (hereafter, the ''NOPR webinar'').

DOE received comments in response to the May 2022 NOPR from the interested parties listed in Table II.1.

TABLE II.1—LIST OF COMMENTERS IN RESPONSE TO THE MAY 2022 NOPR

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	15	Trade Organization.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Northwest Energy Efficiency Alliance, and the National Consumer Law Center.	Joint Commenters	14	Efficiency Advocacy Organizations.
Pacific Gas and Electric Company, San Diego Gas and Electric, Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	13; *9	Utilities.
Carrier Global Corporation	Carrier	12	Manufacturer.
Johnson Controls Inc.	JCI	10	Manufacturer.
Lennox International Inc.	Lennox	11	Manufacturer.
Morrison Products, Inc.	Morrison	*9	Manufacturer.
Rheem Manufacturing	Rheem	*9	Manufacturer.

* Comment No. 9 corresponds to the transcript for NOPR webinar.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[6] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the NOPR webinar, DOE cites the written comments throughout this final rule. Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this final rule.

II. Synopsis of the Final Rule

In this final rule, DOE amends appendix AA to subpart B of 10 CFR part 430, ''Uniform test method for measuring the energy consumption of furnace fans,'' as follows:

- Specify testing instructions for furnace fans incapable of operating at the required ESP;
- Incorporate by reference the most recent versions of industry standards, ASHRAE 103–2017 and ASHRAE 37–2009 (RA 2019), in 10 CFR 430.3;
- Incorporate by reference chapter 1 of the 2021 ASHRAE Handbook;
- Define dual-fuel furnace fans and exclude them from the scope of appendix AA;
- Change the term ''default airflow-control settings'' to ''specified airflow-control settings;''
- Make clarifications to nomenclature, correct the value of the conversion factor from Watts to BTU/h, and correct the units of specific volume of dry air;
- Revise the ambient temperature conditions allowed during testing to between 65 °F and 85 °F for all units (both condensing and non-condensing);
- Assign an allowable range of relative humidity during testing to be between 20 percent and 80 percent; and
- Require that the power measurements be determined as an average over the last 30 seconds of each steady state period at intervals of no less than 1 per second, rather than taken as a single point measurement.

The adopted amendments are summarized in Table II.1 compared to the test procedure provision prior to the amendment, as well as the reason for the adopted change.

[6] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for consumer furnace fans. (Docket No. EERE–2020–BT–TP–0041, which is maintained at *www.regulations.gov*) The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED CONSUMER FURNACE FAN TEST PROCEDURE

DOE test procedure prior to amendment	Amended test procedure	Attribution
Does not specify instructions for testing furnace fans that are incapable of operating at the specified ESP.	Specifies testing instructions for furnace fans incapable of operating at the specified ESP.	Address waiver from the prior test procedure.
Incorporates by reference ASHRAE 103–2007 and ASHRAE 37–2009.	Incorporates by reference ASHRAE 103–2017 and ASHRAE 37–2009 (RA 2019).	Incorporate by reference the most recent industry test procedures.
References 2001 ASHRAE Handbook psychrometric chapter.	Incorporates by reference the 2021 ASHRAE Handbook psychrometric chapter (*i.e.,* chapter 1).	Incorporate by references all industry test procedures that are referenced in appendix AA.
Does not address dual-fuel furnace fans	Defines dual-fuel furnace fans in appendix AA and explicitly excludes them from the scope of the test method.	Clarify scope of coverage of the test procedure.
Defines ''default airflow-control settings''	Defines ''specified airflow-control settings'' to differentiate the settings used in testing from the as-shipped settings.	Clarify selection of airflow control settings during testing
Utilizes potentially unclear nomenclature, attributes the wrong value to the conversion factor from Watts to BTU/h, and assigns the incorrect units to the specific heat of dry air.	Utilizes clearer nomenclatures, attributes the correct value to the conversion factor from Watts to BTU/h, and assigns the correct units to the specific heat of dry air.	Clarify nomenclature and correct typos.
Ambient temperature must remain between 65 °F and 100 °F for non-condensing furnaces and between 65 °F and 85 °F for condensing furnaces.	Ambient temperature must remain between 65 °F and 85 °F for all furnaces.	Improve repeatability and reproducibility of test results.
Does not specify an allowable range of relative humidity.	Requires ambient relative humidity to be maintained between 20% and 80% for all furnaces.	Improve repeatability and reproducibility of test results.
Electrical input power is measured as single point after steady-state conditions are met.	Electrical input power will be determined as the average value of readings taken over the last 30 seconds of each steady state period at intervals of no less than 1 per second.	Improve repeatability and reproducibility of test results.

DOE has determined that the amendments described in section III of this document and adopted in this document will not alter the measured efficiency of consumer furnace fans or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedure. Additionally, DOE has determined that the amendments will not increase the cost of testing. Discussion of DOE's actions are addressed in detail in section III of this document

The effective date for the amended test procedure adopted in this final rule is 75 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedure beginning 180 days after the publication of this final rule.

III. Discussion

A. Scope and Definitions

1. Air-Conditioning Products and Testing During Cooling Operation

As discussed, a ''furnace fan'' is an electrically-powered device used in a consumer product for the purpose of circulating air through ductwork. 10 CFR 430.2. And, as stated, DOE's test procedure is applicable to furnace fans used in weatherized and non-weatherized gas furnaces, oil furnaces, electric furnaces, and modular blowers. *See* section 1, appendix AA. The test procedure is not applicable to non-ducted products, such as whole-house ventilation systems without ductwork, CAC or central air-conditioning heat pump (''HP'') condensing unit fans, small-duct high-velocity (''SDHV'') air conditioner unit fans, room fans, and furnace draft inducer fans.

DOE received a comment in response to the July 2021 RFI that suggested modifying the consumer furnace fans test procedure to account for lower fan power during low-stage cooling operation. In the May 2022 NOPR, DOE requested information and data regarding the electrical energy consumption of multi-stage furnace fans during low-stage cooling operation, specifically in relation to single-stage furnace fans in cooling mode. 87 FR 29576, 29580.

In response, JCI commented that a two-stage cooling blower offers significant energy savings resultant, in part, from the circulating air blower operating at a lower speed during low-stage cooling. JCI stated that the electronically commutated motors (''ECMs'') used in units with two-stage blowers are more efficient at lower speeds. JCI also commented that the increased motor efficiency at low stage is not reflected in the current furnace fan test procedure. JCI commented that, unlike furnaces designed for strictly single-stage cooling, furnaces designed for two-stage cooling applications typically include thermostat connections for control and have the ability to switch automatically to a lower blower speed when low-stage cooling is in operation. JCI commented that the consumer furnace fan test procedure should be modified to properly capture the actual field behavior of two-stage cooling units. (JCI, No. 10 at p. 1)

Lennox stated that fan energy consumption is significantly reduced when operating multi-stage furnace fans during low-stage cooling operation relative to single-stage furnace fans operating in cooling mode. Lennox suggested that fan energy for low-stage operations is reduced by over 25 percent for two-stage products. Lennox commented that field data indicate multi-stage products spend the majority of operating hours in low-stage operation and that DOE should fully consider low-stage and multi-stage operation because they are representative of actual field operation. Lennox expressed support for transitioning the currently applicable consumer furnace fan test procedure to

include low-stage operation. (Lennox, No. 11 at p. 3)

Carrier commented that it does not have data regarding low-stage cooling operation in relation to single-stage furnace fans in cooling mode. However, Carrier stated that engineering principles suggest that accounting for the low-stage fan electrical energy consumption would make the FER rating more representative than the current method of using the high-stage fan electrical energy consumption as if it were a single-stage blower unit. Carrier suggested that DOE consider creating a cooling capacity ratio multiplier to account for the reduced fan electrical energy in low stage. (Carrier, No. 12 at pp. 1–2)

AHRI commented that there may be significant energy savings associated with running multi-stage furnace fans during low-stage cooling operation. AHRI stated that it is in favor of using low-stage cooling operation for package units that employ two-stage or multi-stage cooling modes. (AHRI, No. 15 at p. 2)

In response to these comments, DOE continues to evaluate the potential benefits of accounting for lower fan power during low-stage cooling operation, as well any additional testing burden that such test provisions would entail. DOE has considered the feedback provided by commenters and has concluded that at this time, DOE does not have sufficient data and information to specify amended procedures for testing furnace fans at low-stage cooling operation. In particular, commenters did not provide sufficient data at this time to determine representative additional test points and reapportion the operating hours outlined in table IV.2 of appendix AA to reflect low-stage cooling. Further, adding test points to DOE's test procedure for consumer furnace fans would likely require manufacturers to recertify units and could add burden to the test procedure. DOE is therefore not modifying the consumer furnace fans test procedure to account for lower fan power during low-stage cooling operation in this final rule, but DOE may consider such provisions in a future test procedure rulemaking for furnace fans.

In the May 2022 NOPR, DOE stated that it was not proposing to include fans used in other types of heating, ventilating, and air-conditioning (''HVAC'') products—such as CACs, HPs, and SDHV modular blowers—within the scope of appendix AA. DOE tentatively concluded that the electrical energy consumption of furnace fans used in the aforementioned types of HVAC products will be accounted for by the seasonal energy efficiency ratio 2 (''SEER2'') and heating seasonal performance factor 2 (''HSPF2'') metrics measured by the test procedure for CACs and HPs at appendix M1 to subpart B of part 430 (''appendix M1''). 87 FR 29576, 29580.

In response to the May 2022 NOPR, the CA IOUs stated that the calculations for the SEER2 and HSPF2 metrics do not account for the fractional bin hours between 55 °F and 64 °F. The CA IOUs commented that fan energy during any air circulation through the ductwork at those temperatures is unaddressed in SEER2 and HSPF2; therefore, the CA IOUs recommended that DOE further investigate the fans installed in these residential HVAC products to determine if such fans would meet the current furnace fan energy conservation standards and consider including them in this rulemaking. (CA IOUs, No. 13 at p. 4)

The Joint Commenters stated that they agreed with DOE regarding potential backsliding concerns about furnace fan energy use if single-package air conditioner units with gas heat were excluded from the scope of the furnace fan test procedure and stated that they support continued inclusion of these products within the scope of the furnace fan test procedure. (Joint Commenters, No. 14 at p. 1)

With regards to the comments from the CA IOUs and the Joint Commenters. DOE notes that the test method of determining SEER2, Energy Efficiency Ratio 2 (''EER2''), HSPF2, and $P_{W,OFF}$ for CACs and HPs is provided at appendix M1. Table 19 of appendix M1 specifies the distribution of fractional hours within cooling season temperature bins for the calculation of SEER2. These bins range from 65 °F to 104 °F, and, accordingly, do not cover the 55 °F to 64 °F range, as mentioned by the CA IOUs. Table 20 specifies the distribution of fractional hours within heating season temperature bins for the calculation of HSPF2, which range from –23 °F to 62 °F. Collectively, these two tables cover the entire temperature range from –23 °F to 104 °F except for the relatively narrow range between 62 °F and 65 °F.

As discussed in section I.A of this document, DOE is required by EPCA to develop test procedures that are reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) Accordingly, the SEER2 and HSPF2 metrics must reflect representative average annual use of products subject to those metrics, including CACs, HPs, and SDHV modular blowers, but do not necessarily need to account for performance at every possible temperature condition. DOE has previously determined that SEER2 and HSPF2 capture a representative measure of CAC and HP performance, including fan energy consumption, during heating and cooling operations. (See, for example, discussion of appendix M1 amendments at 82 FR 1426, 1446–1460 (Jan. 5, 2017)) Therefore, DOE has determined that the consumer furnace fan test procedure does not need to be amended to specifically address fan energy use in CACs and HPs.

2. Dual-Fuel Heating Products

Some consumer heating products include an electric heat pump as well as a gas burner and are often referred to as ''dual-fuel'' or ''hybrid heating'' units. These products are designed to provide space heating with the heat pump and/or gas burner, depending on the operating conditions (*e.g.,* outdoor air temperature and heating demand). The annual operating characteristics of a dual-fuel product may differ significantly from a typical furnace because the inclusion of a heat pump may change the operating time necessary to meet the heating load demand when compared with a gas burner alone, resulting in changes to the operating hours of the furnace fan. Additionally, as stated in the May 2022 NOPR, the current DOE consumer furnace fan test procedure does not specify provisions to set up or operate furnace fans for dual-fuel heating units, and the estimated annual national operating values in appendix AA may not be representative of average use cycle for furnace fans installed in dual-fuel applications. 87 FR 29576, 29580.

However, as was also discussed in the May 2022 NOPR, dual-fuel units are subject to the separate applicable standards for both HPs (*i.e.,* in terms of SEER2 and HSPF2) and furnaces (*i.e.,* in terms of annual fuel utilization efficiency (''AFUE'')). Therefore, DOE tentatively concluded that the fan energy use of these products is already accounted for by the metrics measured by the applicable test procedure. The SEER2 and HSPF2 metrics measure the fan energy in its cooling and heating modes, respectively, covering the two major functions of furnace fans. Furthermore, furnace fans in dual-fuel models have not been subject to appendix AA and, therefore, were not

part of the previous standards analysis. *Id.* at 87 FR 29581.

In the May 2022 NOPR, DOE proposed to define dual-fuel units as a consumer product that includes both a heat pump and a burner in a single cabinet. Further, DOE proposed to explicitly exclude furnace fans used in them from the scope of appendix AA. *Id.*

In response to the May 2022 NOPR, the CA IOUs commented that dual-fuel products—such as package units with electric heat pumps and a gas burner that are intended to provide the same utility as a typical weatherized, non-condensing furnace fan and a weatherized gas furnace—will likely grow in popularity for consumers. The CA IOUs agreed with DOE's assertion that the annual operating characteristics of a dual-fuel product may differ significantly from a typical furnace but noted this is not sufficient justification for exclusion from this rulemaking. Moreover, the CA IOUs stated that manufacturers currently need to test these furnace fans in otherwise identical package units with a cooling-only coil and a furnace; therefore, including such furnace fans in the scope would not increase manufacturer burden. The CA IOUs suggested that because heat pump capacity is expected to correlate to cooling capacity, units with lower heating capacity than cooling capacity installed in high-heat-demand climate zones would result in more gas-specific heating operation for a dual-fuel system during heating degree days. The CA IOUs stated that, as a result, the estimated national average operating hour values for calculating FER are also relevant for dual-fuel systems. The CA IOUs therefore recommended that DOE not exclude the furnace fans in dual-fuel heating products from the scope of the test procedure. (CA IOUs, No. 13 at p. 4)

The Joint Commenters stated that the gas furnaces that are part of dual-fuel units are essentially identical to those that are part of currently covered single-package air conditioning units with a gas furnace. The Joint Commenters added that they were unclear as to how DOE made the determination that dual-fuel fans are presently excluded from the currently applicable test procedure. The Joint Commenters encouraged DOE to clarify its determination that dual-fuel fans are excluded from the scope of the currently applicable consumer furnace fan test procedure and to consider adding provisions for testing these furnace fans. (Joint Commenters, No. 14 at pp. 1–2)

Conversely, Carrier, Lennox, and AHRI commented in support of the proposed definition for dual-fuel units and the proposal to exclude the furnace fans in them from the scope of appendix AA. (Carrier, No. 12 at p. 2; Lennox, No. 11 at p. 3; AHRI, No. 15 at p. 2)

In response to these comments, DOE notes that although furnace fans used in dual-fuel units were not explicitly excluded in the currently applicable consumer furnace fan test procedure, the test procedure does not specify provisions for the testing of these products. Additionally, in response to the CA IOUs' suggestion that heating contribution from the heat pump may be small in comparison to the furnace component, DOE notes that these assumptions would not be applicable to all product designs, nor is it necessarily representative of typical installations and usage patterns throughout the U.S. Therefore, DOE continues to conclude that the operating hours used in appendix AA would not be representative of the fans in dual-fuel units. It follows that these products necessarily were not intended to be subject to the currently applicable consumer furnace fan test procedure. DOE further notes that there is a distinction between packaged dual-fuel units, which include both a furnace for heating operation and a heat pump for heating and cooling operation, and package air conditioner units, which include only a furnace for heating operation (along with an air conditioner that provides cooling only). The single-package air conditioner system can be tested according to the currently applicable test procedure for furnace fans, the operating hours are representative for these products, and furnace fans used in package air conditioners are currently subject to the standards established for this product type. Further, as noted previously in this section, the energy consumption of the fans in dual-fuel heating products is already captured in the SEER2 and HSPF2 metrics specified in appendix M1. Therefore, to clarify the distinction between dual-fuel products and products within the scope of this consumer furnace fan test procedure, DOE is finalizing its proposed definition for dual-fuel units within appendix AA in this final rule. Accordingly, DOE is finalizing its proposal to specify more explicitly that furnace fans in dual-fuel products are excluded from the scope of appendix AA.

B. Referenced Industry Standards

1. Updates to Industry Standards

The currently applicable DOE test procedure for consumer furnace fans incorporates by reference ASHRAE 103–2007, ASHRAE 37–2009, and ASHRAE 41.1–1986 (RA 2006). Since publication of the January 2014 Final Rule, ASHRAE published an update to ASHRAE 103, *i.e.,* ASHRAE 103–2017, and two addenda to ASHRAE 37–2009 (ASHRAE 37–2009 (RA 2019)). In the May 2022 NOPR, DOE proposed to incorporate by reference ASHRAE 103–2017 and ASHRAE 37–2009 (RA 2019) in its test procedure for consumer furnace fans to stay consistent with the latest industry testing practices. 87 FR 29576, 29581. Further, DOE proposed to update all references of ASHRAE 37–2009 to ASHRAE 37–2009 (RA 2019). *Id.* Finally, DOE proposed to maintain reference to ASHRAE 41.1–1986 (RA 2006). *Id.*

In response to the May 2022 NOPR, Carrier commented that it agrees with the incorporation by reference of ASHRAE 103, ASHRAE 37, and ASHRAE 41.1. Carrier stated these references are important for the direct measurement method. (Carrier, No. 12 at p. 2) Additionally, Carrier and AHRI recommended that the DOE adopt the most recent versions of all ASHRAE standards relevant to this rule (*i.e.,* ASHRAE 103–2022 and ASHRAE 41.1–2020). (Carrier, No. 12 at p. 2; AHRI, No. 15 at p. 2) Rheem and AHRI commented that DOE should consider the new version of ASHRAE 37 that will be coming out soon. (Rheem, NOPR Webinar Transcript, No. 9 at pp. 19–20; AHRI, No.15 at p. 4)

For the reasons discussed in the preceding section and in the May 2022 NOPR, DOE is finalizing its proposal to incorporate by reference in appendix AA the most recent version of ASHRAE 37 (ASHRAE 37–2009 (RA 2019)). With regards to the comments from Rheem and AHRI, DOE notes that a new version of ASHRAE 37 has not been published yet so DOE is incorporating by reference the most recent version of ASHRAE 37. Relatedly, DOE notes that ASHRAE 37–2009 (RA 2019) references ASHRAE 41.1–1986 (RA 2006) as opposed to the more recent ASHRAE 41.1–2020. Consequently, to maintain consistency with ASHRAE 37–2009 (RA 2019), DOE is finalizing its proposal to maintain the incorporation by reference of ASHRAE 41.1–1986 (RA 2006) in appendix AA. In response to the comments from Carrier and AHRI, DOE notes that ASHRAE 103–2022 updated the references to relevant standard test methods and standard specifications from ASHRAE 103–2017. Notably, the amended ASHRAE 103 standard adds references to ASTM D396–2019, ''Standard Specification for Fuel Oils'' and ANSI/ASHRAE Standard 41.6–2014, ''Standard Methods for Humidity

Measurement,'' while removing the reference to *Heat Transmission* by W.H. McAdams. As discussed, in the May 2022 NOPR, DOE proposed to incorporate by reference ASHRAE 103–2017. 87 FR 29576, 29581. Although DOE continues to evaluate the differences between ASHRAE 103–2017 and ASHRAE 103–2022 (and the standards referenced therein), DOE has not yet determined whether the changes between the versions of the standards would impact appendix AA and, in turn, FER ratings. Therefore, DOE maintains its proposal in the May 2022 NOPR and incorporates by reference ASHRAE 103–2017 into appendix AA in this final rule. DOE will continue to evaluate ASHRAE 103–2022 for future incorporation by reference.

2. Additional References

Appendix AA as established in the January 2014 Final Rule included a reference to the psychrometric chapter (*i.e.,* chapter 1) in the 2001 ASHRAE Handbook for use in calculating the specific volume of dry air at specified operating conditions. Although the 2001 ASHRAE Handbook was not incorporated by reference in appendix AA at the time in the January 2014 Final Rule, DOE notes that its inclusion in the test procedure should necessitate its incorporation by reference. As the 2001 version of the ASHRAE Handbook is no longer widely available, DOE is updating appendix AA to reference to the 2021 version of the ASHRAE Handbook. Because appendix AA already references the 2001 version of the ASHRAE Handbook, which uses the same method to determine the specific volume of dry air as the 2021 version of the ASHRAE Handbook, incorporating by reference chapter 1 of the 2021 ASHRAE Handbook will not change the results of FER. DOE is therefore incorporating by reference chapter 1, ''Psychrometrics'' of the 2021 ASHRAE Handbook into appendix AA in this final rule.

C. Furnace Fans That Operate at Low External Static Pressures

On February 20, 2019, DOE received a petition for waiver and an application for interim waiver from ECR International, Inc. (''ECR'') for certain basic models of furnace fans that ECR described as belt-driven, single-speed furnace fans designed for heating-only applications in oil-fired warm air furnaces.[7] ECR asserted that the furnace fan basic models specified in the petition have design characteristics that prevent testing of the basic model according to the test procedure prescribed in the currently applicable appendix AA. Specifically, ECR claimed that the specified products are not designed to operate within the range of ESP required in the currently applicable appendix AA and that testing such furnace fans at the required ESP reduces airflow and increases temperature rise to the point where the units shut off during testing due to high temperature limits, making it impossible to achieve the steady-state operation required for testing.[8]

On March 9, 2021, DOE published a Decision and Order (''2021 Decision and Order'') granting ECR a test procedure waiver specifying an alternate test procedure that must be used to test and rate the specified basic models.[9] 86 FR 13530, 13534–13535.

Specifically, the 2021 Decision and Order specified adjustments to the ESP test conditions specified in section 8.6.1.2 of the currently applicable appendix AA. Basic models subject to the 2021 Decision and Order must be tested at the specified ESP. *Id.* The alternate test procedure in the 2021 Decision and Order further specifies that if the unit under test shuts down prior to completion of the test, the ESP range is incrementally reduced by 0.05 inches of water column (''w.c.''), and the test is to be re-run. *Id.* This process is repeated until a range is reached at which the test can be conducted to its conclusion, with a minimum allowable ESP range of 0.30–0.35'' w.c., which corresponds to the lowest ESP at which shut-off occurred in the ECR data. *Id.*

The test procedure waiver provision at 10 CFR 430.27(l) provides that, as soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a NOPR to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 430.27(l). Therefore, to amend the test procedure so as to eliminate any need for the continuation of this waiver, in the May 2022 NOPR, DOE proposed to add provisions requiring that furnace fans be initially tested at the applicable ESP range specified in table 1 of appendix AA. If the unit under test is unable to complete the testing (*i.e.,* the unit shuts down), the ESP range would be incrementally reduced by 0.05'' w.c. (*e.g.,* for units designed to be paired with an evaporator coil but without one installed, first from 0.65''–0.70'' to 0.60''–0.65'' w.c.). This process would be repeated until an ESP range at which the test can be conducted to its conclusion is reached. 87 FR 29576, 29582–29583.

In response to the May 2022 NOPR, Lennox, Carrier, and AHRI commented that they support the proposed test procedure instructions for products that cannot be tested at the ESPs in the currently applicable test procedure. (Lennox, No. 11 at p. 3; Carrier, No. 12 at p. 2; AHRI, No. 15 at p. 2) Lennox stated that it supports these test procedure changes, which would eliminate the current test procedure waiver and not create separate product classes for low-ESP products. (Lennox, No. 11 at p. 3) JCI commented that the FER test procedure should not specify a static pressure setting that is above the maximum static pressure specified by the furnace manufacturer. (JCI, No. 10 at pp. 4–5)

The Joint Commenters commented that this proposal could allow the products subject to the 2021 Decision and Order (*i.e.,* ''heating only'' products that cannot be tested at the ESPs in the currently applicable test procedure) to meet the standard more easily. The Joint Commenters stated that despite DOE's discussion in the May 2022 NOPR that these ''heating only'' furnace fans are not manufactured for the same applications as other covered furnace fans (*e.g.,* in a system with cooling), the manufacturer literature for these ''heating-only'' models repeatedly discusses usage in cooling applications. The Joint Commenters encouraged DOE to further consider appropriate testing provisions for ''heating-only'' furnace fans that cannot reach the ESPs defined in appendix AA. (Joint Commenters, No. 14 at p. 2)

The CA IOUs commented that DOE should not require furnace fans that cannot meet the required ESP to be tested using an alternative test procedure because it would result in an unrepresentative metric. Instead, the CA IOUs recommended that DOE either add a correction factor or create a new product class for these products. (CA IOUs, No. 13 at p. 1) The CA IOUs stated that the method of reducing ESP until a test could be complete would result in testing at a much lower airflow and higher temperature rise than the maximum shown on the furnace nameplate. The CA IOUs stated that operating at this condition contradicts the manufacturer's installation and operating instructions and is not representative of field use. The CA IOUs expressed concern that this approach sets a precedent for manufacturers of

[7] *See www.regulations.gov/document?D=EERE-2019-BT-WAV-0004-0001* at p. 1.

[8] *See id.* at pp. 2–3.

[9] *See www.regulations.gov/document/EERE-2019-BT-WAV-0004-0015.*

other products to deviate from Federal test procedures without changing their product rating. (*Id.* at pp. 1–2) The CA IOUs stated that the product for which the waiver was granted has a motor capable of operating at the required ESP. Further, the CA IOUs stated that the motor is supplied with a fixed belt drive that does not allow the fan to run at the speed necessary to achieve the higher ESP. Finally, the CA IOUs stated that the manufacturer's literature provides instructions for changing the pulleys in the field to work at the required speed. (*Id.* at p. 2)

In response to these comments, DOE notes that, as is discussed in the grant of an interim waiver to ECR, test data submitted by ECR showed that the specified furnace fan basic models stop operating at an ESP between 0.30'' and 0.60'' w.c., depending on the particular basic model, with units shutting down at an average ESP of 0.47'' w.c. 85 FR 50808, 50811. These ESPs are below the values listed in table 1 of appendix AA, indicating that these units could not complete a test according to the current consumer furnace fan test procedure without the proposed changes to ESP requirements. DOE further notes that a unit using a different motor or replacing the pulley, belt, or other components would constitute a different basic model.

The CA IOUs reiterated their comments previously submitted in response to the July 2021 RFI in which they demonstrated that for a given speed, forward curve fan efficacy is higher at low airflow and high ESP than at a low ESP with high airflow. The CA IOUs commented that the requirement in the proposed test procedure would test the fixed-speed fan at a much lower airflow and higher ESP than the fan would operate at under normal conditions, resulting in a measured efficacy that is significantly better than would result if the fan were tested at a representative airflow. (*Id.* at p. 2) The CA IOUs stated that the problem is exacerbated by the lack of correction to account for the difference between the tested ESP and the ESP listed in table 1 of appendix AA in the reported FER. The CA IOUs noted that while they are unaware of a validated equation specifically for FER, DOE employs a similar correction for water-source heat pumps by incorporating ANSI/AHRI/ASHRAE ISO Standard 1346–1:1998 (RA 2012). The CA IOUs noted that water-source heat pumps require this correction to determine the power consumption and capacity at the rating condition of 0.0″ wc because the actual tests use a positive ESP. The CA IOUs commented that they believe this DOE-approved equation applies equally well to furnace fans. (*Id.* at pp. 2–3)

The CA IOUs also recommended that DOE require testing at an airflow no less than that required to meet the maximum temperature rise on the furnace nameplate. Alternatively, the CA IOUs suggested that DOE create a new product class for heating-only units and require a specific ESP in table 1 of appendix AA that is lower. The CA IOUs stated that this would reduce test burden because the products would complete testing on the first attempt rather than incrementally reducing ESP in further attempts. The CA IOUs noted that there is a similar breakdown of products based on application and static pressure for ducted blower coil systems for central air conditioners and heat pumps. Further, the CA IOUs stated that appendix M1 has different ESP test conditions for conventional, low static, and mid static blower coil systems based on the external static pressure produced during operation. (*Id.* at p.3)

In response to the comment from the CA IOUs, DOE notes that no data indicate that the correction equation used for water-source heat pumps is appropriate for use in the furnace fans test procedure. Because these two products are tested according to different procedures, DOE cannot conclude that this equation would be appropriate to use to predict the change in FER. Further, as previously stated in the 2021 Decision and Order, validating an equation for extrapolating to FER at an ESP that is higher than that at which the unit can operate may be difficult or even not possible (as the unit cannot operate at that point). *See* 86 FR 13530, 13533.

In addition, products that operate at low ESPs are typically used in heating-only applications, and the products subject to the waiver are not to make any representations in any public-facing materials that these basic models are designed to be installed in systems that provide both heating and cooling. *Id.* Therefore, DOE concludes that these heating-only products do not compete with products intended for both heating and cooling, and DOE is not implementing an adjustment factor to the test procedure for furnace fans that are unable to complete testing at the ESPs specified in table 1 of the revised appendix AA. Additionally, DOE concludes that the proposed modified test provisions reflect the actual use of these products that cannot operate at higher ESPs and result in a metric that is representative.

Therefore, for the reasons discussed here and in the May 2022 NOPR, in this final rule, DOE is finalizing its proposal to adopt the modified test provisions for units that cannot meet the ESPs outlined in table 1 of appendix AA.

D. Test Procedure Repeatability and Reproducibility

Comment responses to the July 2021 RFI indicated that stakeholders encountered difficulty obtaining repeatable and reproducible FER results using the current appendix AA. Based on feedback collected during manufacturer interviews prior to the May 2022 NOPR, DOE understands that there are several key areas of possible revision to the currently applicable consumer furnace fan test procedure that could improve repeatability and reproducibility. 87 FR 29576, 29583.

In response to the May 2022 NOPR, Lennox commented that it evaluated over 60 furnace fans tested through the AHRI audit program and found the correlation between manufacturer test values and audit test values to be within an acceptable variation, such that test procedure repeatability is not a concern. (Lennox, No. 11 at p. 1)

JCI referenced AHRI work project 8020 which, JCI stated, studied the FER metric, attempted to develop a predictive metric, and reviewed possible alternatives to the current standard. JCI quoted the results of the AHRI project as follows: ''Appendix AA results in a wide metric tolerance. AHRI's members report, and the research shows, that the results are affected by the natural gas input rate and relative humidity, which is problematic as testing is not conducted in a controlled environment. Further, the current test method lends itself to test inaccuracies resulting in the inability to achieve repeatability.'' JCI also listed AHRI's recommendations for member companies as follows: (1) evaluate their lab measurement systems, procedures, and the uncertainty of each input variable; (2) test in a controlled environment to reduce variability; and (3) complete a statistical number of tests to improve rating confidence. JCI commented that the first and third recommendations are feasible and less expensive to the test labs, but JCI suggested that reduced variability could be achieved through actions other than testing in a controlled environment. (JCI, No. 10 at p. 2)

DOE notes that feedback from comment responses to the July 2021 RFI and manufacturer interviews have indicated challenges with test procedure repeatability and reproducibility in contrast to the comment from Lennox. Additionally, DOE has received feedback that units are often rated conservatively due to these repeatability

challenges. Further, in the May 2022 NOPR, DOE proposed and requested feedback on specific solutions to minimize variability and uncertainty in results. 87 FR 29576, 29583–29586. The following sections address specific topics on which DOE has received feedback in this regard.

1. Fuel Input Rate Tolerance

DOE received feedback in response to the July 2021 RFI that the natural gas input rate could impact FER, so DOE considered whether tightening the tolerance on firing rate (from ±2 percent) would improve the repeatability of the test procedure without imposing substantial burden. In a NOPR published on March 11, 2015, DOE determined that it could not change the tolerance on firing rate without increasing manufacturer burden because of variations in gas valve performance. 80 FR 12875, 12886–12887. Because DOE is not aware of any data suggesting it would now be possible to tighten this tolerance without imposing substantial test burden, DOE did not propose to change the tolerance on fuel input rating in the May 2022 NOPR. 87 FR 29576, 29583–29584.

In response to the May 2022 NOPR, AHRI, Carrier, and Lennox commented that they support the decision not to tighten the tolerance on fuel input ratings beyond what is required in ASHRAE 103–2017. (AHRI, No. 15 at p. 2; Carrier, No. 12 at p. 2; Lennox, No. 11 at p. 3) Lennox stated also that tightening the tolerance beyond ± 2 percent would increase manufacturer burden. (Lennox, No. 11 at p. 3)

For the reasons discussed in the May 2022 NOPR, and as supported by these comments, DOE is not making any changes to the fuel input rating in this final rule.

2. Ambient Conditions

In the May 2022 NOPR, DOE tentatively concluded that FER results are affected by ambient air temperature and humidity. To help improve the repeatability and reproducibility of test results, DOE proposed to tighten the range of allowable ambient conditions during testing. Specifically, DOE proposed to specify that ambient air temperature must be maintained between 65 °F and 85 °F and relative humidity must be maintained between 20 percent and 80 percent. 87 FR 29576, 29584. DOE tentatively concluded that these limits would not impose additional burden on manufacturers while maintaining the representativeness of the test procedure. *Id.*

DOE requested comment on these proposed constraints, and on its tentative determination that this proposal would decrease variability between tests. *Id.* at 87 FR 29584–29585.

In response to the May 2022 NOPR, Lennox, Carrier, and the Joint Commenters commented that they support the proposed modifications to the allowable ambient temperature range in appendix AA to be between 65 °F and 85 °F for non-condensing and condensing furnaces. (Lennox, No. 11 at p. 4; Carrier, No. 12 at p. 3; Joint Commenters, No. 14 at p. 2) AHRI similarly commented that it supports the change in the ambient air temperature requirement in appendix AA and suggested that the change would not introduce additional burden. (AHRI, No. 15 at p. 2) Lennox and Carrier both commented that their laboratories have the capability to condition the ambient air within the newly specified range; therefore, the requirement will not add significant burden. (Lennox, No. 11 at p. 4; Carrier, No. 12 at p. 3) Lennox stated that this change will reduce FER variability for non-condensing furnaces as well as standardize existing requirements for condensing furnaces. (Lennox, No. 11 at p. 4)

Lennox, Carrier, JCI, and AHRI further commented that they support the proposal to require maintaining the room relative humidity between 20 percent and 80 percent because it will decrease test variability without adding significant burden. (Lennox, No. 11 at p. 4; Carrier, No. 12 at p. 3; JCI, No. 10 at p. 2; AHRI, No. 15 at p. 3) However, they each commented that a tighter range, for example 30 percent to 50 percent, for relative humidity would require FER testing to be conducted in a special conditioned test room rather than in the main laboratory test area, which would add significant manufacturer testing burden. (*Id.*) Additionally, AHRI stated that the narrower band of 30 to 50 percent would require using tighter humidity controls in the test room than the current requirement. (AHRI, No. 15 at p. 3) JCI similarly stated that a tighter humidity range of 30 to 50 percent is beyond the capability of existing lab facilities where FER testing is currently performed. JCI stated that it does not support a relative humidity range tighter than 20 to 80 percent. Furthermore, JCI commented that the test repeatability of FER is less significantly sensitive to the tolerance in relative humidity (''RH'') compared to other test parameters. (JCI, No. 10 at p. 2)

For the reasons discussed in the May 2022 NOPR, and in consideration of these stakeholder comment responses, DOE is finalizing its proposal to specify in section 7.1 of appendix AA that the room temperature shall not fall below 65 °F (18.3 °C) or exceed 85 °F (29.4 °C) and the relative humidity shall not fall below 20 percent or exceed 80 percent in this final rule.

3. Airflow Determination

Section 10.1 of the current appendix AA compares the input heat energy to the heat picked up by the air when the furnace is in heating mode based on the temperature rise of air passing through the furnace and the specific conditions of the inlet air to calculate airflow in the specified heating setting (''Q_{heat}''). If this heating mode airflow setting is the maximum airflow-control setting, then Q_{heat} is equal to the expected airflow at the maximum airflow-control setting (''Q_{max}''). If this heating mode airflow setting is not the maximum airflow-control setting, a second calculation is performed to calculate Q_{max} based on Q_{heat}. Section 10.1, appendix AA. In the May 2022 NOPR, DOE evaluated whether the current method of calculating airflow indirectly based on measurements of other parameters leads to repeatability challenges within the test procedure. 87 FR 29576, 29585.

Each parameter involved in the calculation of Q_{max} and FER has its own inherent variability. Measuring airflow directly reduces the number of parameters required to be measured and therefore could reduce the overall variation inherent in the final FER value.

In the May 2022 NOPR, DOE acknowledged that requiring the use of an airflow-measuring device for furnace fans could introduce a one-time cost for manufacturers that either do not utilize such devices for their current testing programs (presumably of other products) or do not have enough of such devices available to test furnace fans in addition to other HVAC products that use airflow-measuring devices. The estimated cost of an airflow-measuring device is up to $50,000. *Id.*

In the May 2022 NOPR, DOE tentatively concluded that the benefits of measuring airflow would directly outweigh the associated burdens and that the requirement to directly measure airflow would not be unduly burdensome. *Id.* DOE therefore proposed to require that airflow be measured directly during each test. *Id.* Specifically, DOE proposed that this measurement be done using the procedures and methods for measuring airflow specified in ASHRAE 37–2009 (RA 2019), similar to how it is done for central air conditioners and heat pumps.

Id. As part of this proposal, DOE proposed to incorporate by reference Figure 12 of ANSI/Air Movement and Control Association International, Inc. (''AMCA'') 210–07, ANSI/ASHRAE 51–07 (''AMCA 210–2007''), titled ''Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating;'' and Figure 14 of ANSI/ASHRAE Standard 41.2–1987 (RA 92), (''ASHRAE 41.2–1987 (RA 1992)''), titled ''Standard Methods for Laboratory Airflow Measurement.'' *Id.* DOE requested comment on this proposal. *Id.*

In the May 2022 NOPR, DOE also requested comment on whether it is necessary to reference AMCA 210–2007 and ASHRAE 41.2–1987 (RA 1992) in the test procedure instructions for constructing an airflow measuring apparatus. *Id.* DOE also requested comment on alternative methods of directly measuring airflow, such as methods outlined in AMCA 210 (*e.g.,* the pitot traverse method),[10] as well as duct-mounted airflow measurement devices and anemometers, and whether these methods could prove more accurate and repeatable. *Id.* Specifically, DOE requested comment on alternative methods of direct airflow measurement, including on the level of measurement accuracy associated with each approach and any associated test burden. *Id.* at 87 FR 29585–29586.

In response to the May 2022 NOPR, the Joint Commenters expressed support for the proposed requirement for direct measurement of airflow, suggesting that it should improve repeatability and reproducibility. (Joint Commenters, No. 14 at p. 2) Carrier commented that it would support the test procedure change to direct airflow measurement provided that gas heat operation is not required during the direct airflow measurement test. (Carrier, No. 12 at pp. 3–4) Carrier added that it performed comparison tests without gas heating operation on four models, which represented a cross-section of non-weatherized gas furnaces, to compare the methods of the currently applicable test procedure to the proposed direct airflow measurement method. Carrier reported that the results of the test showed slight favoring of the current method over the direct measurement method; however, Carrier stated that the FER results differed by less than 1 percent and maximum airflow averaged 2 percent lower when using the direct measurement method. (*Id.* at p. 4) AHRI stated that it has a limited data set and is unable to provide a meaningful comparison between FER generated by the direct and indirect airflow measurement methods. (AHRI, No. 15 at p. 3)

Lennox stated that the variation in airflow between DOE sample units and AHRI audit units calculated under the currently applicable test procedure would be similar to the typical variation when using direct airflow measurement systems, as motor performance variation is the primary driver for the airflow variation. (Lennox, No. 11 at p. 5) Lennox commented that it did not support the proposal to change the test procedure from the current method to a direct airflow measurement method as it would cause a significant increase in manufacturer burden. (*Id.* at p. 4) However, Lennox commented that, if DOE were to adopt the proposal to measure airflow directly, DOE should carefully ensure that results are cross-walked should ratings change as a result of direct airflow measurement. (*Id.* at p. 5)

JCI commented that it does not support changing to direct measurement of airflow because JCI is unsure if the proposed change to directly measure airflow would resolve the repeatability issues associated with the furnace fan test procedure. (JCI, No. 10 at pp. 2–3, 4) JCI agreed that measuring airflow directly should reduce the uncertainty in calculating maximum airflow compared to the current method, but the proposed change does not guarantee that it would constrain the uncertainty in the FER. JCI commented that the proposal does not address furnace fan electrical consumption, which also has an associated uncertainty. (JCI, No. 10 at pp. 2–3)

Carrier commented that the direct measurement method would improve the accuracy of the test procedure while reducing the difficulty to run it. Carrier suggested that, if DOE were to adopt the direct airflow measurement method, DOE should consider applying the new test procedure only to new models and allowing models tested under the existing test procedure to remain compliant until that model is discontinued. (Carrier, No. 12 at p. 4) Carrier stated that the proposed method of direct airflow measurement would be a slight improvement in the burden imposed on manufacturers from the furnace fans test procedure. (*Id.* at p. 7)

AHRI noted that transitioning to the direct method would create a significant burden for manufacturer test labs and third-party testing facilities as the direct method would require a different set of measurements and therefore additional equipment along with a reconfiguration of the test setup that would require additional floor space. AHRI added that the direct method would further increase testing burden through doubling the number of samples run on code testers. (AHRI, No. 15 at p. 3) AHRI commented that third-party and manufacturer testing facilities would be required to construct code testers and reconfigure heating labs to fit the sizeable instrumentation in order to have the necessary set-up and capacity to conduct direct airflow measurements. AHRI stated that if this is not an option due to space constraints, third-party test facilities would need to move the set-up equipment to small unitary test facilities that already have the built-in flow meters. AHRI concluded that both of these options would significantly increase test time and expenses, including operating costs, and there would be a significant increase in burden for labs not already set up to conduct this type of testing. (*Id.* at p. 7) AHRI commented that manufacturers are equipped to conduct the current furnace fan test procedure and stated that the additional burden posed by transitioning to the direct method will outweigh the value of any potential increased accuracy offered. (*Id.* at p. 3)

Additionally, AHRI commented that should DOE proceed with the direct measurement method, the equipment should remain unfired throughout the testing process. AHRI added that the use of flow measurement devices with high temperature applications will create significant issues and may decrease the life of said measurement devices. AHRI stated that there is limited data available to make accurate comparisons between methods. AHRI requested that data supporting the reasoning for a transition to the direct measurement method be made available prior to requiring the change. AHRI requested that DOE conduct an adequate evaluation of the impact that the direct measurement method will have on FER values and that a crosswalk be created if necessary. Finally, AHRI suggested that DOE consider alternative approaches to reduce testing burden while achieving the same objectives. (*Id.* at p. 4)

Lennox commented that it does not support the proposed change of the furnace fan test procedure from the current method to the direct airflow measurement method due to the increased burden it would impose. (Lennox, No. 11 at p. 1) Lennox commented that the current furnace fan test setup allows the AFUE and FER test to be conducted in a single setup, but a direct airflow measurement approach would require a second setup which would significantly increase burden. (*Id.* at p. 5) Lennox stated that measuring

[10] See *www.amca.org/assets/resources/public/pdf/Education%20Modules/AMCA%20210-16.pdf* (last accessed January 11, 2023.)

airflow directly would cause significant upfront manufacturer costs to purchase code testers and would additionally create ongoing operating costs. Lennox added that additional investments in adequate lab and personnel capacity for direct airflow measurement would be required. Lennox stated that it has multiple product development facilities where furnace fan testing is conducted, so investments would need to be made in each facility. Lennox estimated the ongoing increase in burden to conduct FER direct airflow testing to be up to a 100-percent increase over the currently applicable test method. Lennox stated that DOE should consider the total cumulative regulatory burden associated with any changes to the FER test procedure to require direct airflow measurement. (Lennox, No. 11 at p. 7) Lennox added that, because the FER metric is a part of the AHRI audit program, the additional setup would increase burden when conducting audits. Lennox commented that, while manufacturers do directly measure airflow in the process of developing airflow application tables, it is often done on one sample and is not inclusive of all the iterations required in furnace development, so burden would be added. (*Id.* at p. 5)

JCI commented that the instrumentation for airflow measurement is often found in a different location than the gas lab, where heating equipment is tested, and code tester labs are frequently unequipped to supply fuel gas to a furnace or to dispose of flue gas. Furthermore, JCI stated that the airflow code testers used by JCI and other manufacturers are not intended to have heated air passing through them. JCI noted that the proposed procedure presents issues because it directs that the furnace burners be fired at the same time as the unit is set up on the code tester for direct measurement of airflow. (JCI, No. 10 at p. 3) JCI commented also that the only reason that burners are fired in the current furnace fan test procedure is because they must be fired in order to obtain the temperature rise value used in the calculation of Q_{max}. JCI stated that if the airflow is to be measured directly, there is no need to fire the burners during testing. JCI also commented that changing to a direct airflow measurement would add significant burden because it would require a separate setup from the furnace test procedure, whereas the current furnace fan test procedure setup is the same as the setup used for the furnace AFUE test procedure. (*Id.* at p. 4)

JCI stated that independent testing should be conducted to verify that the two test methods yield the same FER ratings. JCI noted that DOE regulations require that if there is a change of test method, then a unit that complies when tested by the old method must still be compliant when tested by the new method. JCI stated that it would take many months to verify that the hundreds of products they produce which comply with the standards when tested to the currently applicable test procedure still comply when tested according to the proposed method. JCI commented that if test data reveal that the FER results are different when tested according to the proposed method, DOE should be prepared to adjust the maximum allowable FER rating to accommodate the difference. (*Id.* at p. 3) Finally, JCI commented that the proposed method would impose substantial additional test burden and/or equipment costs and that there has been no demonstrated benefit to making the change to direct airflow measurement. (*Id.* at p. 5)

Morrison commented that there are a variety of factors in the airflow measurement procedure as outlined by ASHRAE 37 that could lead to uncertainty associated with this procedure. Morrison noted that DOE should investigate the error specific to this procedure as it relates to furnace fan testing. (Morrison, NOPR Webinar Transcript, No. 9 at pp. 20–23)

In response to the May 2022 NOPR, Lennox commented that AMCA 210–2007 and ASHRAE 41.2–1987 (RA 1992) are associated with the direct airflow measurement method, which Lennox does not support; therefore, Lennox stated, the current furnace fan test procedure airflow calculation is adequate. (Lennox, No. 11 at p. 5) Carrier recommended that DOE reference ASHRAE 41.2–2018 as it is a newer and more current standard. Carrier further commented that it does not recommend other methods beyond ASHRAE 37–2009. (Carrier, No. 12 at p. 4) AHRI recommended that DOE reference ASHRAE 41.2–2018, as opposed to ASHRAE 41.2–1987 (RA 1992), because it is more current. AHRI suggested that establishing standardization across original equipment manufacturers (''OEMs'') would be the best practice. AHRI stated that an updated version of ASHRAE 37 is coming out soon and that ASHAE 37–2009 is the industry standard for equipment and is preferred over AMCA 210–2007, which is a fan-only standard. (AHRI, No. 15 at p. 4)

JCI stated that there are other less expensive measures that, if progressively implemented, would result in repeatability improvements in the furnace fan test procedure and, specifically, reduction in maximum airflow variability. These measures include higher accuracy requirements for instrumentation; providing additional clarity regarding the thermocouple grid, statistical, and sampling techniques; and limiting uncertainty in fuel input rate. JCI stated that these measures would not impose additional burden and disruption to lab facilities, would only require programmatic updates, would not incur the expenses associated with purchasing a code tester, would not put smaller OEMs at a competitive disadvantage, and would expedite improving test procedure repeatability. (JCI, No. 10 at p. 3) Lennox stated that while other airflow measurement methods exist, they are generally less accurate than the methods specified in ASHRAE 37–2009 (RA 2019) and would consequently negate the purpose of transitioning to a direct-airflow measurement method. (Lennox, No. 10 at p. 6)

AHRI noted that there are alternative instruments for direct airflow measurement, but they are less accurate than the methods specified in ASHRAE 37–2009 and would consequently negate the purpose of transitioning to a direct airflow measurement method. (AHRI, No. 15 at p. 4)

The CA IOUs commented that ASHRAE 37 is sufficient, and that referencing AMCA 210 is not necessary. The CA IOUs further commented that they expect that a commercial industrial fans NOPR would lead to an update AMCA 210–2016, and that this test procedure should reference the 2016 version of AMCA 210 if any version is referenced. (CA IOUs, NOPR Webinar Transcript, No. 9 at pp. 25–26)

In response to these comments regarding the proposals to measure airflow directly in the furnace fan test procedure and to reference AMCA 210–2007 and ASHRAE 41.2–1987 (RA 1992) in the furnace fan test procedure, DOE maintains that measuring airflow directly using a code tester could reduce the error associated with airflow measurement in comparison to calculating the airflow and, in turn, reduce concerns about the repeatability and reproducibility of the furnace fan test procedure. However, since the May 2022 NOPR, DOE has conducted preliminary testing to compare the values of Q_{max} and FER determined according to the current test procedure for consumer furnace fans and a modified test method similar to that proposed in the May 2022 NOPR that included direct airflow measurements.

The preliminary results indicated that values determined from tests directly measuring airflow could differ from values determined using the current test method. This preliminary testing did not indicate whether such differences would be more or less representative than the results obtained under the current test procedure requirements. Further, during the preliminary testing, DOE attempted to test some units in the heating mode without the burner firing, as suggested by commenters in response to the May 2022 NOPR, but found that some units were not able to be operated in this way, indicating that a test procedure that requires the test to be conducted unfired may not be possible for all furnace fans. Due to these concerns combined with concerns raised by commenters about potential changes to ratings and the burden associated with implementing this change, DOE has determined to not finalize the proposal from the May 2022 NOPR to measure airflow directly in this final rule. Relatedly, DOE is not incorporating by reference AMCA 210–2007 and ASHRAE 41.2–1987 (RA 1992). Additionally, DOE is adopting other provisions in this final rule that are intended to improve repeatability of the current test procedure without affecting existing ratings or significantly increasing test burden, as discussed elsewhere in section III.D of this document. However, DOE is still investigating the impact of direct airflow measurement on furnace fan ratings, including the impact of running tests with and without the burners firing during heating-mode tests, and may further assess directly measuring airflow in a future test procedure rulemaking for consumer furnace fans.

4. Location of External Static Pressure Measurements

Appendix AA currently requires that external static pressure be measured 18 inches from the outlet. This differs from the requirements outlined in section 6.4 of ASHRAE 37–2009, in which the measurement location varies depending on the dimensions of the duct outlet. In the May 2022 NOPR, DOE reevaluated this provision and how it might impact the repeatability of the test procedure. 87 FR 29576, 29586. DOE expressed concern that measuring at a fixed location of 18 in from the outlet could lead to a less accurate and less repeatable measurement than the approach provided in ASHRAE 37–2009 because the airflow profile may not be fully developed. *Id.*

However, DOE did not have sufficient information to propose a change in the May 2022 NOPR, and therefore requested comment on whether requiring that the external static pressure be measured at the location specified in section 6.4 of ASHRAE 37–2009, as opposed to specifying that external static pressure taps always be placed 18 in from the outlet (*i.e.,* the instructions currently in appendix AA), could improve test repeatability. *Id.* DOE also requested comment on whether manufacturer facilities and other test laboratories would be able to accommodate the added duct length during testing. *Id.* Further, if test facilities would not be able to accommodate the added duct length during testing, DOE requested comment on whether a different length requirement could improve test repeatability while not preventing any existing test facilities from completing a valid test for furnace fans. *Id.*

In response to the May 2022 NOPR, Carrier and AHRI commented that they are opposed to the change in location of measurement if the change results in a higher FER value. If the change does not result in a higher FER value, Carrier and AHRI stated that they would not be opposed to the change. (Carrier, No. 12 at p. 5; AHRI, No. 15 at p. 5) AHRI recommended that the furnace fan test procedure be aligned with furnace test procedures because existing ductwork can be utilized and AFUE will meet existing space constraints. (AHRI, No. 15 at p. 5)

AHRI and JCI stated that they do not support any change to the location of pressure taps for furnace fan testing, and that if the furnace is to be tested on the code tester, the ASHRAE standard for that airflow measurement process includes a description of the duct design and the location of pressure taps. (AHRI, No. 15 at p. 5; JCI, No. 10 at p. 4) AHRI and JCI noted that for furnaces tested in the gas heating lab, the ASHRAE 103 standard includes a description of the ducts and pressure tap locations. (*Id.*) AHRI added that these standards have been in use for many years and yield reliable and repeatable results. AHRI stated that the FER test procedure does not need to specify test duct details; it only needs to reference the appropriate existing standard. (AHRI, No. 15 at p. 5) JCI commented that these standards (*e.g.,* ASHRAE 103) have been in use for many years and provide reliable and repeatable results. JCI stated that the research they conducted concluded that repeatability will not be improved by changing the location of the pressure taps. Moreover, JCI stated that placing the pressure taps at 18 in from the outlet (instead of at a location based on the outlet dimensions) will result in measuring pressure at inconsistent duct lengths within the turbulent flow development region into the supply duct. JCI commented that DOE should engage with OEMs in a research effort to test the assumption in this proposal before finalizing the change. (JCI, No. 10 at p. 4)

Lennox commented that for the current method of calculating airflow based on temperature rise, DOE should maintain the location of 18 in from the outlet to standardize to the same test ducts used for all safety and performance tests performed under Z21.47 and ASHRAE 103–2017. Lennox added that DOE should gather test data that show that a longer duct required by ASHRAE 37–2009, which would require an elbow with 9 thermocouples added to measure outlet temperature, would justify the added manufacturer burden of building additional ducts and switching back and forth between these and those required by all other tests. (Lennox, No. 11 at p. 6)

DOE notes that, in response to the discussion presented in the May 2022 NOPR regarding whether the current method for measuring ESP at a fixed location of 18 in from the outlet could lead to a less accurate and less repeatable measurement than the approach provided in ASHRAE 37–2009, commenters have not provided any data that demonstrate the impact on accuracy or repeatability of changing the location of external static pressure measurements, nor does DOE have any additional information beyond the discussion provided in the May 2022 NOPR. And in response to the comment from JCI, DOE notes that the currently applicable test procedure at appendix AA requires that external static pressure be measured 18 inches from the outlet, as opposed to a measurement location that varies depending on the dimensions of the duct outlet. Additionally, commenters generally did not support the change to the location of pressure taps for consumer furnace fan testing. For these reasons, DOE is not changing the ESP measurement location in this final rule.

5. Language Updates

In the May 2022 NOPR, DOE responded to several comments in response to the July 2021 RFI regarding revisions to the language in appendix AA that could reduce confusion about the test procedure and, in turn, improve test procedure repeatability. 87 FR 29576, 29586–29589.

a. Definitions

For furnace fans used in furnaces or modular blowers with single-stage

heating, the three airflow-control settings required to be tested are: the maximum setting, the default constant-circulation setting, and the default setting when operated using the maximum heat input rate.[11] For furnace fans used in furnaces or modular blowers with multi-stage heating or modulating heating, the airflow-control settings to be tested are: the maximum setting, the default constant-circulation setting, and the default setting when operated using the reduced heat input rate. *See* sections 8.6.1, 8.6.2, 8.6.3, appendix AA. For both single-stage and two-stage or modulating units, if a default constant-circulation setting is not specified, the lowest airflow-control setting is used to represent constant circulation for testing. *See* section 8.6.2, appendix AA.

In addition, if the manufacturer specifies multiple heating airflow-control settings, the highest heating airflow-control setting specified for the given function (*i.e.,* at the maximum or reduced input, as applicable) is used. *See* section 8.6.3, appendix AA.

Inquiries sent to DOE since the publication of the January 2014 Final Rule indicate that there are differing interpretations regarding the appropriate airflow-control settings for testing, with some manufacturers interpreting the DOE consumer furnace fan test procedure as requiring testing only the ''as-shipped'' airflow-control settings. However, the definition for ''default airflow-control setting'' specifically states that ''[i]n instances where a manufacturer specifies multiple airflow-control settings for a given function to account for varying installation scenarios, the highest airflow-control setting specified for the given function shall be used for the procedures specified in this appendix.'' Section 2.6, appendix AA. Further, the default airflow-control settings are defined as airflow-control settings specified for installed use by the manufacturer. That section in turn clarifies that the ''manufacturer specifications for installed use'' are those specifications provided for typical consumer installations in the product literature shipped with the product in which the furnace fan is installed.

Additionally, inquiries sent to DOE indicate that some manufacturers may be interpreting the test procedure to require testing according to installation instructions printed on the control board. However, DOE notes that the same control board may be used across multiple products to reduce manufacturing complexity and costs, and, as a result, instructions provided on a control board may not be applicable to every unit in which a control board is used and could contradict the specifications in product literature. For this reason, DOE specifies in the definition of ''default airflow-control setting'' that the manufacturer specifications for installed use are those specifications provided for typical consumer installations in the product literature shipped with the product in which the furnace fan is installed. Section 2.6, appendix AA.

Based on feedback received in response to the July 2021 RFI, DOE proposed in the May 2022 NOPR to change the defined term at section 2.6 in appendix AA from ''default airflow-control settings'' to ''specified airflow-control settings.'' This revised definition would avoid potential misinterpretation of the term ''default,'' which is not intended to limit testing to the as-shipped airflow-control settings. 87 FR 29576, 29587.

DOE also notes that there is currently conflicting direction from sections 8.6.2 and 2.6 of appendix AA, with section 2.6 specifying that the testing laboratory use the highest available airflow-control setting and section 8.6.2 specifying that the testing laboratory use the lowest available airflow-control setting. To address this discrepancy, DOE also proposed in the May 2022 NOPR to add the phrase ''unless otherwise specified within the test procedure'' to the end the definition of ''specified airflow-control settings'' to clarify that the hierarchy within appendix AA is for the airflow-control settings to be selected according to section 2.6, unless section 8.6.2 applies, in which case section 8.6.2 should be used to select airflow-control settings. *Id.*

In response to the May 2022 NOPR, Lennox and Carrier commented that they support the proposal to change the term ''default airflow-control settings'' to ''specified airflow-control settings.'' (Lennox, No. 11 at p. 6; Carrier, No. 12 at p. 5) JCI commented that while it agrees with the need to clarify what speed tap is to be used for testing a furnace in heating mode, the rule should explicitly state that the heating speed to be used during heat-mode testing is the speed tap specified by the furnace manufacturer in the product literature shipped with the furnace. (JCI, No. 10 at p. 4) AHRI requested that DOE provide clarification regarding what ''default airflow-control settings'' refers to and provide the reasoning for this change. AHRI also suggested that DOE specify what is meant by ''unless otherwise specified within the test procedure.'' (AHRI, No. 15 at p. 5)

Lennox added that it also supports the addition of the phrase ''unless otherwise specified within the test procedure.'' Lennox stated that these changes would improve clarity. (Lennox, No. 11 at p. 6) JCI commented that the phrase ''unless otherwise specified within the test procedure'' is confusing, as the furnace should always be tested at the manufacturer-specified heating speed and the test procedure should not specify otherwise. (JCI, No. 10 at p. 4)

In response to the comment from JCI, DOE notes that the definition it proposed in the May 2022 NOPR and is adopting in this final rule for specified airflow-control settings explicitly states that these settings are those in the product literature shipped with the product in which the furnace fan is installed. In response to the comment from AHRI, DOE notes that this change was proposed in response to inquiries received since the publication of the January 2014 Final Rule. Some inquiries expressed confusion regarding the distinction between the ''default airflow-control settings'' and the ''as-shipped airflow-control settings.'' Others indicated that some manufacturers may be interpreting the test procedure to require testing according to installation instructions printed on the control board. By proposing to change ''default airflow-control settings'' to ''specified airflow-control settings,'' DOE intended to clarify that this refers to the manufacturer-specified settings for each testing mode.

To provide clarity and resolve the conflicting instruction, in this final rule, DOE is finalizing its proposal to change the term ''default airflow-control settings'' to ''specified airflow-control settings'' and to add the phrase ''unless otherwise specified within the test procedure'' to the end the definition of ''specified airflow-control settings'' in section 2.9 of appendix AA.

b. Heating Airflow-Control Settings

In the May 2022 NOPR, DOE stated that it expects that if a fan setting is identified for heating mode operation that the fan would be capable operating in that mode at the ESP specified in appendix AA (which is representative of a typical ESP that would be encountered in the field) and at the specified temperature rise range. DOE requested comment on whether it is necessary to specify that the maximum heating airflow-control setting used during

[11] For furnace fans where the maximum airflow control setting is a heating setting, the maximum airflow-control setting test and the default heating airflow-control setting test would be identical, such that only two tests are required: (1) maximum airflow (which is the same as the default heating setting) and (2) constant circulation.

testing be one that also allows for operation within the manufacturer-specified temperature rise range during testing. DOE also requested information regarding how often furnace fans operate outside of the manufacturer-specified temperature rise range during FER testing under the current requirements. 87 FR 29576, 29587.

In response to the May 2022 NOPR, Lennox, Carrier, AHRI, and JCI suggested that the maximum heating airflow-control setting should allow for operation within the manufacturer's specified rise range during testing. (Lennox, No. 11 at p. 6; Carrier, No. 12 at p. 5; AHRI, No. 15 at p. 6; JCI, No. 10 at p. 4) Carrier stated that it creates unnecessary confusion to require compliance otherwise. (Carrier, No. 12 at p. 5) JCI commented that realistic FER ratings depend on operating the furnace in a realistic manner. JCI added that testing at heating speeds resulting in a temperature rise outside of the manufacturer-specified range is not a realistic operating condition. (JCI, No. 10 at p. 4)

DOE agrees with the commenters that the temperature rise during testing should be within the manufacturer-specified range. If the temperature rise were outside of the manufacturer-specified range, it would not be representative of typical performance. Therefore, in this final rule, DOE is adding clarification in section 8.6.3 of appendix AA that the maximum heating airflow-control setting used during testing be one that also allows for operation within the manufacturer-specified temperature rise range during testing.

c. Power Measurements

Sections 8.6.1.1, 8.6.1.2, 8.6.2, and 8.6.3 of appendix AA require the following parameters to be measured after steady-state operation is achieved: the furnace fan electrical input power, fuel or electric resistance heat kit input energy, external static pressure, steady-state efficiency, outlet air temperature, and/or temperature rise. DOE is aware that some test facilities take a single reading for each of these parameters after achieving the steady-state criteria. As noted in the May 2022 NOPR, in DOE testing, during which these parameters were measured in 1-second intervals throughout the steady-state period, data showed that the values fluctuate sometimes significantly between readings, even while steady-state conditions are maintained. 87 FR 29576, 29588. Due to the potential for significant differences from one reading to the next, these fluctuations could contribute to repeatability issues in FER testing if a value from a single point in time is used for each test. In particular, DOE testing has shown that the standard deviation of furnace fan power measurements for most units over a 30-minute period (at steady state operation) can be up to 16 percent of the average, although for most units the standard deviation is less than 1 percent of the average power consumption. DOE stated in the May 2022 NOPR that it was considering whether further clarifications are necessary for appendix AA to clarify how manufacturers should take power measurements. Specifically, DOE explained that that increasing the number of discrete measurements taken (*i.e.,* increasing the sample size) and averaging them to determine each furnace fan power consumption measurement may yield a result that is more representative and repeatable than using single point measurements of the furnace fan power. *Id.* For example, DOE could require that power measurements be based on the average value over a 1-minute interval beginning immediately after steady-state operation has been achieved, during which the power is measured at least once per second. Alternatively, DOE could require furnace fan power measurements to be based on the average of measurements taken over the entire steady-state period at certain specified intervals (*e.g.,* every minute or every 5 minutes). *Id.*

In the May 2022 NOPR, DOE requested data and information on the methods and granularity with which test facilities currently measure the aforementioned variables, particularly furnace fan power (E_{Max}, E_{Circ}, and E_{Heat}). DOE also requested comment on the intervals at which test facilities are currently capable of recording these measurements with their current instrumentation. Finally, DOE requested information on whether there are variables aside from the fan power consumption variables for which there are significant fluctuations in measurements that DOE should also consider requiring be determined as an average of multiple measurements. *Id.* at 87 FR 29588–29589.

DOE also requested comment on the number of samples that should be taken, and the length of time over which data should be collected in order for a representative average to be achieved. DOE requested comment on the associated costs, if any, to upgrade measurement instruments or software to be able to collect furnace fan power consumption measurements at frequencies of once per second, once per minute, once per 5 minutes, and/or other recommended sampling frequencies. *Id.* at 87 FR 29589.

In response to the May 2022 NOPR, AHRI commented that the number of samples per period of time is dependent on the specific testing conditions; however, AHRI suggested that, generally, manufacturers take power samples every second for 30 seconds, and in alternative testing scenarios once every 2 seconds for 60 seconds to achieve representative averages. (AHRI, No. 15 at p. 6)

Carrier, JCI, and AHRI recommended that short periods of average power measurements should be allowed for instrumentation accuracy and consistency. (Carrier, No. 12 at p. 5; Joint Commenters, No. 14 at pp. 2–3; AHRI, No. 15 at p. 6) Carrier stated that airflow pressure measurements can fluctuate such that using a sample rate of one reading per second for 30 seconds or some other variation to obtain a several-reading average would be preferred. (Carrier, No. 12 at pp. 5–6) AHRI commented that airflow pressure measurements especially have fluctuations that are improved using averaging techniques over multiple measurements and stated that the currently applicable test method on existing equipment does not have the capacity to automatically collect the requested data and information. AHRI noted that the test stand does not have significant fluctuations in data values. (AHRI, No. 15 at p. 6) The Joint Commenters commented that DOE should consider requiring time-averaged values for other test variable measurements as well. (Joint Commenters, No. 14 at p. 3)

Carrier stated that it has not evaluated the associated costs to upgrade lab infrastructure for more frequent readings. (Carrier, No. 12 at p. 6)

These stakeholder comments suggest that current laboratory setups are capable of reporting power data in 1-second intervals and averaging this reported data over the last thirty seconds of the furnace fan test without incurring additional cost or burden. Therefore, in this final rule, DOE is clarifying in section 8.6 of appendix AA that furnace fan electrical input power ($E_{Max,}$ $E_{Circ,}$ and E_{Heat}) shall be determined using an average of the measurements taken over the final 30 seconds of the test at an interval no less frequent than every 1 second.

d. Other Language Clarifications

The title of section 8.3 of appendix AA is ''Steady-State Conditions for Gas and Oil Furnaces,'' the title of section 8.4 is ''Steady-State Conditions for Electric Furnaces and Modular

Blowers,'' and the title of section 8.5 of appendix AA is ''Steady-State Conditions for Cold Flow Tests.'' Sections 8.3 and 8.4 describe the steady-state conditions for ''hot flow'' tests during which the burner or heating element is on, while section 8.5 describes the steady-state conditions for ''cold flow'' tests during which the burner or heating element is off.

In the May 2022 NOPR, DOE proposed to amend the section titles to include the terminology ''for Hot Flow Tests'' in the titles to provide better consistency between the section titles and to provide clarity for the intended use of sections 8.3 and 8.4 of appendix AA. 87 FR 29576, 29589. DOE did not receive any comments in response to this proposal. For the reasons discussed here and in the May 2022 NOPR, DOE is finalizing this change as proposed.

DOE also proposed in the May 2022 NOPR to redesignate the description of operating-mode hours from ''cooling hours'' with variable ''CH'' to ''maximum airflow hours'' with variable ''MH.'' DOE tentatively concluded that these descriptions would be more accurate, as the maximum airflow-control setting is not necessarily a cooling airflow-control setting, and that this proposed change would provide consistency with the description of the operational mode and E_{Max} measurement and avoid the implication that the maximum airflow-control setting will always be a cooling mode. *Id.*

Finally, in the May 2022 NOPR, DOE proposed to add an asterisk prior to the statement ''once the specified ESP has been achieved, the same outlet duct restrictions shall be used for the remainder of the furnace fan test'' in section 8.6.1.2 of appendix AA to link this statement to the ESP column of table 1. *Id.* at 87 FR 29588. This change would clarify the appropriate duct restrictions for testing and not make any substantive changes. *Id.*

DOE did not receive any comments in response to these proposals. Therefore, for the reasons discussed in this final rule and in the May 2022 NOPR, DOE is finalizing these changes as proposed.

E. Nomenclature and Equations

In response to comments submitted following the July 2021 RFI, DOE considered several changes to the nomenclature and equations in appendix AA. First, in the May 2022 NOPR, DOE noted the term Q_i in appendix AA, which refers to the airflow control setting in airflow-control setting *i,* could lead to confusion as the subscript ''i'' has two different meanings: the airflow-control setting and the heat input setting. *Id.* at 87 FR 29589.

DOE also evaluated revising the nomenclature for variables and conversion factors, including steady-state efficiency (''$Effy_{SS}$''), the specific volume of dry air (''v_{air}''), jacket loss (''L_J''), airflow (''Q_i''), the conversion factor from hours to minutes (60), the approximate specific heat of dry air (0.24), and the approximate specific heat capacity of saturated water vapor (0.44). *Id.* at 87 FR 29589–29590.

In the May 2022 NOPR, DOE noted that, should DOE adopt its proposal to measure airflow directly, the equations to calculate airflow would no longer be needed. *Id.* at 87 FR 29590. (However, as discussed in section III.D.3 of this document, DOE is not adopting its proposal to measure airflow directly and is instead maintaining the equations for calculating airflow.) Further, because the variable $Q_{IN,i}$ would be relevant regardless of whether DOE ultimately adopts its proposal to directly measure airflow, DOE proposed to revise the variable $Q_{IN,i}$ within the test procedure for furnace fans at appendix AA. *Id.* DOE also stated that should DOE not adopt the proposal to measure airflow directly, DOE would propose to include the following definitions in section 9 of appendix AA:

- 60 = conversion factor from hours to minutes (min/h)
- 0.24 = approximate specific heat capacity of dry air (Btu/lb-°F)
- 0.44 = approximate specific heat capacity of saturated water vapor, (Btu/lb-°F)
- $Effy_{ss,i}$ = Steady-State Efficiency in airflow-control setting i. For gas and oil furnaces, $Effy_{ss,i}$ as specified in sections 11.2.7 (Non-Condensing and Non modulating), 11.3.7.3 (Condensing and Non modulating), 11.4.8.8 (Non-Condensing and Modulating), or 11.5 (Condensing and Modulating) of ASHRAE 103–2017, in %. For electric furnaces or modular blowers, $Eff_{yss,i}$ equals 100, in %.
- L_J = jacket loss as determined as specified in section 8.6 of ASHRAE 103–2017 or a default value of 1% if the jacket loss test is not performed, in %.
- $T_{i,k,\ In}$ = inlet air temperature at time of the electrical power measurement, in °F, in airflow-control setting *i* and heat setting *k,* where *i* can be ''Circ'' to represent constant-circulation (or minimum airflow) mode, ''Heat'' to represent heating mode, or ''Max'' to represent maximum airflow (typically designated for cooling) mode. If *i* = Heat, *k* can be ''H'' to represent the high heat setting or ''R'' to represent the reduced heat setting. If *i* = Max or Circ, *k* is not needed.
- $T_{i,k,\ Out}$ = average outlet air temperature as measured by the outlet thermocouple grid at time of the electrical power measurement, in °F, in airflow-control setting *i* and heat setting *k,* where *i* can be ''Circ'' to represent constant-circulation (or minimum airflow) mode, ''Heat'' to represent heating mode, or ''Max'' to represent maximum airflow (typically designated for cooling) mode If *i* = Heat, *k* can be ''H'' to represent the high heat setting or ''R'' to represent the reduced heat setting. If *i* = Max or Circ, *k* is not needed.
- $\Delta T_{i,k} = T_{i,k,\ Out}$ minus $T_{i,k,\ In}$, which is the air throughput temperature rise in setting *i* and heat setting *k,* in °F
- $Q_{i,k}$ = airflow in airflow-control setting *i* and heat setting *k,* in cubic feet per minute (CFM)
- $Q_{IN,k}$ = measured fuel energy input rate, in Btu/h, at specified operating conditions *k* based on the fuel's high heating value (HHV) determined as required in section 8.2.1.3 or 8.2.2.3 of ASHRAE 103–2017, where *k* can be ''H'' for the maximum heat setting or ''R'' for the reduced heat setting
- v_{air} = specific volume of dry air at specified operating conditions per chapter 1 of the 2021 ASHRAE Handbook in ft^3/lb [12]

Id.

Further, DOE proposed to correct the conversion factor from watts to Btu/h to match the units designated for the fuel energy input rate ($Q_{IN,k}$), changing it from 3,413 to 3.413. *Id.* Finally, DOE noted that there should be different variables assigned to represent relative humidity and the humidity ratio. To provide clarity regarding these variables, DOE proposed to redesignate the variable for relative humidity from ''W'' to ''φ.'' *Id.* at 87 FR 29590–29591.

In response, AHRI and Carrier commented that ''W'' is defined as humidity ratio; therefore, it would not be necessary to change ''W'' to ''φ.'' (AHRI, No. 15 at p. 6; Carrier, No. 12 at p. 6) Lennox commented it agreed with adding definitions to certain variables

[12] The current version of appendix AA defines v_{air} as ''the specific volume of dry air at specified operating conditions per the equations in the psychrometric chapter in the 2001 ASHRAE Handbook in ft^3/lb.'' DOE proposed an identical definition in the May 2022 NOPR. 87 FR 29576, 29591. However, the specific volume of dry air can be read from tables so, in this final rule, DOE is removing the reference to equations in this definition for clarity. Additionally, as previously discussed in section III.B.2 in this document, DOE is now incorporating by reference chapter 1 of the 2021 AHSRAE Handbook, which uses the same method to determine the specific volume of dry air as the psychrometric chapter of the 2001 ASHRAE Handbook.

and constants as proposed and to change the conversion factor to (Btu/h)/W. (Lennox, No. 11 at p. 7)

With regards to the comments from AHRI and Carrier, while ''W'' is defined as the humidity ratio in section 9 of appendix AA, DOE notes that ''W'' is also defined as relative humidity in section 8.6.1 of appendix AA. To provide clarity and distinguish between the two terms, DOE is finalizing its proposal to designate ''φ'' as the relative humidity in section 8.6.1 of appendix AA. For the reasons discussed in this final rule and in the May 2022 NOPR, DOE is finalizing the additional proposals regarding nomenclature and equation adjustments in appendix 9 of appendix AA, consistent with the proposals in the May 2022 NOPR.

F. Thermocouple Accuracy

Section 5.1 of appendix AA, which references section 5.1 of ASHRAE 37–2009, requires that temperature-measuring instruments must be accurate to within 0.75 °F. Section 6 of appendix AA references section 7 of ASHRAE 103–2007 for the test apparatus setup. Section 7.6 of ASHRAE 103–2007 includes instructions to take temperature measurements with thermocouple grids constructed of either 5, 9, or 17 thermocouples, depending on the stack diameter. The measurement accuracy of a thermocouple grid depends on the type and number of thermocouples used, as well as the magnitude of the air temperature being measured.

In the May 2022 NOPR, DOE evaluated commenter feedback to the July 2021 RFI and tentatively concluded that, assuming that the stack temperatures of gas furnaces would not likely exceed 450 °F, current instrumentation is adequate to measure the stack temperature of furnaces on the market. Thus, DOE did not propose any changes to the accuracy of temperature-measuring instruments in appendix AA. 87 FR 29576, 29591. DOE did not receive any comments in response to the May 2022 NOPR. As a result, this final rule makes no changes to the specified accuracy of temperature measuring instruments in appendix AA.

G. Alternatives to the FER Metric

In response to the May 2022 NOPR, AHRI stated that the FER metric may not be the most appropriate method for testing furnace fans. AHRI stated that furnace fans are not sold directly to consumers and consumers are generally unconcerned with FER values when selecting the best product for their application. AHRI stated that it would appreciate DOE working through concerns about this test procedure with manufacturers to achieve a workable solution. (AHRI, No. 15 at p. 4)

Lennox stated that furnace fan standards do not impact consumer buying decisions for the furnaces in which residential furnace fans are used. Lennox added that when considering energy efficiency, consumers evaluate AFUE because it represents the majority of the energy use of a furnace, and furnace fans consume less than 2 percent of the overall energy use of a residential furnace. Lennox recommended that DOE explore less burdensome approaches regarding ensuring minimum furnace fan efficiency. Lennox added that there are limited opportunities for manufacturers to improve furnace fan energy efficiency and that it is not likely to be economically justified for non-weatherized and weatherized gas furnaces. (Lennox, No. 11 at p. 2)

In response to the comments from AHRI and Lennox, DOE notes that AHRI and Lennox did not provide any specific suggestions as to an alternate test procedure that would better satisfy EPCA's requirement that the test procedure produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a furnace fan during a representative average use cycle or period of use without being unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) Throughout this final rule, DOE has considered and responded to each comment received regarding specific aspects of the furnace fan test procedure. DOE has determined that the amended test procedure adopted in this final rule produces a representative measure of furnace fan energy efficiency and is not unduly burdensome to conduct. Regarding improved furnace fan efficiencies, DOE evaluates opportunities for increased efficiency as part of the separate energy conservation standards rulemaking for consumer furnace fans.[13]

H. Test Procedure Costs

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) In this final rule, DOE is finalizing its proposals to amend the existing test procedure for consumer furnace fans by specifying a test method for furnace fans that operate at low ESPs, updating the incorporation by reference of certain industry test procedures to the most recent versions, clarifying the scope of the definition of ''furnace fans,'' tightening ambient conditions, clarifying language for airflow-control settings, clarifying nomenclature, and correcting typographical errors. As discussed in section III.D.3 of this document, DOE is not finalizing its proposal to require direct measurement of airflow in this final rule. DOE has determined that the amendments adopted in this final rule will not impact test costs, as discussed in the remainder of this section.

In response to a petition for waiver and an application for interim waiver for heating-only furnace fans, DOE granted a waiver requiring use of an alternate test procedure that specifies alternate ESP test conditions for furnace fans that operate at low ESPs. Any such furnace fan models currently on the market have already been granted a test procedure waiver from DOE, which specifies use of the alternate test procedure. As such, incorporating a similar methodology as the waiver methodology into the test procedure for furnace fans that operate at low ESPs will not result in any additional costs for manufacturers.

DOE is updating the material it incorporates by reference to include more recent versions of ASHRAE 103 and ASHRAE 37. DOE is also incorporating by reference chapter 1 of 2021 ASHRAE Handbook. As discussed previously, DOE's review of these standards indicates that reference to the revised versions of them will not impact FER ratings and will not require that manufacturers recertify their units. Therefore, manufacturers will not incur any additional costs.

Defining and explicitly excluding dual-fuel furnace fans from the scope of appendix AA will make clear that such products are not subject to testing under appendix AA and will not impose any additional burden.

In this final rule, DOE is also tightening ambient conditions to limit the permissible ambient temperature range to between 65 °F and 85 °F and the ambient humidity range to between 20 percent and 80 percent for both condensing and non-condensing furnaces. As discussed, appendix AA currently already limits ambient temperatures to between 65 °F and 85 °F, as well as humidity to below 80 percent for condensing furnaces, and DOE understands that testing laboratories are generally able to meet these criteria in their testing laboratories without the use of a specialized test chamber. Additionally, based on feedback received from Lennox, Carrier, JCI, and AHRI as outlined in section III.D.2 of this document and in confidential manufacturer interviews, DOE has

[13] *See* docket ID EERE–2021–BT–STD–0029 on *www.regulations.gov.*

concluded that it is unlikely that test laboratories would be unable to meet a minimum relative humidity requirement of 20 percent because that limit would exclude only the driest conditions. Therefore, DOE expects that test laboratories will not incur additional cost in applying these same temperature tolerances to testing of non-condensing furnaces as well. These changes to the ambient condition requirements are intended to increase the accuracy of FER ratings and the consistency of test results but are not expected to change the actual performance of any units. Additionally, DOE will not require units that are currently certified to retest according to the updated test procedure.

DOE's remaining changes (clarifying nomenclature and fixing typographic errors) will similarly not result in any changes to the test conduct and therefore will not affect the cost of testing. For these reasons, manufacturers will be able to rely on data generated under the test procedure in effect prior to the adoption of this amendment. However, if a manufacturer chooses to retest as a result of these test procedure amendments, DOE estimates a testing cost of $3,500 per unit and a minimum total cost of $7,000 per basic model.

I. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 75 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

Upon the compliance date of test procedure provisions in this final rule, any waivers that had been previously issued and are in effect that pertain to issues addressed by such provisions are terminated. 10 CFR 430.27(h)(3). Recipients of any such waivers are required to test the products subject to the waiver according to the amended test procedure as of the compliance date of the amended test procedure. The amendments adopted in this document pertain to issues addressed by waivers granted to ECR International, Inc. (Case number 2019–001). *See* 86 FR 13530.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in this preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

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

DOE used the Small Business Administration's (''SBA'') small business size standards to determine whether any small entities would be subject to the requirements of the rule. The size standards are listed by North American Industry Classification System (''NAICS'') code as well as by industry description and are available at *www.sba.gov/document/support--table-size-standards.* Manufacturing of consumer furnace fans is classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.[14]

DOE used available public information to identify potential small manufacturers. DOE reviewed the

[14] U.S. Small Business Administration, ''Table of Size Standards'' (effective December 19, 2022). Available at: *www.sba.gov/document/support-table-size-standards* (last accessed January 23, 2022).

Compliance Certification Database [15] (''CCD''), the Modernized Appliance Efficiency Database System [16] (''MAEDbS''), individual company websites, and prior consumer furnace fan energy conservation standards rulemakings to create a list of companies that import or otherwise manufacture the products covered by this final rule. DOE then consulted other publicly available data, such as manufacturer specifications and product literature, U.S. import and export data (*e.g.,* Panjiva [17]) and basic model numbers, to identify OEMs of the products covered by this rulemaking. DOE further relied on public sources and subscription-based market research tools (*e.g.,* Dun & Bradstreet reports [18]) to determine company location, headcount, and annual revenue. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the SBA's definition of a ''small business,'' or are foreign-owned and operated.

DOE identified 25 OEMs offering consumer furnace fans for the U.S. market. Of the 25 OEMs identified, DOE estimates that 8 companies qualify as small businesses and are not foreign-owned and operated.

DOE did not receive written comments that specifically addressed impacts on small businesses or that were provided in response to the initial regulatory flexibility analysis.

In this final rule, DOE is finalizing its proposals to amend the existing test procedure for consumer furnace fans by specifying a test method for furnace fans that operate at low ESPs, incorporating by reference the most recent industry test procedures, clarifying the scope of the definition of ''furnace fans,'' tightening ambient conditions, clarifying language for airflow-control settings, and clarifying nomenclature and correcting typographical errors. DOE is not finalizing its proposal to require direct measurement of airflow in this final rule. DOE has determined that the amendments adopted in this final rule will not impact test costs.

In response to a petition for waiver and an application for interim waiver for heating-only furnace fans, DOE granted a waiver requiring use of an alternate test procedure that specifies alternate ESP test conditions for furnace fans that operate at low ESPs. Any such furnace fan models currently on the market have already been granted a test procedure waiver from DOE, which specifies use of the alternate test procedure. As such, incorporating a similar methodology as the waiver methodology into the test procedure for furnace fans that operate at low ESPs will not result in any additional costs for manufacturers. DOE is updating the material it incorporates by reference to include more recent versions of ASHRAE 103 and ASHRAE 37. DOE is also incorporating by reference chapter 1 of 2021 ASHRAE Handbook. As discussed previously, DOE's review of these standards indicates that reference to the newer versions of them will not impact FER and will not require that manufacturers recertify their units. Therefore, manufacturers will not incur any additional costs. Defining and explicitly excluding dual-fuel furnace fans from the scope of appendix AA will make clear that such products are not subject to testing under appendix AA and will not impose any additional burden.

DOE is also tightening ambient conditions to limit the permissible ambient temperature range to between 65 °F and 85 °F and the ambient humidity range to between 20 percent and 80 percent for both condensing and non-condensing furnaces. As discussed, appendix AA currently already limits ambient temperatures to between 65 °F and 85 °F, as well as humidity to below 80 percent for condensing furnaces, and DOE understands that testing laboratories are generally able to meet these criteria in their testing laboratories without the use of a specialized test chamber. Additionally, DOE concluded that it is unlikely that test laboratories would be unable to meet a minimum requirement of 20 percent, because that limit would exclude only the driest conditions. Therefore, DOE expects that test laboratories will not incur additional cost in applying these same temperature tolerances to testing of non-condensing furnaces as well. These changes to the ambient condition requirements are intended to increase the accuracy of FER ratings and the consistency of test results but are not expected to change the actual performance of any units. DOE will not require units that are currently certified to retest according to the updated test procedure.

DOE's remaining changes, which clarify nomenclature and fix typographic errors, will not result in any changes to the test conduct and therefore will not affect the cost of testing. For these reasons, manufacturers will be able to rely on data generated under the test procedure in effect prior to the adoption of this amendment.

DOE has determined that the amendments described in section III of the final rule will not alter the measured efficiency of consumer furnace fans, or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. Additionally, DOE has determined that the amendments will not increase the cost of testing. Therefore, DOE concludes that the cost effects accruing from the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of consumer furnace fans must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including consumer furnace fans. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for consumer furnace fans in this final rule.

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[15] U.S. Department of Energy, Compliance Certification Database. Available at: *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (last accessed February 4, 2022).

[16] California Energy Commission, Modernized Appliance Efficiency Database System. Available at: *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (last accessed February 4, 2022).

[17] Panjiva: S&P Global. Available at: *panjiva.com/import-export/United-States* (last access January 20, 2023).

[18] The Dun & Bradstreet Hoovers subscription login is accessible online at *app.dnbhoovers.com/* (last accessed January 20, 2023).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for consumer furnace fans. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

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

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/*

files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf. DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for consumer furnace fans adopted in this final rule incorporate testing methods contained in certain sections of the following commercial standards: ASHRAE 103–2017, ASHRAE 37–2009 (RA 2019), and ASHRAE 41.1–1986 (RA 2006), as well as chapter 1 of the 2021 ASHRAE Handbook. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this final rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

ASHRAE Standard 37–2009 (RA 2019) is an industry-accepted test procedure that provides a method of test for many categories of air conditioning and heating equipment. ANSI/ASHRAE Standard 37–2009 (RA 2019) is available on ANSI's website at *webstore.ansi.org/RecordDetail.aspx?sku=ANSI%2FASHRAE+Standard+37-2009.*

ASHRAE 37–2009 Errata Sheet is a technical corrections sheet for ASHRAE 37–2009. The errata sheet for ASHRAE 37–2009 is reasonably available on ASHRAE's website at: *www.ashrae.org/.*

ASHRAE 103–2017 is an industry-accepted test procedure for measuring the performance of consumer furnaces and boilers. Copies of ASHRAE 103–2017 may be purchased from ANSI at 1899 L Street, NW, 11th Floor, Washington DC 20036, or by going to *webstore.ansi.org/standards/ashrae/ansiashrae1032017.*

The 2021 ASHRAE Handbook is an industry-accepted handbook that covers basic principles and data used in the heating, ventilation, air-conditioning, and refrigeration industries. The 2021 ASHRAE Handbook is available on ASHRAE's website at *www.ashrae.org/technical-resources/ashrae-handbook.*

The following standard was previously approved for incorporation by reference in the sections where it appears in this final rule and no change is made: ASHRAE 41.1–1986 (RA 2006).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on March 25, 2024, by Jeff Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 5, 2024.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends part 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Amend § 430.3 by:
■ a. In paragraph (g)(3), removing the text ''appendices AA, CC, and CC1'' and adding in its place the text ''appendices CC and CC1'';
■ b. Removing paragraph (g)(18);
■ c. Redesignating paragraphs (g)(19) through (22) as paragraphs (g)(20) through (23);
■ d. Redesignating paragraphs (g)(5) through (17) as paragraphs (g)(7) through (19), respectively;

■ e. Adding new paragraphs (g)(5) and (6);
■ f. In newly redesignated paragraph (g)(20), removing the text ''appendices O and EE'' and adding in its place the text ''appendices O, AA, and EE''; and
■ g. Adding paragraph (g)(24).

The additions read as follows:

§ 430.3 Materials incorporated by reference.

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(5) ANSI/ASHRAE Standard 37–2009 (RA 2019) (''ASHRAE 37–2009 (RA 2019)''), *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,* ASHRAE-approved June 21, 2019; IBR approved for appendix AA to subpart B.

(6) ANSI/ASHRAE Standard 37–2009 Errata Sheet (''ASHRAE 37–2009 Errata Sheet''), *Errata Sheet for ANSI/ASHRAE Standard 37–2009—Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,* ASHRAE-approved March 27, 2019; IBR approved for appendix AA to subpart B.

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(24) 2021 ASHRAE Handbook—Fundamentals Inch-Pound Edition, Chapter 1, ''Psychrometrics'' (''2021 ASHRAE Handbook''), copyright 2021; IBR approved for appendix AA to subpart B.

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■ 3. Appendix AA to subpart B of part 430 is revised to read as follows:

Appendix AA to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnace Fans

Note: Prior to October 9, 2024, any representations with respect to energy use or efficiency of furnace fans must be made either in accordance with the results of testing pursuant to this appendix or with the results of testing pursuant to this appendix as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2023. On or after October 9, 2024, any representations, including certifications of compliance, made with respect to the energy use or efficiency of furnace fans must be made in accordance with the results of testing pursuant to this appendix.

0. *Incorporation by Reference*

DOE incorporated by reference in § 430.3, the entire standard for ASHRAE 37–2009 (RA 2019), as corrected by the ASHRAE 37–2009 Errata Sheet; ASHRAE 41.1–1986; as well as Chapter 1 of the 2021 ASHRAE Handbook and ASHRAE 103–2017. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over the incorporated standards.

1. Scope. This appendix covers the test requirements used to measure the energy consumption of fans used in weatherized and non-weatherized gas furnaces, oil furnaces, electric furnaces, and modular blowers. This appendix does not apply to furnace fans used in dual-fuel units.

2. *Definitions.* Definitions include the definitions as specified in section 3 of ASHRAE 103–2017 and the following additional definitions, some of which supersede definitions found in ASHRAE 103–2017:

2.1. *Active mode* means the condition in which the product in which the furnace fan is integrated is connected to a power source and circulating air through ductwork.

2.2. *Airflow-control settings* are programmed or wired control system configurations that control a fan to achieve discrete, differing ranges of airflow—often designated for performing a specific function (*e.g.,* cooling, heating, or constant circulation)—without manual adjustment other than interaction with a user-operable control such as a thermostat that meets the manufacturer specifications for installed-use. For the purposes of this appendix, manufacturer specifications for installed-use shall be found in the product literature shipped with the unit.

2.3. *Dual-fuel unit* means a consumer product that includes both a heat pump and a burner in a single cabinet.

2.4. *External static pressure* (ESP) means the difference between static pressures measured in the outlet duct and return air opening (or return air duct when used for testing) of the product in which the furnace fan is integrated.

2.5. *Furnace fan* means an electrically-powered device used in a consumer product for the purpose of circulating air through ductwork.

2.6. *Modular blower* means a product which only uses single-phase electric current, and which:

(a) Is designed to be the principal air circulation source for the living space of a residence;

(b) Is not contained within the same cabinet as a furnace or central air conditioner; and

(c) Is designed to be paired with HVAC products that have a heat input rate of less than 225,000 Btu per hour and cooling capacity less than 65,000 Btu per hour.

2.7. *Off mode* means the condition in which the product in which the furnace fan is integrated either is not connected to the power source or is connected to the power source but not energized.

2.8. *Seasonal off switch* means a switch on the product in which the furnace fan is integrated that, when activated, results in a measurable change in energy consumption between the standby and off modes.

2.9. *Specified airflow-control settings* are the airflow-control settings specified for installed-use by the manufacturer. For the purposes of this appendix, manufacturer specifications for installed-use are those specifications provided for typical consumer installations in the product literature shipped with the product in which the furnace fan is installed. In instances where a manufacturer specifies multiple airflow-control settings for a given function to account for varying installation scenarios, the highest airflow-control setting specified for the given function shall be used for the procedures specified in this appendix, unless otherwise specified within this test procedure.

2.10. *Standby mode* means the condition in which the product in which the furnace fan is integrated is connected to the power source and energized, but the furnace fan is not circulating air.

2.11. *Thermal stack damper* means a type of stack damper that opens only during the direct conversion of thermal energy of the stack gases.

3. *Classifications.* Classifications are as specified in section 4 of ASHRAE 103–2017.

4. *Requirements.* Requirements are as specified in section 5 of ASHRAE 103–2017. In addition, Fan Energy Rating (FER) of furnace fans shall be determined using test data and estimated national average operating hours pursuant to section 10.1 of this appendix.

5. *Instruments.* Instruments must be as specified in section 6, not including section 6.2, of ASHRAE 103–2017; and as specified in sections 5.1 and 5.2 of this appendix.

5.1. *Temperature.* Temperature measuring instruments shall meet the provisions specified in section 5.1 of ASHRAE 37–2009 (RA 2019) (as corrected by the ASHRAE 37–2009 Errata Sheet), including the references to ASHRAE 41.1–1986, and shall be accurate to within 0.75 degrees Fahrenheit (within 0.4 degrees Celsius).

5.1.1. *Outlet Air Temperature Thermocouple Grid.* Outlet air temperature shall be measured as described in section 8.2.1.5.5 of ASHRAE 103–2017 and illustrated in Figure 2 of ASHRAE 103–2017. Thermocouples shall be placed downstream of pressure taps used for external static pressure measurement.

5.2. *Humidity.* Air humidity shall be measured with a relative humidity sensor that is accurate to within 5% relative humidity. Air humidity shall be measured as close as possible to the inlet of the product in which the furnace fan is installed.

6. *Apparatus.* The apparatus used in conjunction with the furnace during the testing shall be as specified in section 7 of ASHRAE 103–2017 except for section 7.1, the second paragraph of sections 7.2.2.2, 7.2.2.5, and 7.7, and as specified in sections 6.1, 6.2, 6.3, 6.4, 6.5, and 6.6 of this appendix.

6.1. *General.* The product in which the furnace fan is integrated shall be installed in the test room in accordance with the product manufacturer's written instructions that are shipped with the product unless required otherwise by a specific provision of this appendix. The apparatus described in this section is used in conjunction with the product in which the furnace fan is integrated. Each piece of the apparatus shall conform to material and construction specifications and the reference standard cited. Test rooms containing equipment shall have suitable facilities for providing the utilities necessary for performance of the test and be able to maintain conditions within the limits specified.

6.2. *Downflow furnaces.* Install the internal section of vent pipe the same size as the flue collar for connecting the flue collar to the top

of the unit, if not supplied by the manufacturer. Do not insulate the internal vent pipe during steady-state test described in section 9.1 of ASHRAE 103–2017. Do not insulate the internal vent pipe before the cool-down and heat-up tests described in sections 9.5 and 9.6, respectively, of ASHRAE 103–2017. If the vent pipe is surrounded by a metal jacket, do not insulate the metal jacket. Install a 5-ft test stack of the same cross-sectional area or perimeter as the vent pipe above the top of the furnace. Tape or seal around the junction connecting the vent pipe and the 5-ft test stack. Insulate the 5-ft test stack with insulation having a minimum R-value of 7 and an outer layer of aluminum foil. (*See* Figure 3–E of ASHRAE 103–2017.)

6.3. *Modular Blowers.* A modular blower shall be equipped with the electric heat resistance kit that is likely to have the largest volume of retail sales with that particular basic model of modular blower.

6.4. *Ducts and Plenums.* Ducts and plenums shall be built to the geometrical specifications in section 7 of ASHRAE 103–2017 and section 6.7 of this appendix. An apparatus for measuring external static pressure shall be integrated in the plenum and test duct as specified in sections 6.4 of ASHRAE 37–2009 (RA 2019) (as corrected by the ASHRAE 37–2009 Errata Sheet), excluding specifications regarding the minimum length of the ducting and minimum distance between the external static pressure taps and product inlet and outlet, and section 6.5 of ASHRAE 37–2009 (RA 2019) (as corrected by the ASHRAE 37–2009 Errata Sheet). External static pressure measuring instruments shall be placed between the furnace openings and any restrictions or elbows in the test plenums or ducts. For all test configurations, external static pressure taps shall be placed 18 inches from the outlet.

6.4.1. *For tests conducted using a return air duct.* Additional external static pressure taps shall be placed 12 inches from the product inlet. Pressure shall be directly measured as a differential pressure as depicted in Figure 8 of ASHRAE 37–2009 (RA 2019) rather than determined by separately measuring inlet and outlet static pressure and subtracting the results.

6.4.2. *For tests conducted without a return air duct.* External static pressure shall be directly measured as the differential pressure between the outlet duct static pressure and the ambient static pressure as depicted in Figure 7a of ASHRAE 37–2009 (RA 2019).

6.5. *Air Filters.* Air filters shall be removed.

6.6. *Electrical Measurement.* Only electrical input power to the furnace fan (and electric resistance heat kit for electric furnaces and modular blowers) shall be measured for the purposes of this appendix. Electrical input power to the furnace fan and electric resistance heat kit shall be sub-metered separately. Electrical input power to all other electricity-consuming components of the product in which the furnace fan is integrated shall not be included in the electrical input power measurements used in the FER calculation. If the procedures of this appendix are being conducted at the same time as another test that requires metering of components other than the furnace fan and electric resistance heat kit, the electrical input power to the furnace fan and electric resistance heat kit shall be sub-metered separately from one another and separately from other electrical input power measurements.

7. *Test Conditions.* The testing conditions shall be as specified in section 8, not including sections 8.5.2 and 8.6.1.1 of ASHRAE 103–2017; and as specified in sections 7.1 and 7.2 of this appendix.

7.1 *Ambient Temperature and Humidity Conditions.* During the time required to perform all tests, maintain the room temperature within ±5 °F (2.8 °C) of the air temperature value measured at the end of the steady-state performance test (T_{RA}). For condensing furnaces and boilers, maintain the relative humidity within ±5% of the relative humidity measured at the end of the steady-state performance test. During all tests, the room temperature shall not fall below 65 °F (18.3 °C) or exceed 85 °F (29.4 °C) and the relative humidity shall not fall below 20% or exceed 80%.

7.2. *Measurement of Jacket Surface Temperature (optional).* The jacket of the furnace or boiler shall be subdivided into 6-inch squares when practical, and otherwise into 36-square-inch regions comprising 4 in. x 9 in. or 3 in. x 12 in. sections, and the surface temperature at the center of each square or section shall be determined with a surface thermocouple. The 36-square-inch areas shall be recorded in groups where the temperature differential of the 36-square-inch area is less than 10 °F for temperature up to 100 °F above room temperature and less than 20 °F for temperature more than 100 °F above room temperature. For forced air central furnaces, the circulating air blower compartment is considered as part of the duct system and no surface temperature measurement of the blower compartment needs to be recorded for the purpose of this test. For downflow furnaces, measure all cabinet surface temperatures of the heat exchanger and combustion section, including the bottom around the outlet duct, and the burner door, using the 36 square-inch thermocouple grid. The cabinet surface temperatures around the blower section do not need to be measured (*see* Figure 3–E of ASHRAE 103–2017.)

8. *Test Procedure.* Testing and measurements shall be as specified in section 9 of ASHRAE 103–2017 except for sections 9.1.2.1, 9.3, 9.5.1.1, 9.5.1.2.1, 9.5.1.2.2, 9.5.2.1, and section 9.7.1; and as specified in sections 8.1 through 8.6 of this appendix.

8.1. *Direct Measurement of Off-Cycle Losses Testing Method.* [Reserved]

8.2. *Measurement of Electrical Standby and Off Mode Power.* [Reserved]

8.3. *Steady-State Conditions for Hot Flow Tests for Gas and Oil Furnaces.* Steady-state conditions are indicated by an external static pressure within the range shown in table 1 to this appendix and a temperature variation in three successive readings, taken 15 minutes apart, of not more than any of the following:

(a) 3 °F in the stack gas temperature for furnaces equipped with draft diverters;

(b) 5 °F in the stack gas temperature for furnaces equipped with either draft hoods, direct exhaust, or direct vent systems; and

(c) 1 °F in the flue gas temperature for condensing furnaces.

8.4. *Steady-State Conditions for Hot Flow Tests for Electric Furnaces and Modular Blowers.* Steady-state conditions are indicated by an external static pressure within the range shown in table 1 to this appendix and a temperature variation of not more than 5 °F in the outlet air temperature in four successive temperature readings taken 15 minutes apart.

8.5. *Steady-State Conditions for Cold Flow Tests.* For tests during which the burner or electric heating elements are turned off (*i.e.,* cold flow tests), steady-state conditions are indicated by an external static pressure within the range shown in table 1 to this appendix and a variation in the difference between outlet temperature and ambient temperature of not more than 3 °F in three successive temperature readings taken 15 minutes apart.

8.6. *Fan Energy Rating (FER) Test.*

8.6.1. *Initial FER test conditions and maximum airflow-control setting measurements.* Measure the relative humidity (φ) and dry bulb temperature (T_{db}) of the test room.

8.6.1.1. *Furnace fans for which the maximum airflow-control setting is not a specified heating airflow-control setting.* The main burner or electric heating elements shall be turned off. Adjust the external static pressure to within the range shown in table 1 to this appendix. Maintain these settings until steady-state conditions are attained as specified in sections 8.3, 8.4, and 8.5 of this appendix. Measure furnace fan electrical input power (E_{Max}), external static pressure (ESP_{Max}), and outlet air temperature ($T_{Max,Out}$). The measurement of E_{Max} shall be taken over the final 30 seconds of the steady-state period, at intervals of no less than 1 per second, and averaged over the 30 second period.

8.6.1.2. *Furnace fans for which the maximum airflow-control setting is a specified heating airflow-control setting.* Adjust the main burner or electric heating element controls to the default heat setting designated for the maximum airflow-control setting. Burner adjustments shall be made as specified by section 8.4.1 of ASHRAE 103–2017. Adjust the furnace fan controls to the maximum airflow-control setting. Adjust the external static to within the range shown in table 1 to this appendix. Maintain these settings until steady-state conditions are attained as specified in sections 8.3, 8.4, and 8.5 of this appendix and the temperature rise (ΔT_{Max}) is at least 18 °F. Measure furnace fan electrical input power (E_{Max}), fuel or electric resistance heat kit input energy ($Q_{IN,H}$), external static pressure (ESP_{Max}), steady-state efficiency for this setting ($Effy_{SS,Max}$) as specified in sections 11.2 and 11.3 of ASHRAE 103–2017, outlet air temperature ($T_{Max,Out}$), and temperature rise (ΔT_{Max}). The measurement of E_{Max} shall be taken over the final 30 seconds of the steady-state period, at intervals of no less than 1 per second, and averaged over the 30 second period.

TABLE 1—REQUIRED MINIMUM EXTERNAL STATIC PRESSURE IN THE MAXIMUM AIRFLOW-CONTROL SETTING BY INSTALLATION TYPE

Installation type	ESP (in. wc.) *
Units with an internal, factory-installed evaporator coil	0.50–0.55
Units designed to be paired with an evaporator coil, but without one installed	0.65–0.70
Mobile home	0.30–0.35

* Once the specified ESP has been achieved, the same outlet duct restrictions shall be used for the remainder of the furnace fan test. If the unit under test is unable to complete the testing (*i.e.,* the unit shuts down before completing a test), reduce the target ESP range by 0.05″ w.c. and restart the test. Repeat this process until the test can be completed.

8.6.2. *Constant circulation airflow-control setting measurements.* The main burner or electric heating elements shall be turned off. The furnace fan controls shall be adjusted to the specified constant circulation airflow-control setting. If the manufacturer does not specify a constant circulation airflow-control setting in the installation and operations manual supplied with the unit, the lowest airflow-control setting shall be used. Maintain these settings until steady-state conditions are attained as specified in sections 8.3, 8.4, and 8.5 of this appendix. Measure furnace fan electrical input power (E_{Circ}) and external static pressure (ESP_{Circ}). The measurement of E_{Circ} shall be taken over the final 30 seconds of the steady-state period, at intervals of no less than 1 per second, and averaged over the 30 second period.

8.6.3. *Heating airflow-control setting measurements.* For single-stage gas and oil furnaces, the burner shall be fired at the maximum heat input rate. For single-stage electric furnaces, the electric heating elements shall be energized at the maximum heat input rate. For multi-stage and modulating furnaces, the reduced heat input rate settings shall be used. Burner adjustments shall be made as specified by section 8.4.1 of ASHRAE 103–2017. After the burner is activated and adjusted or the electric heating elements are energized, the furnace fan controls shall be adjusted to operate the fan in the specified heating airflow-control setting that also allows for operation within the manufacturer-specified temperature rise range. In instances where a manufacturer specifies multiple airflow-control settings for a given function to account for varying installation scenarios, the highest airflow-control setting specified for the given function that also allows for operation within the manufacturer-specified temperature rise range shall be used. High heat and reduced heat shall be considered different functions for multi-stage heating units. Maintain these settings until steady-state conditions are attained as specified in sections 8.3, 8.4, and 8.5 of this appendix and the temperature rise (ΔT_{Heat}) is at least 18 °F. Measure furnace fan electrical input power (E_{Heat}), fuel or electric resistance heat kit input energy ($Q_{IN,k}$)external static pressure (ESP_{Heat}), steady-state efficiency for this setting ($Effy_{SS}$) as specified in sections 11.2 and 11.3 of ASHRAE 103–2017, outlet air temperature ($T_{Heat,\ Out}$) and temperature rise (ΔT_{Heat}). The measurement of E_{Heat} shall be taken over the final 30 seconds of the steady-state period, at intervals of no less than 1 per second, and averaged over the 30 second period.

9. *Nomenclature.* Nomenclature shall include the nomenclature specified in section 10 of ASHRAE 103–2017 and the following additional variables:

60 = conversion factor from hours to minutes, (min/h)

0.24 = approximate specific heat capacity of dry air, (Btu/lb-°F)

0.44 = approximate specific heat capacity of saturated water vapor, (Btu/lb-°F)

$Effy_{SS,i}$ = Steady-State Efficiency in airflow-control setting *i.* For gas and oil furnaces $Effy_{SS,i}$ is specified in sections 11.2.7 (Non-Condensing and Modulating), 11.3.7.3 (Condensing and Non-modulating), 11.4.8.8 (Non-Condensing and Non-modulating), or 11.5 (Condensing and Modulating) of ASHRAE 103–2017, in %. For electric furnaces or modular blowers, $Effy_{SS,i}$ equals 100, in %.

L_J = jacket loss as determined as specified in section 8.6 of ASHRAE 103–2017 or a default value of 1% if the jacket loss test is not performed, in %

CCH = annual furnace fan constant-circulation hours

E_{Circ} = furnace fan electrical consumption at the specified constant-circulation airflow-control setting (or minimum airflow-control setting operating point if a default constant-circulation airflow-control setting is not specified), in watts

E_{Heat} = furnace fan electrical consumption in the specified heat airflow-control setting for single-stage heating products or the specified low-heat setting for multi-stage heating products, in watts

E_{Max} = furnace fan electrical consumption in the maximum airflow-control setting, in watts

ESP_i = external static pressure, in inches water column, at time of the electrical power measurement in airflow-control setting *i,* where *i* can be ''Circ'' to represent constant-circulation (or minimum airflow) mode, ''Heat'' to represent heating mode, or ''Max'' to represent cooling (or maximum airflow mode).

FER = fan energy rating, in watts/1000 cfm

HH = annual furnace fan heating operating hours

HCR = heating capacity ratio (nameplate reduced heat input capacity divided by nameplate maximum input heat capacity)

k_{ref} = physical descriptor characterizing the reference system

T_{db} = dry bulb temperature of the test room in, °F

$T_{i,k,in}$ = inlet air temperature at time of the electrical power measurement, in °F, in airflow-control setting *i* and heat setting *k,* where *i* can be ''Circ'' to represent constant-circulation (or minimum airflow) mode, ''Heat'' to represent heating mode, or ''Max'' to represent maximum airflow (typically designated for cooling) mode. If *i* = Heat, *k* can be ''H'' to represent high heat setting or ''R'' to represent the reduced heat setting. If *i* = Max or Circ, *k* is not needed.

$T_{i,k,out}$ = average outlet air temperature as measured by the outlet thermocouple grid at time of the electrical power measurement, in °F, in airflow-control setting *i* and heat setting *k,* where *i* can be ''Circ'' to represent constant-circulation (or minimum airflow) mode, ''Heat'' to represent heating mode, or ''Max'' to represent maximum airflow (typically designated for cooling) mode. If *i* = Heat, *k* can be ''H'' to represent high heat setting or ''R'' to represent the reduced heat setting. If *i* = Max or Circ, *k* is not needed.

$\Delta T_{i,k}$ = $T_{i,k,Out}$ minus $T_{i,k,in}$, which is the air throughput temperature rise in setting *i* and heat setting *k,* in °F

Qi,k = airflow in airflow-control setting *i* and heat setting *k,* in cubic feet per minute (CFM)

MH = annual furnace fan maximum airflow hours

$Q_{IN,k}$ = nameplate fuel energy input rate, in Btu/h, at specified operating conditions *k,* based on the fuel's high heating value (''HHV'') determined as required in section 8.2.1.3 or 8.2.2.3 of ASHRAE 103–2017, where *k* can be ''H'' for the maximum heat setting or ''R'' for the reduced heat setting.

W = humidity ratio in pounds water vapor per pounds dry air

v_{air} = specific volume of dry air at specified operating conditions per the 2021 ASHRAE Handbook, in ft^3/lb

10. *Calculation of derived results from test measurements for a single unit.* Calculations shall be as specified in section 11 of ASHRAE 103–2017, except for appendices B and C; and as specified in sections 10.1 through 10.10 and Figure 1 of this appendix.

10.1. *Fan Energy Rating (FER)*

$$FER = \frac{(MH \times E_{Max}) + (HH \times E_{Heat}) + (CCH \times E_{circ})}{(MH + 830 + CCH) + Q_{Max}} \times 1000$$

Where: $Q_{Max} = Q_{Heat}$ for products for which the maximum airflow-control setting is a specified heat setting, or

$$Q_{Max} = Q_{Heat} \sqrt{\frac{ESP_{Max}}{ESP_{Heat}} \times \frac{(T_{Heat,Out} + 460)}{(T_{Max,Out} + 460)}}$$

For products for which the maximum airflow control setting is only designated for cooling; and

$$Q_{i,k} = \frac{\left(Effy_{SS,i} - L_J\right) \times Q_{IN,k} + (3.413 \times E_k)}{60 \times (0.24 + 0.44 \times W) \times \left(\frac{1}{v_{air}}\right) \times \Delta T_{i,k}}$$

The estimated national average operating hours presented in table 2 to this appendix shall be used to calculate FER.

TABLE 2—ESTIMATED NATIONAL AVERAGE OPERATING HOUR VALUES FOR CALCULATING FER

Operating mode	Variable	Single-stage (hours)	Multi-stage or modulating (hours)
Heating	HH	830	830/HCR.
Maximum Airflow	MH	640	640.
Constant Circulation	CCH	400	400.

Where:

$$HCR = \frac{Q_{IN,R\ (nameplate)}}{Q_{IN,H\ (nameplate)}}$$

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BILLING CODE 6450–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR 210, 229, 230, 232, 239, and 249

[Release Nos. 33–11280; 34–99908; File No. S7–10–22]

RIN 3235–AM87

The Enhancement and Standardization of Climate-Related Disclosures for Investors; Delay of Effective Date

AGENCY: Securities and Exchange Commission.

ACTION: Final rules; delay of effective date.

SUMMARY: On March 28, 2024, the Securities and Exchange Commission (''Commission'') published final rules in the **Federal Register**, titled ''The Enhancement and Standardization of Climate-Related Disclosures for Investors'' (''Final Rules'' or ''Rules''), in order to amend its rules under the Securities Act of 1933 (''Securities Act'') and Securities Exchange Act of 1934 (''Exchange Act'') to require registrants to provide certain climate-related information in their registration statements and annual reports. The Final Rules were to become effective on May 28, 2024. This document announces that the effective date of the Final Rules is delayed pending the completion of judicial review in consolidated proceedings in the Eighth Circuit.

DATES: As of April 12, 2024, the effective date of the Final Rules, published at 89 FR 21668, March 28, 2024, is delayed indefinitely. The Commission will publish a subsequent notification in the **Federal Register** announcing the effective date of the Final Rules following the completion of judicial review of the consolidated Eighth Circuit petitions.

FOR FURTHER INFORMATION CONTACT: Elliot Staffin, Senior Special Counsel, Office of Rulemaking, at (202) 551–3430, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

On March 6, 2024, the Commission adopted Final Rules that will require registrants to provide certain climate-related information in their registration

statements and annual reports.[1] The Final Rules were subsequently published in the **Federal Register** on March 28, 2024.[2]

Between March 6 and March 14, 2024, petitions seeking review of the Final Rules were filed in multiple courts of appeals.[3] On March 8, 2024, petitioners Liberty Energy Inc. and Nomad Proppant Services LLC filed a motion in the Fifth Circuit seeking an administrative stay and a stay pending judicial review of the Final Rules. On March 15, 2024, the Fifth Circuit issued an administrative stay.

On March 19, 2024, the Commission filed a Notice of Multicircuit Petitions for Review with the Judicial Panel on Multidistrict Litigation pursuant to 28 U.S.C. 2112(a)(3). On March 21, 2024, the Judicial Panel on Multidistrict Litigation issued an order consolidating the petitions for review in the U.S. Court of Appeals for the Eighth Circuit.[4] On March 22, 2024, the Fifth Circuit dissolved its administrative stay.[5]

On March 26, 2024, Liberty Energy Inc. and Nomad Proppant Services LLC filed a letter in the Eighth Circuit noting the pendency of their motion for an administrative stay and a stay pending judicial review. Also on March 26, 2024, the Chamber of Commerce of the United States of America, the Texas Association of Business, and the Longview Chamber of Commerce filed a motion in the Eighth Circuit seeking a stay pending judicial review. On March 29, 2024, recognizing the efficiencies for the parties and the Court, the Commission filed a motion to establish a consolidated briefing schedule encompassing all motions seeking a stay of the Final Rules pending judicial review.[6] On April 1, thirty-one petitioners opposed the Commission's motion to establish a consolidated briefing schedule and urged the Court to instead expedite briefing on the ''already-filed and imminently forthcoming emergency stay motions.'' [7]

Pursuant to Exchange Act Section 25(c)(2) and Section 705 of the Administrative Procedure Act, the Commission has discretion to stay its rules pending judicial review if it finds that ''justice so requires.'' [8] The Commission has determined to exercise its discretion to stay the Final Rules pending the completion of judicial review of the consolidated Eighth Circuit petitions.

In issuing a stay, the Commission is not departing from its view that the Final Rules are consistent with applicable law and within the Commission's long-standing authority to require the disclosure of information important to investors in making investment and voting decisions. Thus, the Commission will continue vigorously defending the Final Rules' validity in court and looks forward to expeditious resolution of the litigation. But the Commission finds that, under the particular circumstances presented, a stay of the Final Rules meets the statutory standard. Among other things, given the procedural complexities accompanying the consolidation and litigation of the large number of petitions for review of the Final Rules, a Commission stay will facilitate the orderly judicial resolution of those challenges and allow the court of appeals to focus on deciding the merits. Further, a stay avoids potential regulatory uncertainty if registrants were to become subject to the Final Rules' requirements during the pendency of the challenges to their validity. The Commission has previously stayed its rules pending judicial review in similar circumstances. *See Rule 610T of Regulation NMS,* Rel. No. 34–85447 (Mar. 28, 2019); and *Facilitating Shareholder Director Nominations,* Rel. Nos. 33–9149, 34–63031, IC–29456 (Oct. 4, 2010).

Accordingly, the Commission has ordered, pursuant to Exchange Act Section 25(c)(2) and Administrative Procedure Act Section 705, that the Final Rules are stayed pending the completion of judicial review of the consolidated Eighth Circuit petitions.[9]

By the Commission.

Dated: April 4, 2024.

Vanessa A. Countryman.

Secretary.

[FR Doc. 2024–07648 Filed 4–11–24; 8:45 am]

BILLING CODE 8011–01–P

[1] The Enhancement and Standardization of Climate-Related Disclosures for Investors, Rel. No. 33–11275 (Mar. 6, 2024).

[2] *See* 89 FR 21,668 (Mar. 28, 2024).

[3] *See Nat. Res. Def. Council, Inc.* v. *SEC,* No. 24–707 (2d Cir. filed Mar. 12, 2024); *Liberty Energy Inc.* v. *SEC,* No. 24–60109 (5th Cir. filed Mar. 6, 2024); *Louisiana* v. *SEC,* No. 24–60109 (5th Cir. filed Mar. 7, 2024); *Tex. All. of Energy Producers* v. *SEC,* No. 24–60109 (5th Cir. filed Mar. 11, 2024); *Chamber of Commerce of U.S. of Am.* v. *SEC,* No. 24–60109 (5th Cir. filed Mar. 14, 2024); *Ohio Bureau of Workers' Comp.* v. *SEC,* No. 24–3220 (6th Cir. filed Mar. 13, 2024); *Iowa* v. *SEC,* No. 24–1522 (8th Cir. filed Mar. 12, 2024); *West Virginia* v. *SEC,* No. 24–10679 (11th Cir. filed Mar. 6, 2024); and *Sierra Club* v. *SEC,* No. 24–1067 (D.C. Cir. filed Mar. 13, 2024).

[4] On March 21, 2024, an additional petition for review was filed in the Fifth Circuit. *See Nat'l Legal & Pol'y Ctr.* v. *SEC,* No. 24–60147 (5th Cir. filed Mar. 21, 2024). That petition was transferred to and consolidated in the Eighth Circuit on April 1, 2024. *See Nat'l Legal & Pol'y Ctr.* v. *SEC,* No. 24–1685 (8th Cir. docketed Apr. 1, 2024).

[5] *See* ECF No. 87, *Liberty Energy Inc.* v. *SEC,* No. 24–60109 (5th Cir. Mar. 22, 2024).

[6] On March 28, 2024, Liberty Energy Inc. and Nomad Proppant Services LLC also filed a complaint challenging the Final Rules in the Northern District of Texas. *See Liberty Energy Inc.* v. *SEC,* No. 3:24–cv–00739–G (N.D. Tex. filed Mar. 28, 2024).

[7] *See* ECF No. 5379427, at 3, *Iowa* v. *SEC,* No. 24–1522 (8th Cir. filed Apr. 1, 2024).

[8] *See* 15 U.S.C. 78y(c)(2) (''Until the court's jurisdiction becomes exclusive, the Commission may stay its order or rule pending judicial review if it finds that justice so requires.''); 5 U.S.C. 705.

[9] In the Matter of the Enhancement and Standardization of Climate-Related Disclosures for Investors (Order Issuing Stay), Release No. 33–11280 (Apr. 4, 2024) (''Commission Order''). The stay issued by the Commission Order is limited to the Final Rules that have been challenged in the consolidated Eighth Circuit petitions. It does not stay any other Commission rules or guidance. *See, e.g., Commission Guidance Regarding Disclosure Related to Climate Change,* Rel. No. 33–9106 (Feb. 2, 2010), 75 FR 6290 (Feb. 8, 2010).

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

RIN 3142–AA18

Representation-Case Procedures

AGENCY: National Labor Relations Board.

ACTION: Correcting amendments.

SUMMARY: On August 25, 2023, the National Labor Relations Board published a final rule that revised its representation case procedures. That final rule failed to update certain cross-references. This document corrects those cross-references.

DATES: Effective April 12, 2024.

FOR FURTHER INFORMATION CONTACT: Roxanne L. Rothschild, Executive Secretary, 1015 Half Street SE, Washington, DC 20570. Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: This is the first set of corrections to the National Labor Relations Board's final rule on representation case procedures, published in the **Federal Register** on August 25, 2023 at 88 FR 58076. It corrects the cross references in § 102.66(d) from § 102.63(b)(1)(iii) and (b)(3)(iii) to § 102.63(b)(1)(i)(C) and (b)(3)(i)(D).

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

Accordingly, the National Labor Relations Board amends 29 CFR part 102 by making the following correcting amendments:

PART 102—RULES AND REGULATIONS, SERIES 8

■ 1. The authority citation for part 102 continues to read as follows:

Authority: 29 U.S.C. 151, 156. Section 102.117 also issued under 5 U.S.C. 552(a)(4)(A), and § 102.119 also issued under 5 U.S.C. 552(a)(j) and (k). Sections 102.143 through 102.155 also issued under 5 U.S.C. 504(c)(1).

Subpart D—Procedure Under Section 9(c) of the Act for the Determination of Questions Concerning Representation of Employees and for Clarification of Bargaining Units and for Amendment of Certifications Under Section 9(b) of the Act

■ 2. Amend § 102.66 by revising paragraph (d) to read as follows:

§ 102.66 Introduction of evidence: rights of parties at hearing; preclusion; subpoenas; oral argument and briefs.

* * * * *

(d) *Preclusion.* A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in § 102.63(b)(1)(i)(C), (b)(2)(iii), or (b)(3)(i)(D), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

* * * * *

Dated: April 9, 2024.

Roxanne L. Rothschild,

Executive Secretary, National Labor Relations Board.

[FR Doc. 2024–07819 Filed 4–11–24; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2024–0280]

Special Local Regulations; Conch Republic Navy Parade and Battle, Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations for the Conch Republic Navy Parade and Battle, in Key West, Florida. Our regulation for Recurring Marine Events in Captain of the Port Key West Zone identifies the regulated area for this event. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the regulated area without approval from the Captain of the Port Key West or a designated representative.

DATES: The regulations in 33 CFR 100.701, Table 1, item (b)(2) will be enforced from 7 p.m. until 8 p.m. on April 26, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email MST2 Hayden Hunt, Sector Key West Waterways Management Department, Coast Guard; telephone (305) 292–8823, email *Hayden.B.Hunt@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the special local regulations in 33 CFR 100.701, from 7 p.m. until 8 p.m. on April 26, 2024 for the annual Great Sea Battle of the Conch Republic in Key West, Florida. This action is being taken to provide for the safety of life on the navigable waters of the Key West Harbor during the simulated battle event. Our regulation for Recurring Marine Events in Captain of the Port Key West Zone, § 100.701, Table 1, item (b)(2), specifies the location of the regulated area for the reenactment of the battle within the Key West Harbor.

During the enforcement period, no person or vessel may enter, transit through, anchor within, or remain within the established regulated areas without approval from the Captain of the Port Key West or designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this notice of enforcement in the **Federal Register,** the Coast Guard plans to provide notice of this enforcement period via the Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: April 8, 2024.

Jason D. Ingram,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2024–07825 Filed 4–11–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2024–0242]

Special Local Regulations; Northern California and Lake Tahoe Area Annual Marine Events; Blessing of the Fleet, San Francisco, CA

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations for the annual Blessing of the Fleet Boat Parade on April 28, 2024, to provide for the safety of life on navigable waterways in the San Francisco Bay during this event. Our regulation for marine events in Northern California identifies the regulated area for this event in San Francisco, CA. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or loitering or anchoring in the regulated area, unless authorized by the designated Patrol Commander (PATCOM) or other law enforcement agencies on scene.

DATES: The regulations in 33 CFR 100.1103 will be enforced for the location listed in table 1, Item number 1, from 10 a.m. to noon on April 28, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call, or

email MST1 Shannon Curtaz-Milian, Sector San Francisco Waterways Management, U.S. Coast Guard; telephone (415)-399–7440, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1103, table 1, Item number 1, for the Blessing of the Fleet regulated area from 10 a.m. to noon on April 28, 2024. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within Northern California, § 100.1103, specifies the location of the regulated area for the Blessing of the Fleet Boat Parade which encompasses portions of the San Francisco Bay. During the enforcement period, the regulated area will be in effect in the navigable waters, from surface to bottom, defined by a line drawn from Bluff Point on the southeastern side of the Tiburon Peninsula to Point Campbell on the northern edge of Angel Island, and a line drawn from Peninsula Point to the southern edge of the Tiburon Peninsula to Point Stuart on the western edge of Angel Island.

During the enforcement period, under the provisions of 33 CFR 100.1103(b), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander (PATCOM) or any other Official Patrol, defined as a Federal, State, or local law enforcement agency on scene to assist the Coast Guard in enforcing the regulated area. During the enforcement period, if you are the operator of a vessel that participates in the marine event within the regulated area, you must follow the parade route established by the marine event sponsor and comply with directions from the PATCOM or other Official Patrol. The PATCOM or Official Patrol may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notification, a Broadcast Notice to Mariners or other marine broadcast may be used to grant general permission to enter the regulated area.

Dated: April 3, 2024.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. 2024–07785 Filed 4–11–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2024–0241]

Special Local Regulations; Northern California and Lake Tahoe Area Annual Marine Events; Opening Day on San Francisco Bay, San Francisco, CA

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations for the annual Opening Day on the San Francisco Bay Boat Parade on April 28, 2024, to provide for the safety of life on navigable waterways in the San Francisco Bay during this event. Our regulation for marine events in Northern California identifies the regulated area for this event in San Francisco, CA. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or loitering or anchoring in the regulated area, unless authorized by the designated Patrol Commander (PATCOM) or other law enforcement agencies on scene.

DATES: The regulations in 33 CFR 100.1103 will be enforced for the location in table 1, Item number 2, from noon to 3 p.m. on April 28, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call, or email MST1 Shannon Curtaz-Milian, Sector San Francisco Waterways Management, U.S. Coast Guard; telephone (415) 399–7440, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1103, table, Item number 2, for the Opening Day on San Francisco Bay regulated area from noon to 3 p.m. on April 28, 2024. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within Northern California, § 100.1103, specifies the location of the regulated area for the Opening Day on San Francisco Bay Boat Parade which encompasses portions of the San Francisco Bay. During the enforcement period, the regulated area will be in effect in the navigable waters, from surface to bottom, defined by a line drawn from Fort Point; thence easterly approximately 5,000 yards; thence easterly to the Blossom Rock Bell Buoy; thence westerly to the Northeast corner of Pier 39; thence returning along the shoreline to the point of origin.

During the enforcement period, under the provisions of 33 CFR 100.1103(b), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander (PATCOM) or any other Official Patrol, defined as a Federal, State, or local law enforcement agency on scene to assist the Coast Guard in enforcing the regulated area. During the enforcement period, if you are the operator of a vessel that participates in the marine event within the regulated area, you must follow the parade route established by the marine event sponsor, be capable of maintaining an approximate speed of 6 knots, and comply with directions from the PATCOM or other Official Patrol. The PATCOM or Official Patrol may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notification, a Broadcast Notice to Mariners or other marine broadcast may be used to grant general permission to enter the regulated area.

Dated: April 3, 2024.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2024–07784 Filed 4–11–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0277]

RIN 1625–AA00

Safety Zone, Calcasieu River Ship Channel, Lake Charles, LA

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters between Mile Marker 30 and 31 on the Calcasieu River Ship Channel. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by partially blocking the federally maintained channel to unload a ship loader at a waterfront facility. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Marine Safety Unit Port Arthur.

DATES: This rule is effective without actual notice from April 12, 2024, through April 26, 2024. For the purposes of enforcement, actual notice will be used from April 8, 2024, until April 12, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov*, type USCG–2024–0277 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Mache Mason, U.S. Coast Guard; telephone 337–912–0073, email *msulcwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The ship loader unload will partially block the federally maintained channel, compromising public safety, and preventing commercial and recreational vessels from transiting. The Coast Guard must establish this temporary safety zone by April 8, 2024, and lacks sufficient time to publish an NPRM, provide a reasonable comment period, and then consider those comments before establishing the necessary safety zone.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because the Coast Guard must establish this safety zone by April 8, 2024, to respond to the potential safety hazards associated with partially blocking a federally maintained channel to unload a ship loader at a waterfront facility.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Marine Safety Unit Port Arthur (COTP) has determined that potential hazards associated with the ship loader unload at this location would be a safety concern for commercial and recreational vessels in the vicinity. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the ship loader unload.

IV. Discussion of the Rule

The effective period of the rule will be from April 8, 2024, to April 26, 2024, to accommodate any weather delays. This rule will be enforced from 6 a.m. until 6 p.m. on the day of the unload. The COTP or a designated representative will inform the public of the unload date, as well as any changes in the dates and times of the enforcement period, through Broadcast Notices to Mariners and Marine Safety Information Bulletins as appropriate.

The safety zone will cover all navigable waters between Mile Markers 30 and 31 on the Calcasieu River Ship Channel. The ship loader unload will occur at 30°11′30.90″ N, 093°17′45.7″ W. The duration of the safety zone is intended to protect persons and vessels, in the nearby navigable waters during the ship loader unload.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, location, and duration of the safety zone. Smaller vessel traffic will be able to safely transit around this safety zone which would impact a small, designated area of the Calcasieu River Ship Channel for 12 hours. Moreover, the Coast Guard would issue a Marine Safety Information Bulletin and Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will be enforced for 12 hours that will prohibit entry between Mile Markers 30 and 31 on the Calcasieu River Ship Channel for the unload of a ship loader at a waterfront facility. 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.T08–0277 to read as follows:

§ 165.T08–0277 Safety Zone; Calcasieu River Ship Channel, Lake Charles, LA.

(a) *Location.* All navigable waters between Mile Marker 30 and 31 on the Calcasieu River Ship Channel.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Marine Safety Unit Port Arthur (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, entry of vessels or persons into this zone is prohibited unless authorized by the COTP or a designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF–FM channel 13 or 16, or by phone at telephone at 337–912–0073.

(3) The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(d) *Enforcement period.* The safety zone in this section is in effect from April 8, 2024, through April 26, 2024. It will be subject to enforcement from 6 a.m. to 6 p.m. on the day of the unload. The COTP or a designated representative will inform the public of the unload date through Broadcast Notices to Mariners and Marine Safety Information Bulletins as appropriate.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of the enforcement period through Broadcast Notices to Mariners and Marine Safety Information Bulletins as appropriate.

Dated: April 8, 2024.

A.R. Migliorini,

Captain, U.S. Coast Guard Captain of the Port Marine Safety Unit Port Arthur.

[FR Doc. 2024–07781 Filed 4–11–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–0268]

Safety Zone; San Francisco Giants Fireworks, San Francisco Bay, San Francisco, CA

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the San Francisco Giants Fireworks in the Captain of the Port San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect personnel, vessels, and the marine environment from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons and vessels are prohibited from entering into, transiting through, or remaining in the safety zone, unless authorized by the Patrol Commander (PATCOM), or any Official Patrol defined as other law enforcement agencies on scene.

DATES: The regulations in 33 CFR 165.1191 will be enforced for the location identified in table 1 to § 165.1191, Item number 1, from 11:30 a.m. until 10:40 p.m. on April 26, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LT William Harris, U.S. Coast Guard Sector San Francisco, Waterways Management Division; telephone (415) 399–7443, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.1191, table 1, Item number 1 for the San Francisco Giants Fireworks from 11:30 a.m. until 10:40 p.m. on April 26, 2024. The safety zone will extend to all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 100 feet outwards of the fireworks barge during the loading, transit, and arrival from the loading location to the display location and until the start of the fireworks display. From 11:30 a.m. until 9 p.m. on April 26, 2024, the fireworks barge will be loading pyrotechnics from Pier 68 in San Francisco, CA. The fireworks barge will remain at the loading location until its transit to the display location. From 9 p.m. to 9:30 p.m. on April 26, 2024, the loaded fireworks barge will transit from Pier 68 to the launch site near Pier 48 in approximate position 37°46′36″ N, 122°22′56″ W (NAD 83) where it will remain until the conclusion of the fireworks display. Upon commencement of the 10-minute fireworks display, scheduled to begin at the conclusion of the baseball game, between 9:40 p.m. and 10 p.m. on April 26, 2024, the safety zone will increase in size and encompass all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 700 feet out from the fireworks barge near Pier 48 in approximate position 37°46′36″ N, 122°22′56″ W (NAD 83). This safety zone will be enforced from 11:30 a.m. until 10:40 p.m. on April 26, 2024, or as announced via Marine Information Broadcast.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM or other Official Patrol, defined as a Federal, State, or local law enforcement agency on scene to assist the Coast Guard in enforcing the safety zone. During the enforcement period, if you are the operator of a vessel in one of the safety zones you must comply with the direction from the PATCOM or other Official Patrol. The PATCOM or Official Patrol may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notification, a Marine Information Broadcast may be used to grant general permission to enter the regulated area.

Dated: April 3, 2024.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2024–07786 Filed 4–11–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2023–0629; FRL–11261–02–R3]

Air Plan Approval; Virginia; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Fredericksburg Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to the Commonwealth's plan, submitted by the Virginia Department of Environmental Quality (VADEQ), for maintaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) (referred to as the ''1997 ozone NAAQS'') in the Fredericksburg, Virginia Area (Fredericksburg Area). EPA is approving these revisions to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on May 13, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2023–0629. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2053. Ms. Nichols can also be reached via electronic mail at *Nichols.Serena@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 6, 2024 (89 FR 8131), EPA published a notice of proposed

rulemaking (NPRM) for the Commonwealth of Virginia. In the NPRM, EPA proposed approval of Virginia's plan for maintaining the 1997 ozone NAAQS in the Fredericksburg Area through January 23, 2026, in accordance with CAA section 175A. The formal SIP revision was submitted by Virginia on May 25, 2023.

II. Summary of SIP Revision and EPA Analysis

On December 23, 2005 (70 FR 76165),[1] EPA approved a redesignation request (and maintenance plan) from VADEQ for the Fredericksburg Area for the 1997 ozone NAAQS. In accordance with section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years. In *South Coast Air Quality Management District* v. *EPA*,[2] the District of Columbia (D.C). Circuit held that this requirement cannot be waived for areas, like the Fredericksburg Area, that had been redesignated to attainment for the 1997 8-hour ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) an attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.[3] VADEQ's May 25, 2023 submittal fulfills Virginia's obligation to submit a second maintenance plan and addresses each of the five necessary elements, as explained in the NPRM.

As discussed in the February 6, 2024, NPRM, EPA allows the submittal of a limited maintenance plan (LMP) to meet the statutory requirement that the area will maintain for the statutory period. Qualifying areas may meet the maintenance demonstration by showing that the area's design value[4] is well below the NAAQS and that the historical stability of the area's air quality levels indicate that the area is unlikely to violate the NAAQS in the future. EPA evaluated VADEQ's May 25, 2023 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the Fredericksburg Area as a revision to the Virginia SIP.

Other specific requirements of Virginia's May 25, 2023 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

III. Final Action

EPA is approving VADEQ's second maintenance plan for the 1997 ozone NAAQS in the Fredericksburg Area as a revision to the Virginia SIP.

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

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.11198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.11198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts . . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.11199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, section 113, 167, 205, 211, or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the

[1] As noted in the NPRM, EPA's December 23, 2005 redesignation and initial approval of the maintenance plan mistakenly listed the publication date as the effective date. 70 FR 76165. EPA subsequently corrected the effective date, found in title 40 of the Code of Federal Regulations (CFR), part 81, to January 23, 2006. 72 FR 68515 (December 5, 2007).

[2] 882 F.3d 1138 (D.C. Cir. 2018).

[3] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

[4] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area. *www.epa.gov/air-trends/air-quality-design-values.*

CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

This action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the Commonwealth, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The VADEQ did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving VADEQ's second maintenance plan for the Fredericksburg Area for the 1997 ozone NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Adam Ortiz,

Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph €(1) is amended by adding the entry ''Second Maintenance Plan for the Fredericksburg 1997 8-Hour Ozone Nonattainment Area'' at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Second Maintenance Plan for the Fredericksburg 1997 8-Hour Ozone Nonattainment Area.	Fredericksburg Area	5/25/23	4/12/24, [Insert **Federal Register** Citation].	The Fredericksburg Area consists of the city of Fredericksburg, and the counties of Spotsylvania and Stafford.

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[FR Doc. 2024–07778 Filed 4–11–24; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1638

Restriction on Solicitation

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation's (LSC or Corporation) regulation prohibiting solicitation of clients. LSC adds definitions for the terms ''communicate'' and ''communication,'' revises the existing text to make language more active, and clarifies how recipients may interact with client-eligible individuals. The main goal of these revisions is to formalize the interpretations of LSC's rule on solicitation that the Office of Legal Affairs (OLA) has issued over the past several years, making clear that recipients may inform client-eligible individuals about their rights and responsibilities and provide them with information about the recipients' intake processes, as well as how recipients may relay that information without violating either LSC's Fiscal Year 1996 appropriations statute or the rule prohibiting solicitation.

DATES: This final rule is effective on May 13, 2024.

FOR FURTHER INFORMATION CONTACT: Elijah Johnson, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295–1638 (phone), or *johnsone@lsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 26, 1996, Congress passed the appropriations act for Fiscal Year 1996. Public Law 104–134, 110 Stat. 1321. Through this statute, Congress enacted a series of restrictions applicable to LSC grant recipients' activities. One of the restrictions was section 504(a)(18), which states that grant recipients ''will not accept employment resulting from in-person unsolicited advice to a nonattorney that such nonattorney should obtain counsel or take legal action, and will not refer such nonattorney to another person or entity or an employee of the person or entity, that is receiving financial assistance provided by the Corporation[.]'' Pubic Law 104–134, 110 Stat. 1321, 1321–56.

On May 19, 1996, the Operations and Regulations Committee (Committee) of the LSC Board of Directors requested that LSC staff prepare an interim rule to implement section 504(a)(18), and in April 1997, LSC promulgated part 1638. Consistent with section 504(a)(18), LSC's rule prohibits a grant recipient from representing an individual who had not sought legal advice from the grant recipient but who the grant recipient had provided in person unsolicited advice to seek legal representation or take legal action. 45 CFR 1638.3(a). Part 1638 also prohibits a grant recipient who has given in-person unsolicited advice to an individual from referring that individual to another LSC grant recipient. 45 CFR 1638.3(b). Finally, LSC included language in part 1638 stating that providing legal information, including information about the availability of counsel and a grant recipient's intake procedures, are permissible activities. 45 CFR 1638.4(a).

The regulation's language caused grantees to question whether they can provide information about individuals' legal rights and the availability of legal assistance through texts, phone calls, and in-person contacts at court clinics. Over the years, OLA has received multiple inquiries from grant recipients and other stakeholders about the types of proposed outreach activities permissible under part 1638. Examples of inquiries include:

- Is it permissible to send text messages to unrepresented individuals explaining defendants' rights in eviction cases?
- Is it permissible to inform individuals of the availability of legal assistance via mailings and text messages?
- What activities are allowed when interacting with individuals approaching grant recipient attorneys at court-based self-help clinics?

In July 2003, OLA published an advisory opinion (AO) answering a question from the Northwest Justice Project (''NJP''). NJP asked whether they could hand out informational brochures to individuals in the courthouse as part of their administration of the Housing Justice Program (''HJP''). The HJP provided same-day advice and representation from volunteer attorneys to LSC-eligible clients in eviction proceedings in court. The previous coordinator of the HJP, a non-LSC-funded organization, contacted prospective clients at the courthouse, advised them of the availability of services, asked if they would like to discuss their case with a lawyer, and represented some the same day. Upon assuming operation of the program, NJP stopped engaging in direct contact and submitted its inquiry to LSC. NJP contacted LSC because it was concerned that the lack of direct client engagement had led to a decline in the usage of HJP services. LSC confirmed that under part 1638, it would be impermissible for NJP to provide unsolicited advice to prospective clients at the courthouse to advise them of the availability of legal services and ask individuals if they wanted to discuss their case with a lawyer and then accept those individuals as clients. EX–2003–1011, June 9, 2003. This advisory opinion remained LSC's position until 2016.

In 2016, OLA received a question from a law professor who was researching methods to increase the likelihood that individuals living in poverty would engage with the legal system, including by seeking free legal services. The study proposed to test the effectiveness of different types of mailings sent to defendants in debt collection cases. The professor asked OLA whether part 1638 prohibits a grant recipient from representing individuals to whom the grant recipient has mailed information regarding their rights and

identifying the types of legal services provided by the grant recipient. AO 2016–001. OLA opined that a mailing from an LSC grant recipient would violate part 1638 if it provided (1) ''unsolicited advice'' and (2) constituted a ''personal letter.'' *Id.* OLA also stated that a mailing that contains only ''information regarding legal rights and responsibilities or . . . information regarding the recipient's services and intake procedures'' does not constitute ''unsolicited advice.'' Further, a mailing does not constitute a ''personal letter'' if the letter provides only generic information that is not tailored to the individual receiving the mailing and it does not include specific facts related to the individual's legal issues. *Id.* OLA concluded that a mailing that contains unsolicited advice that is not tailored to the individual receiving the mailing is not considered a ''personal letter'' under § 1638.2(a). *Id.*

In 2020, OLA issued an advisory opinion addressing a question involving the permissibility of a grant recipient representing individuals that it had either (1) contacted over the telephone or via text message; or (2) initiated contact with through the grant recipient's ongoing presence in the courthouse. Regarding in-person contact in courthouses, OLA confirmed that part 1638 does not prohibit a grant recipient from initiating contact with individuals if the grant recipient is providing ''information regarding legal rights and responsibilities'' or providing information about the grant recipient's intake process while ''. . . maintain[ing] an ongoing presence in a courthouse to provide advice at the invitation of the court[.]'' AO 2020–004. Additionally, part 1638 does not prohibit a grant recipient from representing an individual that the grant recipient initiated contact with over the telephone or via text message as long as the communication contains only generic information that is not tailored to the individual or the specific facts of the individual's legal issues. *Id.*

LSC issued its most recent guidance on part 1638 in 2022. In Program Letter 22–1, LSC advised that grant recipients could send text messages to defendants (tenants) in landlord/tenant cases to notify them that an eviction case has been filed against them; to let them know of any upcoming court appearances; and to inform them of the availability of counsel. Program Letter 22–1. The program letter cited previous guidance from OLA regarding unsolicited advice via text message and mail.

LSC believes regulatory action is justified at this time for two reasons. First, OLA has been applying a nearly thirty-year-old rule concerning communications to new technologies and outreach strategies developed since part 1638 was published. Second, regulatory action is justified because LSC has continued to receive questions from grantees and other stakeholders about whether certain proposed outreach activities are permissible under part 1638. These questions became more compelling as governments began lifting moratoria on filing evictions and pursuing debt collection cases that had been put into place near the beginning of the COVID–19 pandemic. Rulemaking to make part 1638 more consistent with the language of section 504(a)(18) has become more critical to helping grantees inform people living in poverty who are facing eviction or potentially significant financial consequences about their rights and the availability of attorneys to assist them.

On July 25, 2023, the Committee voted to recommend that the LSC Board authorize rulemaking on part 1638. On July 27, 2023, the Board authorized LSC to begin rulemaking. On October 16, 2023, the Committee voted to recommend that the Board authorize publication of a notice of proposed rulemaking (NPRM) in the **Federal Register** for notice and comment. On October 17, 2023, the Board accepted the Committee's recommendation and voted to approve publication of the NPRM. LSC published the notice of proposed rulemaking in the **Federal Register** on October 25, 2023. 88 FR 73303, Oct. 25, 2023. The comment period remained open for sixty days and closed on December 26, 2023.

After consideration of the comments received during the comment period, on April 2, 2024, the Committee voted to recommend that the LSC Board adopt this final rule and approve its publication in the **Federal Register**. On April 8, 2024, the Board voted to adopt and publish this final rule.

Materials regarding this rulemaking are available in the open rulemaking section of LSC's website at *https://www.lsc.gov/about-lsc/laws-regulations-guidance/rulemaking.* After the effective date of the rule, those materials will appear in the closed rulemaking section at *https://www.lsc.gov/about-lsc/laws-regulations-guidance/rulemaking/closed-rulemaking.*

II. Section-by-Section Discussion of Comments and Regulatory Provisions

LSC received seven comments during the public comment period. Comments were received from the following: (1) the National Legal Aid and Defender Association (NLADA) by its Civil Council, the elected representative body that establishes policy for the NLADA Civil Division, and its Regulations Committee; (2) the American Bar Association (ABA) through its Standing Committee on Legal Aid and Indigent Defense (SCLAID); (3) Lakeshore Legal Aid, an LSC-funded recipient; (4) four law students and one private individual. LSC received one telephone call from a LSC grantee former Executive Director after the comment period. All commenters were generally supportive of LSC's proposed changes to part 1638.

III. Proposed Changes

Section 1638.1 Purpose

LSC proposed to make no changes to this section. LSC received no comments on this section.

Section 1638.2 Definitions

LSC proposed to add a definition for the terms *communicate* and *communication* that pertains to mailed, emailed, and texted messages, as opposed to merely in-person engagements. With advances in technology since the inception of this prohibition, this change will provide greater flexibility and clarity around the methods of communication that are permitted. This change is not intended to require recipients to use particular methods to reach client-eligible individuals. Rather, it clarifies which methods are permissible.

LSC also proposed to amend the definition of the term *in-person* to include virtual engagements such as clinics conducted via Zoom or other videoconferencing software. LSC proposed to make this change to reflect the transition, hastened by the COVID–19 pandemic, to the provision of legal services through virtual means in addition to traditional in-person engagements.

Finally, to account for adding a new definition, LSC proposed to redesignate existing paragraph (b), defining the term *unsolicited advice,* as paragraph (c).

Comments: Commenters generally supported LSC's proposed changes to provide clarity and greater flexibility for recipients to reach client-eligible members. For example, in the ABA's view, ''the proposed revisions to section 1638 that clearly delineate permissible communication and impermissible in-person solicitation are consistent with what is allowed under Model Rule 7.3. The revisions setting forth permissible communication such as 'sending information via mailings, text message, email, or other methods of voice or electronic Communication' meet the

'easily disregarded' standard under Rule 7.3, as they do not implicate a potential for undue influence to be exerted by the lawyer in the interaction.'' Additionally, at the Committee meeting on January 21, 2024, this comment was discussed, and Board members commented that phone use is still very prevalent in some areas, and it is important for recipients to be able to provide legal information to eligible clients by calling the clients because that is the only viable means of communication.

Some commenters recommended additional refinement of the terms *communicate* and *communication.* One person commented that ''further explanation is required for the record as per why LSC is declining to include live phone calls within its definition of in-person activity'' because LSC's decision to not extend ''in-person activity'' to phone calls by narrowing the proposed definition to ''face-to-face encounters'', is ''directly contrary to Model Rule 7.3's explicit inclusion of prohibiting solicitation via live telephone.'' Another suggested clarifying ''what types of communication are not considered solicitation under the rule'' because the proposed rule definitions ''could potentially include any form of interaction between a recipient and a client-eligible individual.'' Additionally, the commenter continued, the rule should specify how recipients may communicate with client-eligible individuals without violating part 1638. Lastly, LSC ''may want to consider adopting or adapting the ABA's guidance on electronic and written communication to clarify its own rule on solicitation. This may help recipients avoid confusion and potential violations of the rule.''

Response: LSC believes the language in the proposed rule provides sufficient clarity and, therefore, will adopt this section with no changes. It is impossible to list out every potential scenario that may arise and language such as ''not limited to'' and ''including'' is intended to signal that the examples are not an exhaustive list. LSC agrees with the ABA's comments that the proposed revisions to this section clearly delineate permissible communication and impermissible in-person solicitation and the changes are consistent with what is allowed under Model Rule 7.3.

Regarding the use of telephone, the definition of ''communication'' includes methods of voice or electronic communication. The telephone is an example of voice communication but is not the only means of voice communication. In 2020, OLA opined that part 1638 does not prohibit a grant recipient from representing an individual that the grant recipient initiated contact with over the telephone as long as the communication contains only generic information that is not tailored to the individual or the specific facts of the individual's legal issues. AO–2020–004 (June 24, 2020).

Section 1638.3 Prohibition

LSC proposed to edit the text to be active as opposed to passive. For example, ''shall not represent'' replaced ''are prohibited from representing.''

Comments: LSC received one comment in support of the change.

Response: LSC adopts the proposed version in this final rule without change.

Section 1638.4 Permissible Activities

LSC proposed to edit the text of this rule to be active as opposed to passive. Additionally, LSC proposed to revise § 1638.4(a) to permit communication and in-person engagement about individuals' legal rights and responsibilities and grantees' intake procedures. LSC believes that the proposed language clarifies that grantees are permitted to send individuals information about rights and responsibilities that could lend itself to individuals filing complaints, either pro se or with the assistance of counsel. This instance may arise in the context of housing cases; for example, in housing habitability and tenant building purchase cases. A grantee may discover that there is a building with numerous safety issues and communicate with the tenants about the warranty of habitability, their options for getting the landlord to make repairs, including affirmative litigation, and the grantee's intake process. After receiving such legal information, some tenants could conceivably apply for legal assistance to help them pursue legal action to force repairs. This approach is consistent with the text of section 504(a)(18) of LSC's 1996 appropriation statute, which speaks in general terms about prohibited solicitation. It is critical to closing the justice gap that grantees are aware that they can advise their client-eligible communities about issues for which affirmative litigation may be an appropriate solution.

Further, LSC proposed to add paragraphs (c) and (e) to incorporate OLA's interpretations of existing part 1638 and the guidance LSC provided in Program Letter 22–1. Finally, LSC proposed to redesignate existing paragraph (c) as paragraph (d) and to revise new paragraph (d) to replace the phrase ''physically or mentally disabled'' with the person-first term ''living with a physical or mental disability.''

Comments: Commenters generally supported LSC's proposed changes. The ABA noted that ''the range of permissible activities set forth under section 1638.4 reflects the same types of activities in which lawyers in general may engage under Rule 7.3.'' Additionally, Lakeshore Legal Aid commented that ''the proposed changes to section 1638, particularly section 1638.4(b), clarify that this critical notice to tenants is allowable in the regulation itself. This change will encourage legal aid programs to provide the exact notice that tenants need to avail themselves of legal representation, protect their rights, and remain in their homes.''

There were two main suggested edits. The first was to make this section ''more explicit that this list of permissible activities is an illustrative one, not an exhaustive one . . . The intention of this revision would be undermined if an LSC recipient could look at this regulation a few years from now and come away thinking that a permissible outreach effort should be avoided because it was not one of the specific activities listed in § 1638.4.''

The second is regarding the phrase in § 1638.4(a) ''at the invitation of the court.'' NLADA observed that the meaning of the phrase is unclear because ''[a]n invitation could be a formal letter, a request by a judge on the record, or a simple ask by a clerk or other court staff.'' They continued: ''[m]any LSC recipients work closely with courts to maintain a presence in the courthouse. This increases the ability to provide legal information and reach eligible clients who may in fact be seeking legal advice.'' NLADA suggested changing the language to ''in cooperation with the court . . . This will also help clarify that LSC recipients do not need to wait for a formal invitation by the court to reach out to court officials and work alongside courts to establish a courthouse presence and reach clients in need of services.'' This comment was also discussed at the January 21, 2024, Committee meeting, during which Board members remarked that if the statute does not require recipients to be present in the courthouse ''at the invitation of the court,'' the phrase should not be included in this rule. Further, recipients should cooperate with courts, but since courthouses are public buildings, recipients should not be precluded from performing important functions for eligible clients if the court has not invited the recipient or is not particularly cooperative.

Lastly, one commenter suggested updating the new paragraph (d), which is a redesignation of existing paragraph (c). The commenter recommended that LSC revise the list of individuals who may not be able to seek legal assistance on their own to include persons who are incarcerated, unhoused, living in institutions or correctional facilities, or living with a physical or mental disability.

Response: LSC agrees it is important for this rule to be flexible enough for recipients to apply the rule to new technologies and circumstances not contemplated at the time of these changes. Therefore, the section will be revised to indicate the listed methods are examples of permissible activities.

Further, LSC agrees that a recipient may have a difficult time proving they were in a courthouse ''at the invitation of the court'' particularly because the rule does not indicate what constitutes an ''invitation.'' Although not contemplated in the NPRM, LSC believes that removal of ''at the invitation of the court'' is a logical outgrowth of the proposed rule changes. The purpose of this rulemaking was to clarify and simplify part 1638. Removal of this language is not a substantive change, rather it is a technical change to remove ambiguity. As mentioned during the January 21, 2024, Committee meeting, section 504(a)(18) does not require this language. In fact, the statute does not discuss a recipient's activities in courthouses at all. Further, as the written comments note, a recipient's ongoing presence in a courthouse is sufficient to establish the court's approval of the recipient being in the courthouse. Therefore, the term will be removed for the sake of clarity.

Lastly, to achieve active voice, LSC will amend the last clause of § 1638.4(d) to read as ''including institutionalized individuals or individuals living with a physical or mental disability.''

Section 1638.5 Recipient Policies

LSC proposed no changes to this section. LSC received no comments on this section.

List of Subjects in 45 CFR Part 1638

Grant programs—law, Legal services.

For the reasons set forth in the preamble, the Legal Services Corporation amends 45 CFR part 1638 as follows:

PART 1638—RESTRICTION ON SOLICITATION

■ 1. The authority citation for part 1638 is revised to read as follows:

Authority: 42 U.S.C. 2996g(e).

■ 2. Revise § 1638.2 to read as follows:

§ 1638.2 Definitions.

(a) *Communicate* or *communication* means to share information. Permissible forms of communication include, but are not limited to, sending information via mailings, text message, email, or other methods of voice or electronic communication.

(b) *In-person* means a face-to-face encounter, including virtual clinics or other encounters via videoconference.

(c) *Unsolicited advice* means advice to obtain counsel or take legal action given by a recipient or its employee to an individual who did not seek the advice and with whom the recipient does not have an attorney-client relationship.

■ 3. Revise § 1638.3 to read as follows:

§ 1638.3 Prohibition.

(a) Recipients and their employees shall not represent a client as a result of in-person unsolicited advice.

(b) Recipients and their employees shall not refer to other recipients individuals to whom they have given in-person unsolicited advice.

■ 4. Revise § 1638.4 to read as follows:

§ 1638.4 Permissible activities.

A recipient may:

(a) Communicate about legal rights and responsibilities or the recipient's services and intake procedures or provide the same information through community legal education activities. Recipients may engage in various activities including, but not limited to, outreach, public service announcements, maintaining an ongoing presence in a courthouse to provide advice, disseminating community legal education publications, and giving presentations to groups that request them.

(b) Communicate to parties in civil cases to notify them that a case has been filed against them; to inform them of upcoming court dates; to inform them that counsel may be available to represent them; and to provide information about intake.

(c) Represent an otherwise eligible individual requesting legal assistance from the recipient as a result of a communication or information provided as described in paragraph (a) of this section, provided that the request has not resulted from in-person unsolicited advice.

(d) Represent or refer clients pursuant to a statutory or private ombudsman program that provides investigatory and referral services and/or legal assistance on behalf of persons who are unable to seek assistance on their own, including institutionalized individuals or individuals living with a physical or mental disability.

(e) Represent an individual with whom the recipient initiated contact over the phone or via an electronic platform so long as the communication provides only generic information that is not tailored to the individual or the specific facts of the individual's legal issues.

Dated: April 8, 2024.

Stefanie Davis,

Deputy General Counsel, Legal Services Corporation.

[FR Doc. 2024– 07761 Filed 4–11–24; 8:45 am]

BILLING CODE 7050– 01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240318–0082; RTID 0648–XD843]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Common Pool Fishery and Other Measures for Fishing Year 2024

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

ACTION: Temporary rule; possession and trip limit implementation.

SUMMARY: This action implements measures for the Northeast multispecies common pool fishery and other measures under Regional Administrator authority for the 2024 fishing year. This action is necessary to ensure that the Northeast multispecies common pool fishery may achieve the optimum yield for the relevant stocks, while controlling catch to help prevent in-season closures or quota overages. These measures include possession and trip limits, the allocation of zero trips into the Closed Area II Yellowtail Flounder/Haddock Special Access Program for common pool vessels to target yellowtail flounder, and the closure of the Regular B Days-at-Sea Program.

DATES: Effective at 0001 hours on May 1, 2024, through April 30, 2025.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Policy Analyst, 978–281–9232.

SUPPLEMENTARY INFORMATION: The Northeast Multispecies Fishery Management Plan (FMP) regulations allow the Regional Administrator to implement possession limits for the common pool fishery, the U.S./Canada

Management Area, and Special Management Programs. This action implements a number of these management measures for the 2024 fishing year, effective May 1, 2024.

Common Pool Trip Limits

Regulations at 50 CFR 648.86(o) provide that the Regional Administrator may implement or adjust a per-Day-at-Sea (DAS) possession limit and/or a maximum trip limit in order to prevent exceeding the common pool sub-annual catch limit (sub-ACL) in that fishing year. The possession and trip limits for the start of the 2024 fishing year are included in tables 1 and 2 below. These possession and trip limits were developed based on the common pool sub-ACLs that will be in effect on May 1, 2024, including those set by Framework Adjustment 65 to the FMP and those that are in place as default specifications consistent with the current regulations at § 648.90(a)(3). NMFS considered preliminary 2024 sector rosters, expected common pool participation, and common pool fishing activity in previous fishing years. NMFS will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, vessel monitoring system catch reports, and other available information and, if necessary, will make further adjustments to common pool management measures based on common pool catch.

During its December 2023 meeting, the New England Fishery Management Council adopted Framework Adjustment 66 to the Northeast Multispecies FMP, which, if approved, would modify the common pool sub-ACLs for several stocks. On March 22, 2024, NMFS published a proposed rule for Framework 66, with a comment period ending on April 8, 2024 (89 FR 20412). It is possible that the final rule for that action is not in effect until after the beginning of the fishing year. In that case, default specifications for white hake and redfish would be in place until that rule is final. When developing the trip limits in this action, NMFS considered the Council-recommended sub-ACLs that may be implemented in Framework 66. Framework 66's proposed sub-ACLs are not sufficiently different from the Framework 65's sub-ACLs to alter NMFS' projections and recommendations. Thus, in addition to appropriately addressing specifications that would be in place on May 1, 2024, the trip limits in this action are expected to avoid exceeding, but not to overly constrain catch in a manner that would prevent achieving, any sub-ACLs or trimester total allowable catch (TAC) that may be implemented by Framework 66. Based on this information, NMFS projects that these adjustments will facilitate optimized harvest of the common pool quotas, while preventing early trimester closures, and preventing catch from exceeding the 2024 fishing year sub-ACLs.

For Handgear A and Handgear B vessels, possession and trip limits for Georges Bank (GB) and Gulf of Maine (GOM) cod are dependent on the possession and trip limits for groundfish DAS vessels. The default cod trip limit is 300 pounds (lb) (136 kilograms (kg)) for Handgear A vessels and 75 lb (34 kg) for Handgear B vessels. If the GOM or GB cod limit for vessels fishing on a groundfish DAS drops below 300 lb (136 kg), then the respective Handgear A cod trip limit must be reduced to the same limit. Similarly, the Handgear B trip limit must be adjusted proportionally to the DAS limit (rounded up to the nearest 25 lb (11 kg)). In accordance with this process, the Handgear A and Handgear B possession and trip limits for GB and GOM cod are as listed below in table 2.

Vessels with a Small Vessel category permit can possess up to 300 lb (136 kg) of cod, haddock, and yellowtail flounder, combined, per trip. Additionally, for these vessels, the trip limit for all stocks is equal to the landing limits per DAS applicable to multispecies DAS vessels. This is necessary to ensure that the trip limit applicable to the Small Vessel category permit is consistent with the trip limits for other common pool vessels, as described above.

Weekly quota monitoring reports for the common pool fishery can be found on NMFS' website at: *https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/h/nemultispecies.html.* NMFS will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, vessel monitoring system catch reports, and other available information and, if necessary, will make additional adjustments to common pool management measures.

TABLE 1—2024 FISHING YEAR COMMON POOL POSSESSION AND TRIP LIMITS

Stock	2024 trip limit
GB Cod (outside Eastern U.S./Canada Area)	100 lb (45.4 kg) per DAS, up to 200 lb (90.7 kg) per trip.
GB Cod (inside Eastern U.S./Canada Area)	
GB Cod [Closed Area II Yellowtail Flounder/Haddock Special Access Program(SAP) (for targeting haddock)].	500 lb (226.8 kg) per trip.
GOM Cod	150 lb (68 kg) per DAS, up to 300 lb (136.1 kg) per trip.
GB Haddock	50,000 lb (22,679.6 kg) per trip.
GOM Haddock	1,000 lb (453.6 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.
GB Yellowtail Flounder	100 lb (45.4 kg) per trip.
Southern New England/Mid-Atlantic (SNE/MA) Yellowtail Flounder	200 lb (90.7 kg) per DAS, up to 400 lb (181.4 kg) per trip.
Cape Cod (CC)/GOM Yellowtail Flounder	1,500 lb (680.4 kg) per DAS, up to 3,000 lb (1,360.8 kg) per trip.
American plaice	3,000 lb (1,360.8 kg) per DAS, up to 6,000 lb (2,721.6 kg) per trip.
Witch Flounder	1,500 lb (680.4 kg) per trip.
GB Winter Flounder	500 lb (226.8 kg) per trip.
GOM Winter Flounder	2,000 lb (907.2 kg) per trip.
SNE/MA Winter Flounder	2,000 lb (907.2 kg) per DAS, up to 4,000 lb (1,814.4 kg) per trip.
Redfish	Unlimited.
White hake	750 lb (340.2 kg) per trip.
Pollock	Unlimited.
Atlantic Halibut	1 fish per trip.
Windowpane Flounder	Possession Prohibited.
Ocean Pout.	
Atlantic Wolffish.	

Note: Minimum fish sizes apply for many groundfish species, but are not included in this rule. Please see 50 CFR 648.83 for applicable minimum fish sizes.

TABLE 2—2024 FISHING YEAR COD TRIP LIMITS FOR HANDGEAR A, HANDGEAR B, AND SMALL VESSEL CATEGORY PERMITS

Permit	Initial 2024 trip limit
Handgear A GOM Cod	150 lb (68 kg) per trip.
Handgear A GB Cod	100 lb (45.4 kg kg) per trip.
Handgear B GOM Cod	25 lb (11 kg) per trip.
Handgear B GB Cod	25 lb (11 kg) per trip.
Small Vessel Category	300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined; additionally, vessels are limited to the common pool DAS limit for all stocks.

Table 3 includes the initial common pool trimester TACs for fishing year 2024. These trimester TACs are based on preliminary sector rosters. However, individual permit holders have until the end of the 2023 fishing year (April 30, 2024) to drop out of a sector and fish in the common pool fishery for the 2024 fishing year. Therefore, it is possible that the sector and common pool catch limits, including the trimester TACs, may change due to changes in sector rosters. If changes to sector rosters occur that require updated catch limits and/or possession and trip limits, these will be announced as soon as practicable in the 2024 fishing year to reflect the final sector rosters as of May 1, 2024.

TABLE 3—INITIAL COMMON POOL TRIMESTER TOTAL ALLOWABLE CATCHES FOR FISHING YEAR 2024

[Mt, live weight]

Stock	Trimester total allowable catches		
	Trimester 1	Trimester 2	Trimester 3
GB Cod	3.0	3.7	4.1
GOM Cod	4.7	3.2	1.7
GB Haddock	68.1	83.3	100.9
GOM Haddock	6.9	6.7	12.1
GB Yellowtail Flounder	0.9	1.5	2.5
SNE/MA Yellowtail Flounder	1.6	2.1	3.9
CC/GOM Yellowtail Flounder	22.5	10.2	6.7
American Plaice	105.3	11.4	25.6
Witch Flounder	22.3	8.1	10.2
GB Winter Flounder	3.5	10.6	29.9
GOM Winter Flounder	29.1	29.9	19.7
Redfish	17.3	21.5	30.5
White Hake	4.9	4.0	4.0
Pollock	34.2	42.8	45.2

Closed Area II Yellowtail Flounder/Haddock Special Access Program

The regulations at § 648.85(b)(vii) allow the Regional Administrator to determine the total number of common pool trips that may be declared into the Closed Area II Yellowtail Flounder/Haddock SAP to target yellowtail flounder. This action allocates zero trips for common pool vessels to target yellowtail flounder within the Closed Area II Yellowtail Flounder/Haddock SAP for fishing year 2024. As a result, this SAP is only open to target haddock, from August 1, 2024, through January 31, 2025. Northeast multispecies vessels fishing in the SAP must fish with a haddock separator trawl, a Ruhle trawl, or hook gear.

The Regional Administrator determines the allocation of the total number of trips into the Closed Area II Yellowtail Flounder/Haddock SAP based on several criteria, including the GB yellowtail flounder catch limit and the amount of GB yellowtail flounder caught outside of the SAP. Allocating trips to target yellowtail flounder in the Closed Area II Yellowtail Flounder/Haddock SAP is discretionary if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit, for a total catch of 2,250,000 lb (1,020,600 kg). This calculation considers projected catch from all vessels from the area outside the SAP. Based on the fishing year 2024 GB yellowtail flounder groundfish sub-ACL implemented by Framework Adjustment 65 of 185,845.7 lb (84,298.2 kg), there is insufficient GB yellowtail flounder to allocate any trips to the SAP. Further, given the low GB yellowtail flounder catch limit, catch rates outside of this SAP are more than adequate to fully harvest the 2024 GB yellowtail flounder allocation.

If approved, Framework Adjustment 66 would reduce the 2024 GB yellowtail flounder sub-ACL. As a result, NMFS does not expect the final rule implementing Framework 66, if approved, would change the determination to allocate no trips to the SAP to target yellowtail flounder.

Regular B DAS Program

The regulations at § 648.85(b)(6)(vi) authorize the Regional Administrator to close the Regular B DAS program by prohibiting the use of Regular B DAS when the continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP or the Regular B DAS Program. One reason for terminating the program is an inability to constrain common pool catches to the Incidental Catch TACs.

Framework Adjustment 65 implemented Common Pool Incidental Catch TACs for the Regular B DAS Program for the 2024 fishing year (table 4). These TACs are further divided into Quarterly Incidental Catch TACs to be monitored and managed during each calendar quarter.

TABLE 4—FISHING YEAR TOTAL AND QUARTERLY INCIDENTAL CATCH TACS FOR THE REGULAR B DAS PROGRAM

[Mt, live weight]

Stock	Total incidental catch TAC (mt)	Quarterly incidental catch TAC (mt)			
	2024	1st quarter (13 percent)	2nd quarter (29 percent)	3rd quarter (29 percent)	4th quarter (29 percent)
GB Cod	0.11	0.01	0.03	0.03	0.03
GOM Cod	0.11	0.01	0.03	0.03	0.03
GB Yellowtail Flounder	0.05	0.01	0.01	0.01	0.01
CC/GOM Yellowtail Flounder	0.48	0.06	0.14	0.14	0.14
American Plaice	7.27	0.94	2.11	2.11	2.11
Witch Flounder	2.06	0.27	0.60	0.60	0.60
SNE/MA Winter Flounder	0.53	0.07	0.15	0.15	0.15

Given that the Incidental Catch TACs allocated to the Regular B DAS Program for several stocks are very small, in-season management of the Regular B DAS Program is likely to be extremely difficult and impractical. Implementation of an in-season action to close the Regular B DAS Program once a Quarterly Incidental Catch TAC for a stock has been reached would not be possible to complete quickly enough to prevent further catch of that stock.

As a result, it is unlikely that catch can be effectively limited to the Incidental Catch TACs during fishing year 2024, and we project that continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP and the Regular B DAS Program. The Regular B DAS Program will be closed and use of Regular B DAS is prohibited for the 2024 fishing year, through April 30, 2025. This applies to all vessels issued a limited access Northeast multispecies permit.

Classification

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

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be contrary to the public interest and is unnecessary.

Regulations at § 648.86(o) provide that the Regional Administrator may adjust the Northeast multispecies possession and trip limits for common pool vessels in order to prevent the overharvest or under-harvest of the pertinent common pool quotas. This action sets the initial common pool possession and trip limits on May 1, 2024, for the 2024 fishing year. The possession and trip limits implemented through this action help to ensure that the Northeast multispecies common pool fishery may achieve the optimum yield for the relevant stocks, while controlling catch to help prevent in-season closures or quota overages. Delay of this action would leave the common pool fishery with the possession and trip limits found in § 648.86, which are too high to control catch. This would likely lead to early closure of a trimester and quota overages. Any overage of the quota for either of the first two trimesters must be deducted from the Trimester 3 quota, which could substantially disrupt the trimester structure and intent to distribute the fishery across the entire fishing year. An overage reduction in Trimester 3 would further reduce fishing opportunities for common pool vessels and likely result in early closure of Trimester 3. Additionally, any overage of the annual quota would be deducted from common pool's quota for the next fishing year, to the detriment of this stock and diminishing fishing opportunities in the following fishing year.

To ensure proper carrying out of the FMP's Closed Area II Yellowtail Flounder/Haddock SAP, regulations at § 648.85(b)(3)(vii) provide that the Regional Administrator is responsible for announcing the appropriate total number of allowed trips by common pool vessels that may be declared into the Closed Area II Yellowtail Flounder/Haddock SAP on or about June 1. The Regional Administrator's announcement ensures that the fishing industry has sufficient notice in order to plan their activities in the new fishing year. This action occurs annually. Industry participants are accustomed to it and expect its timely implementation. No trips have been allocated to this SAP from fishing year 2010 to fishing year 2023.

Regulations at § 648.85(b)(6)(vi) provide that the Regional Administrator may close the Regular B DAS program by prohibiting the use of Regular B DAS when the Regional Administrator projects that continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP or the Regular B DAS Program. The Regular B DAS program closure implemented through this action will prevent an overage of the Incidental Catch TACs. Delay of this action would provide vessel owners an opportunity to participate in the Regular B DAS Program, but participation and catch in the program may likely exceed the allocation. Exceeding the allocation is against the public's interest of achieving optimum yield.

In addition to the adverse consequences of exceeding the allocation, delaying implementation of this action for prior notice and opportunity for comment is unnecessary. These processes and criteria for determinations were established with prior notice and opportunity for comment. They were established to provide for regular and timely implementation of necessary catch limits to avoid adverse economic or ecological consequences that are not in the public interest. Further, adjusting catch limits in accordance with current conditions and limits provides participants with the maximum fishing opportunities practicable that avoid excess catch and potential overfishing. Fishing industry participants and other stakeholders expect these actions to occur annually and in-season. These actions are regular occurrences to which participants have become accustomed. This action must be implemented prior to May 1, 2024, to avoid adverse impacts on common pool fishery stocks and participants by ensuring that the fishery's catch limits are not exceeded. This action was originally intended to be included in the Final Rule for Framework 66. The agency only recently had sufficient information to determine that Framework 66 may not

be in effect prior to May 1, 2024, and that publication of this notice as a separate in-season action was necessary to ensure that these measures are implemented at the start of fishing year 2024 on May 1, 2024.

For the reasons above, delay of this action for additional prior notice and the opportunity for public comment and the 30-day delayed effectiveness period are unnecessary and against the public interest because they would undermine management objectives of the FMP and cause unnecessary negative economic impacts to the common pool fishery.

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

Dated: April 8, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–07744 Filed 4–11–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240405–0100]

RIN 0648–BM84

Fisheries of the Northeastern United States; 2024 and Projected 2025 Specifications for the Atlantic Mackerel Fishery

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements the 2024 specifications and projected 2025 specifications for Atlantic mackerel as recommended by the Mid-Atlantic Fishery Management Council. These specifications establish allowable harvest levels that will prevent overfishing, consistent with the most recent scientific information.

DATES: Effective April 12, 2024.

ADDRESSES: A Supplemental Information Report (SIR) was prepared for these specifications. Copies of the SIR are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The SIR is also accessible via the internet at *https://www.mafmc.org/supporting-documents.*

Copies of the small entity compliance guide are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, or available on the internet at *https://www.greateratlantic.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Policy Analyst, (978) 281–9150, or *carly.bari@noaa.gov.*

SUPPLEMENTARY INFORMATION:

General Background

The Mid-Atlantic Fishery Management Council (Council) manages the Atlantic mackerel fishery under the Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). The regulations implementing the FMP require the Council's Mackerel, Squid, and Butterfish Monitoring Committee to develop specification recommendations based upon the acceptable biological catch (ABC) advice of the Council's Scientific and Statistical Committee (SSC). Specifications are the combined suite of commercial and recreational catch levels and management measures necessary to prevent such catch levels from being exceeded. As part of this process, the Council sets specifications for up to 3 years. These specifications are reviewed annually and may be revised by the Council based on updated information.

The Council's final action on these specifications was delayed to its December 2023 meeting because the 2023 Atlantic mackerel stock assessment required additional peer review in late fall 2023 after the assessment indicated a change in the stock status. The stock status changed from experiencing overfishing to not experiencing overfishing. Although this change in stock status may appear to reflect an improvement in stock condition, the change is the result of significant catch reductions that were implemented in 2021, 2022, and 2023.

The preliminary stock assessment, which was still subject to peer review, showed an unexpected failure of the Atlantic mackerel stock to rebuild, and updated projections suggested that Atlantic mackerel overfishing could occur in 2023 if the full Atlantic mackerel commercial quota (*i.e.,* 3,639 metric tons (mt)) was harvested. However, because the peer review of the assessment was not complete, the SSC was unable to provide its ABC recommendation and the Council was unable to make its recommendations on the 2024 specifications. Based on the preliminary assessment information, however, the Council requested at its August 2023 meeting that NMFS take emergency action to limit the directed Atlantic mackerel fishery for the remainder of 2023 and until these specifications are implemented. On October 13, 2023, NMFS published an interim rule that reduced the Atlantic mackerel catch by instituting trip limits of 20,000 pounds (lb) (9.08 mt) for limited access permits and 5,000 lb (2.27 mt) for open access permits (see 88 FR 70909). These interim measures expire upon publication of this rule or on April 10, 2024, whichever is sooner.

2024 and Projected 2025 Specifications

The Council's SSC met in October 2023 to review the peer-reviewed management track assessment, which showed an unexpected failure of the Atlantic mackerel stock to rebuild. Based on this information, the SSC recommended an averaged 2024–2025 ABC of 3,200 mt. These specifications also include deductions for the expected Canadian catch of 74 mt, estimated recreational catch of 2,143 mt, and estimated commercial discards of 115 mt to set a commercial quota of 868 mt. This commercial quota is a 76-percent decrease from the original 2023 commercial quota.

TABLE 1—SUMMARY OF 2024 AND PROJECTED 2025 ATLANTIC MACKEREL FISHERY SPECIFICATIONS

Specifications	Metric tons
ABC/ACL	3,200
Canadian Catch Deduction	74
Recreational Catch Deduction	2,143
Commercial Discards	115
Commercial Quota	868

Because of the low-resulting commercial quota, these specifications also implement reduced Atlantic mackerel catch by instituting trip limits of 20,000 lb (9.08 mt) for all limited access permits and 5,000 lb (2.27 mt) for open access permits. These trip limits are unchanged from those in the interim rule. When 80 percent of the commercial quota is harvested, the trip limits will be further reduced to 10,000 lb (4.54 mt) for all limited access permits and 2,500 lb (1.13 mt) for open access permits. The recreational possession limit will remain status quo at 20 fish per person.

On February 1, 2023, NMFS approved Amendment 23 to the Mackerel, Squid, and Butterfish FMP and implemented a revised rebuilding plan for the Atlantic mackerel stock (see 88 FR 6665). The reductions in ABC and trip limits included in this rule were determined to be necessary to maintain the timeline by which the Atlantic mackerel stock is

rebuilt by 2032 as outlined in Amendment 23.

Changes From the Proposed Rule

There are no changes from the proposed rule.

Proposed Rule Comments and Responses

We received six public comments on the proposed rule. Three comments were in support of the proposed specifications to reduce Atlantic mackerel catch to allow the stock to rebuild. One comment asked how we would enforce these trip limits. We will continue to enforce trip limits as we are currently, with enforcement tools on the water and at the docks, and by reviewing landings reports submitted by dealers and permit owners. Three comments were not relevant to this action.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this final rule is consistent with the Mackerel, Squid, and Butterfish 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 (E.O.) 12866.

This final rule does not contain policies with federalism or ''takings'' implication, as those terms are defined in E.O. 13132 and E.O. 12630, respectively. This action does not contain any collection-of-information requirements subject to the Paperwork Reduction Act.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. The Council adopted these specifications on December 13, 2023, and submitted a preliminary draft of the supplemental information report on January 3, 2024. Substantial edits to the economic analysis were required for regional economist clearance for the Regulatory Flexibility Act, E.O. 12866, and E.O. 14094. The NMFS regional economist provided clearance on February 9, 2024. After incorporating that economic analysis into the proposed rule document and having the rule reviewed by regional staff, the rule was submitted to NMFS headquarters on February 16, 2024 and the proposed rule was published on February 28, 2024. The comment period for the proposed rule closed on March 14, 2024. Regional staff submitted the final rule to NMFS headquarters on March 28, 2024. NMFS then submitted the rule to Commerce's Office of the General Counsel for review on April 2, 2024. Thus, NMFS has taken all diligent steps to promulgate this rule as quickly as possible but could not have published the rule sooner because the data necessary for the Council to develop these specifications was not yet finalized.

The start of the fishing year began on January 1, 2024, and the interim measures currently in place to reduce Atlantic mackerel catch—including reduced trip limits—will expire on April 10, 2024. A delay in implementing final measures may result in substantial Atlantic mackerel catch because trip limits would revert to the default of unlimited catch for Tier 1 limited access permits, 135,000 lb (61.23 mt) for Tier 2 limited access permits, 100,000 lb (45.36 mt) for Tier 3 limited access permits, and 20,000 lb (9.08 mt) for open access permits. Allowing catch at these levels in the high-volume mackerel fishery, even for a short time period, could result in exceeding the commercial quota and overfishing limit, and have devastating impacts on the rebuilding of the Atlantic mackerel stock. Moreover, unlike actions that require an adjustment period to comply with new gear requirements, this action does not require permit holders to purchase new equipment or otherwise expend time or money to comply with this action's management measures. Rather, compliance with this final rule simply means adhering to trip limits applicable to permit tiers. It is in the public interest to implement this final action as soon as possible, and the Assistant Administrator finds good cause to waive the 30-day delay in the date of effectiveness and to implement this rule upon the date of publication in the **Federal Register**.

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.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 5, 2024.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended 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 § 648.24, revise paragraphs (b)(1)(i) and (ii) to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(1) * * *

(i) Unless otherwise determined in paragraph (b)(1)(ii) of this section, NMFS will close the commercial Atlantic mackerel fishery, which includes vessels issued an open access or limited access Atlantic mackerel permit, in the EEZ when the Regional Administrator projects that 80 percent of the Atlantic mackerel DAH is harvested. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed, as specified in § 648.26.

(ii) NMFS has the discretion to not implement measures outlined in paragraphs (b)(1)(i) of this section during November and December if the Regional Administrator projects that commercial Atlantic mackerel landings will not exceed the DAH during the remainder of the fishing year.

* * * * *

■ 3. In § 648.26, revise paragraphs (a) to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

(a) *Atlantic mackerel*—(1) *Initial commercial possession limits.* A vessel must be issued a valid limited access Atlantic mackerel permit to fish for, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel in or harvested from the EEZ per trip, provided the fishery has not been closed as specified in § 648.24(b)(1).

(i) A vessel issued a Tier 1, 2, or 3 limited access mackerel permit is authorized to fish for, possess, or land up to 20,000 lb (9.098 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period

beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a commercial fishery closure, as specified in § 648.24(b)(1).

(ii) A vessel issued an open access Atlantic mackerel permit may fish for, possess, or land up to 5,000 lb (2.27 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a commercial fishery closure as specified in § 648.24(b)(1).

(iii) Both vessels involved in a pair trawl operation must be issued a valid Atlantic mackerel permit to fish for possess, or land Atlantic mackerel in the EEZ. Both vessels must be issued the Atlantic mackerel permit appropriate for the amount of Atlantic mackerel jointly possessed by both of the vessels participating in the pair trawl operation.

(2) *Atlantic mackerel closure possession restrictions.* Any Atlantic mackerel possession restrictions implemented under paragraph (a)(2) of this section will remain in place for the rest of the fishing year, unless further restricted by a subsequent action. If the entire commercial Atlantic mackerel fishery is closed due to harvesting the river herring/shad catch cap, as specified in § 648.24(b)(6) before a commercial fishery closure, then the Atlantic mackerel possession restrictions specified in § 648.26(a)(2)(iii) shall remain in place for the rest of the fishing year.

(i) *Limited Access Fishery.* During a closure of the commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i), when 80 percent of the DAH is harvested, vessels issued a Tier 1, 2, or 3 limited access Atlantic mackerel permit, may not take and retain, possess, or land more than 10,000 lb (4.54 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(ii) *Open Access Fishery.* During a closure of the Atlantic mackerel commercial sector pursuant to § 648.24(b)(1)(i), when 80 percent of the DAH is harvested, vessels issued an open access Atlantic mackerel permit may not take and retain, possess, or land more than 2,500 lb (1.13 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(iii) *River herring/shad catch cap closure.* During a closure of the limited access commercial Atlantic mackerel fishery pursuant to § 648.24(b)(6), when 95 percent of the river herring/shad catch cap has been harvested, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(3) *Recreational possession limits.* The recreational Atlantic mackerel possession limit for charter/party and private recreational anglers is 20 Atlantic mackerel per person per trip, including for-hire crew.

* * * * *

[FR Doc. 2024–07650 Filed 4–11–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 72
Friday, April 12, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1000; Project Identifier AD–2023–01051–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–400F series airplanes. This proposed AD was prompted by a report that cap seals were not applied to certain fasteners in the fuel tanks during production. This proposed AD would require applying cap seals to certain fastener collars inside the fuel tanks. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 28, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–1000; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2024–1000.

FOR FURTHER INFORMATION CONTACT: Samuel Dorsey, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3415; email: *samuel.j.dorsey@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–1000; Project Identifier AD–2023–01051–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Samuel Dorsey, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3415; email: *samuel.j.dorsey@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, the FAA issued a final rule titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, that rule included Amendment 21–78, which established Special Federal Aviation Regulation No. 88 (''SFAR 88'') at 14 CFR part 21. Subsequently, SFAR 88 was amended by Amendment 21–82 (67 FR 57490, September 10, 2002; corrected at 67 FR 70809, November 26, 2002) and Amendment 21–83 (67 FR 72830, December 9, 2002; corrected at 68 FR 37735, June 25, 2003, to change ''21–82'' to ''21–83'').

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the final rule published on May 7, 2001, the FAA intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, the FAA has established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, combination of failures, and unacceptable (failure) experience. For all three failure criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The FAA has determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosion or fire.

The FAA has received a report indicating that cap seals were not applied to certain fasteners in the fuel tank during production. The FAA issued AD 2022–10–11, Amendment 39–22049 (87 FR 34120, June 6, 2022) to require, among other actions, application of cap seals to certain fasteners in the fuel tank on airplanes having line numbers 645 through 1363 inclusive. Cap seals were determined to be a necessary feature by SFAR 88 reviews and were required to be retrofitted onto existing airplanes by AD 2022–10–11 and earlier ADs. Boeing intended to incorporate similar changes on future airplanes, ultimately those having line numbers 1364 through 1419 inclusive, via a production design change. However, Boeing discovered that the design change omitted application of the cap seals on eight fasteners (four each on the left and right wings in the inboard main fuel tanks). Without these cap seals, the ends of the fasteners do not have sufficient electrical insulation to prevent arcing in the event of a lightning strike or high-powered short circuit, possibly creating an ignition source in the inboard main fuel tanks. A failure to prevent possible ignition sources in the fuel tank, in combination with flammable fuel vapors, could result in an explosion or fire and consequent loss of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023. This service information specifies procedures for applying cap seals to four fastener collars inside the fuel tank common to the stiffeners located at the front spar on the left and right wings. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at regulations.gov under Docket No. FAA–2024–1000.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 15 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Apply cap seals	37 work-hours × $85 per hour = $3,145	$1,000	$4,145	$62,175

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2024–1000; Project Identifier AD–2023–01051–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 28, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400F series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report that cap seals were not applied to certain fasteners in the fuel tanks during production. The FAA is issuing this AD to address missing cap seals in the fuel tanks. The unsafe condition, if not addressed, could result in a failure to prevent possible ignition sources in the fuel tanks, which in combination with flammable fuel vapors, could result in an explosion or fire and consequent loss of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–57A2371, dated September 29, 2023, which is referred to in Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023.

(h) Exceptions to Service Information Specifications

(1) Where Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023, use the phrase ''the original issue date of Requirements Bulletin 747–57A2371 RB,'' this AD requires using the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Samuel Dorsey, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3415; email: *samuel.j.dorsey@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the address specified in paragraphs (k)(3) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

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

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

Issued on April 4, 2024.

Victor Wicklund,

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

[FR Doc. 2024–07562 Filed 4–11–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0773; Project Identifier MCAI–2023–00256–R]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–22–05, which applies to all Leonardo S.p.a. (Leonardo) Model A119 and AW119 MKII helicopters. AD 2021–22–05 requires repetitively inspecting certain torque tube assemblies for any deficiency and corrective action if necessary, and replacing any affected part with a serviceable part, which is terminating action for the repetitive inspections. AD 2021–22–05 was prompted by reports of abnormal play on the collective torque tube on two Leonardo Model AW119 MKII helicopters, which were due to an erroneous manufacturing process. Since the FAA issued AD 2021–22–05, it was discovered that additional torque tube assemblies are subject to the unsafe condition. This proposed AD would retain certain requirements specified in AD 2021–22–05, reduce the

applicability to include helicopters with only affected part-numbered collective torque tube assemblies, reduce the inspection intervals, and remove the previously approved terminating action as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by May 28, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0773; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *regulations.gov* under Docket No. FAA–2024–0773.

Other Related Service Information: For Leonardo service information identified in this NPRM, contact Leonardo S.p.A., Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone (+39) 0331–225074; fax (+39) 0331–229046; or at *customerportal.leonardocompany.com/en-US/.* You may also view this service information at the FAA contact information under Material Incorporated by Reference above.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA,1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0773; Project Identifier MCAI–2023–00256–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–22–05, Amendment 39–21778 (86 FR 67301, November 26, 2021) (AD 2021–22–05), for all Leonardo Model A119 and AW119 MKII helicopters. AD 2021–22–05 was prompted by MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2021–0096, dated March 31, 2021 (EASA AD 2021–0096), to address an unsafe condition on Leonardo S.p.A. Model A119 and AW119 MKII helicopters, all serial numbers. EASA AD 2021–0096 stated that there were reports of abnormal play on the collective torque tube on two Model AW119 MKII helicopters. Investigations revealed that these events were due to an erroneous manufacturing process, affecting certain collective torque tube assemblies; those affected batch numbers were identified. Leonardo Model A119 helicopters are similar in design and may be subject to the same unsafe condition revealed on the Model AW119 MKII helicopters.

AD 2021–22–05 requires repetitive inspections of certain batches of affected torque tube assemblies for any deficiency and corrective action if necessary; and the replacement of any affected part with a serviceable part, which is terminating action for the repetitive inspections. The FAA issued AD 2021–22–05 to address abnormal play on the collective torque tube, which could result in reduced control of the helicopter, resulting in a forced landing and consequent damage to the helicopter and injury to occupants.

Actions Since AD 2021–22–05 Was Issued

Since AD 2021–22–05 was issued, there have been reports of abnormal play on additional torque tube assemblies. EASA, which is the Technical Agent for the Member States of the European Union, has issued superseding EASA AD 2023–0035, dated February 10, 2023 (EASA AD 2023–0035) (also referred to as the MCAI), to correct an unsafe condition for Leonardo Model A119 and AW119MKII helicopters up to serial number 14999 inclusive.

This proposed AD was prompted by additional occurrences of abnormal play on parts not previously included in the affected batches of torque tube assemblies. In light of this, Leonardo issued updated service information and EASA issued EASA AD 2023–0035 to reduce the applicability to include helicopters with only affected part-numbered collective torque tube assemblies, reduce the inspection

intervals, and simplify the inspection method. The FAA is proposing this AD to address abnormal play on additional collective torque tubes, which could result in reduced control of the helicopter, resulting in a forced landing and consequent damage to the helicopter and injury to occupants. See EASA AD 2023–0035 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0035 requires repetitive inspections of the affected torque tube assemblies for any deficiency (*i.e.,* any abnormal play or relative rotation) by marking the torque tube assembly and the collar and applying specific loads to determine if there is any play; and depending on the results of these inspections replacing the torque tube assembly with a serviceable part.

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

Other Related Service Information

The FAA reviewed Leonardo Helicopters Alert Service Bulletin (ASB) No. 119–098, Revision B, dated January 25, 2023 (ASB 119–098, Revision B). This ASB specifies procedures for inspecting the collective torque tube assembly for abnormal play and specifies instructions for replacing affected parts.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would reduce the applicability to include helicopters with only affected all part-numbered collective torque tube assemblies, retain certain requirements of AD 2021–22–05, and require accomplishing the actions specified in EASA AD 2023–0035, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the MCAI.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0035 by reference in the FAA final rule. Service information required by EASA AD 2023–0035 for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2024–0773 after the FAA final rule is published.

Differences Between This Proposed AD and the MCAI or the Service Information

Where the service information referenced in paragraphs (1) and (2) of EASA AD 2023–0035 specifies ''in case of doubt'' apply marks on both sides of the torque tube assembly, move the pilot collective stick lever, and verify that the markings stay aligned, this proposed AD would require those actions.

Instead of paragraph (4) of EASA AD 2023–0035, which allows credit for the initial inspection and corrective action, as applicable for that helicopter, r accomplished before the effective date of EASA AD 2023–0035 using ASB 119–098, Revision B, this proposed AD would allow credit for the following, as applicable.

- The inspections required by paragraph (1) of EASA AD 2023–0035 that have been accomplished before the effective date of the final rule using Leonardo Helicopters Alert Service Bulletin (ASB) No. 119–098, dated March 13, 2019 (ASB 119–098, original issue); or Leonardo Helicopters ASB No. 119–098, Revision A, dated March 31, 2021 (ASB 119–098, Revision A), as applicable for the batch numbers identified within.
- Replacing an affected part, as defined in EASA AD 2023–0035, with a serviceable part, as defined in EASA AD 2023–0035, required by paragraph (3) of EASA AD 2023–0035 that has been accomplished before the effective date of the final rule using ASB 119–098, original issue; or ASB 119–098, Revision A.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 184 helicopters of U.S. registry. Labor costs are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Inspecting the torque tube assembly inspection would take about 1 work-hour for an estimated cost of $85 per inspection and $15,640 for the U.S. fleet per inspection cycle.

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the proposed inspections. The agency has no way of determining the number of helicopters that might need these repairs.

If required, replacing the torque tube assembly would take about 16 work-hours and parts would cost $10,000 for an estimated cost of $11,360 per torque tube assembly replacement.

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–22–05, Amendment 39–21778 (86 FR 67301, November 26, 2021); and

■ b. Adding the following new airworthiness directive:

Leonardo S.p.a.: Docket No. FAA–2024–0773; Project Identifier MCAI–2023–00256–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 28, 2024.

(b) Affected ADs

This AD replaces AD 2021–22–05, Amendment 39–21778 (86 FR 67301, November 26, 2021).

(c) Applicability

This AD applies to Leonardo S.p.a. Model A119 and AW119 MKII helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0035, dated February 10, 2023 (EASA AD 2023–0035).

(d) Subject

Joint Aircraft System Component (JASC) Code 6700: Rotorcraft Flight Control.

(e) Unsafe Condition

This AD was prompted by reports of abnormal play on the collective torque tube assemblies. The FAA is issuing this AD to address this unsafe condition which could result in reduced control of the helicopter, resulting in a forced landing and consequent damage to the helicopter and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with EASA AD 2023–0035.

(h) Exceptions to EASA AD 2023–0035

(1) Where EASA AD 2023–0035 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2023–0035 refers to April 14, 2021 (the effective date of EASA AD 2021–0096, dated March 31, 2021), this AD requires using January 3, 2022 (the effective date of AD 2021–22–05).

(3) Where EASA AD 2023–0035 refers to its effective date, this AD requires using the effective date of this AD.

(4) Where the service information referenced in paragraphs (1) and (2) of EASA AD 2023–0035 specifies ''in case of doubt'' apply marks on both sides of the torque tube assembly, move the pilot collective stick lever, and verify that the markings stay aligned, this AD requires those actions.

(5) Instead of the credit allowed in paragraph (4) of EASA AD 2023–0035, you may take credit for the following in paragraphs (h)(5)(i) and (ii) of this AD, as applicable.

(i) The inspections required by paragraph (1) of EASA AD 2023–0035 that have been accomplished before the effective date of this AD using Leonardo Helicopters Alert Service Bulletin (ASB) No. 119–098, dated March 13, 2019 (ASB 119–098, original issue) but this credit is limited to the torque tube assembly batch numbers identified in ASB 119–098, original issue; or Leonardo Helicopters ASB No. 119–098, Revision A, dated March 31, 2021 (ASB 119–098, Revision A) but this credit is limited to the torque tube assembly batch numbers identified in ASB 119–098, Revision A.

(ii) Replacing an affected part, as defined in EASA AD 2023–0035, with a serviceable part, as defined in EASA AD 2023–0035, required by paragraph (3) of EASA AD 2023–0035 that has been accomplished before the effective date of this AD using ASB 119–098, original issue; or ASB 119–098, Revision A.

(6) Where the service information referenced in EASA AD 2023–0035 specifies to return a torque tube assembly to the manufacturer, this AD does not include that requirement.

(7) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0035.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0035 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD or email to *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email.

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

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0035 dated February 10, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0035, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on March 27, 2024.

Victor Wicklund,

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

[FR Doc. 2024–07489 Filed 4–11–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 58

[REG–118499–23]

RIN 1545–BQ60

Excise Tax on Repurchase of Corporate Stock—Procedure and Administration

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would provide guidance regarding reporting and payment of the new excise tax on repurchases of corporate stock made after December 31, 2022. The proposed regulations would affect certain publicly traded corporations that repurchase their stock or whose stock is acquired by certain specified affiliates. Another notice of proposed rulemaking on this topic is published elsewhere this issue of the **Federal Register** to propose rules on the general application of, and exceptions to, this new excise tax.

DATES: Written or electronic comments and requests for a public hearing must be received by May 13, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–118499–23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically or on paper to the IRS's public docket.

Send paper submissions to: CC:PA:01:PR (REG–118499–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Samuel G. Trammell at (202) 317–6975; concerning submissions of comments and requests for a public hearing, Vivian Hayes at (202) 317–6901 (not toll-free numbers) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

This notice of proposed rulemaking proposes regulations under section 4501 of the Internal Revenue Code (Code) that would provide rules on procedure and administration applicable to the reporting and payment of the new excise tax on repurchases of corporate stock (stock repurchase excise tax) imposed by section 4501 for repurchases made after December 31, 2022. As proposed in this notice of proposed rulemaking, the regulations are proposed to be added as subpart B of new 26 CFR part 58 (Stock Repurchase Excise Tax Regulations), which is proposed to be added to subchapter D of 26 CFR chapter I (Miscellaneous Excise Taxes).

Proposed subpart A of part 58, contained in another notice of proposed rulemaking (REG–115710–22) published elsewhere in this issue of the **Federal Register**, would provide operative rules under section 4501. Proposed § 58.4501–1 would provide an overview of the stock repurchase excise tax, generally applicable definitions, the scope of the regulations implementing the tax, and certain operating rules applicable to those regulations. Proposed § 58.4501–2 would provide general rules regarding the application and computation of the stock repurchase excise tax. Proposed § 58.4501–3 would provide rules regarding the application of the exceptions in section 4501(e) (other than the de minimis exception described in section 4501(e)(3) and to which proposed § 58.4501–2(b)(2) applies). Proposed § 58.4501–4 would provide rules regarding the application of section 4501(c)(3). Proposed §§ 58.4501–5 and 58.4501–6 would provide examples and applicability dates. Proposed § 58.4501–7 would provide rules specifically relating to the application of section 4501(d).

II. Section 4501; Notice 2023–2

Section 4501 was added to a new chapter 37 of the Code by the enactment of section 10201 of Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). In general, section 4501 imposes the stock repurchase excise tax on each covered corporation (as defined in section 4501(b)) for repurchases made after December 31, 2022. *See* section 10201(d) of the IRA. The stock repurchase excise tax is equal to 1 percent of the fair market value of any stock of the corporation that is repurchased (as defined in section 4501(c)(1)) by the corporation during the taxable year. Section 4501(a). The term ''covered corporation'' includes an entity treated as a covered corporation under section 4501(d)(1)(A) or (d)(2)(A).

Section 4501(f) authorizes the Secretary of the Treasury or her delegate (Secretary) to prescribe regulations and other guidance as are necessary or appropriate to carry out, and to prevent the avoidance of, the purposes of section 4501.

On January 17, 2023, the Treasury Department and the IRS published Notice 2023–2, 2023–3 I.R.B. 374, to provide initial guidance on the application of the stock repurchase excise tax. The notice describes certain operating rules for purposes of the stock repurchase excise tax that the Treasury Department and the IRS announced the intent to include in proposed regulations, along with anticipated rules for reporting and paying any liability for the stock repurchase excise tax.

Section 4 of Notice 2023–2 describes the anticipated rules for reporting and paying any liability for the stock repurchase excise tax. As described in Notice 2023–2, those anticipated rules would provide that (1) the stock repurchase excise tax must be reported on IRS Form 720, *Quarterly Federal Excise Tax Return,* (2) taxpayers must attach an additional form to the Form 720 reflecting the computation of the stock repurchase excise tax, (3) the stock repurchase excise tax must be reported once per taxable year on the Form 720 that is due for the first full quarter after the close of the taxpayer's taxable year, (4) the deadline for payment of the stock repurchase excise tax is the same as the filing deadline, and (5) no extensions are permitted for reporting or paying the stock repurchase excise tax owed.

Consistent with Notice 2023–2, and as explained in the Explanation of Provisions, these proposed regulations would prescribe the manner and method of reporting and paying the stock repurchase excise tax by adding rules on procedure and administration in proposed subpart B of the proposed Stock Repurchase Excise Tax Regulations (26 CFR part 58) under sections 6001, 6011, 6060, 6061, 6065, 6071, 6091, 6107, 6109, 6151, 6694, 6695, and 6696 of the Code. The Treasury Department and the IRS have added items relevant to the stock repurchase excise tax to tax return forms other than Form 720, to assist in the identification of transactions subject to the stock repurchase excise tax. *See* Form 1120, *U.S. Corporation Income Tax Return* and Form 1065, *U.S. Return of Partnership Income.* The Treasury Department and the IRS continue to

evaluate amending or developing other forms, including for information reporting with respect to foreign owners of domestic business entities and domestic owners of foreign business entities, to assist in the identification of transactions subject to the stock repurchase excise tax.

Explanation of Provisions

I. Requirement for Return and Recordkeeping

Under proposed § 58.6011–1(a), a stock repurchase excise tax return would be required to be filed by any covered corporation, or any person treated as a covered corporation, that makes a repurchase (as defined in section 4501(c)(1)), or that is treated as making a repurchase under section 4501(c)(2)(A), (d)(1)(B), or (d)(2)(B), after December 31, 2022. Any covered corporation or person treated as a covered corporation, that makes a repurchase, or that is treated as making a repurchase, would be required to keep complete and detailed records sufficient to establish accurately the amount of repurchases, adjustments, or exceptions required to be shown on its stock repurchase excise tax return. *See* proposed § 58.6001–1(a). Under the proposed regulations, any covered corporation that makes a repurchase must comply with these requirements, even if every repurchase is eligible for a statutory exception (for example, in the case of repurchases by a regulated investment company or a real estate investment trust) or is offset by issuances.

Under proposed § 58.6011–1(b), the stock repurchase excise tax return would include the Form 720, on which the stock repurchase excise tax liability would be reported, and an attached Form 7208, *Excise Tax on Repurchase of Corporate Stock,* on which the stock repurchase excise tax would be calculated. Proposed § 58.6001–1(b) provides that the IRS may require any covered corporation or person treated as a covered corporation, to make such returns, render such statements, or keep such specific records as to enable the IRS to determine whether the covered corporation or person treated as a covered corporation is liable for the stock repurchase excise tax. The records that would be required to be maintained would need to be available for inspection by the IRS and retained for so long as their contents may become material. *See* proposed § 58.6001–1(c).

Under proposed § 58.6061–1(a), the person required to file the stock repurchase excise tax return would be required to sign that return in accordance with the applicable forms and their corresponding instructions, and the signature would be prima facie evidence that the individual is authorized to sign the stock repurchase excise tax return. In addition, proposed § 58.6065–1(a) would provide that any person signing a stock repurchase excise tax return is required to include a written declaration that the return is made under penalties of perjury when required by the return or the forms or their corresponding instructions.

II. Time and Place for Filing Return and Paying Tax

With respect to a covered corporation or person treated as a covered corporation, with a taxable year ending after December 31, 2022, and on or before the date of publication of final regulations in the **Federal Register**, proposed § 58.6071–1(c) would require the stock repurchase excise tax return for such taxable year to be filed by the due date of the Form 720 for the first full calendar quarter after the date of publication of final regulations in the **Federal Register**.

For example, if a covered corporation had a taxable year ending December 31, 2023, and if the date of publication of final regulations in the **Federal Register** were September 16, 2024, the covered corporation would be required to file the stock repurchase excise tax return for its 2023 taxable year by January 31, 2025 (the due date of the Form 720 for the calendar quarter ending December 31, 2024).

Proposed § 58.6071–1(a) generally would require the stock repurchase excise tax return to be filed by the due date of the Form 720 for the first full calendar quarter after the taxable year of the covered corporation or person treated as a covered corporation ends. This rule would be applicable for taxable years ending after the date of publication of final regulations in the **Federal Register**.

For example, if a covered corporation had a taxable year ending December 31, 2024, and if the date of publication of final regulations in the **Federal Register** were September 16, 2024, the covered corporation would be required to file the stock repurchase excise tax return for its 2024 taxable year by April 30, 2025 (the due date of the Form 720 for the calendar quarter ending March 31, 2025). Proposed § 58.6091–1(a) and (b) would require the stock repurchase excise tax to be filed at the place specified in the instructions applicable to Form 720 or, if the return is hand-carried, with any person assigned the responsibility to receive hand-carried returns in the local IRS office that serves the principal place of business, principal office, or agency of the taxpayer. In exceptional cases, proposed § 58.6091–1(c) would provide that the Commissioner of Internal Revenue (Commissioner) would be able to permit the filing of the stock repurchase excise tax return in any local IRS office. Full payment of the stock repurchase excise tax liability would be required to accompany the filed stock repurchase excise tax return. *See* proposed § 58.6151–1(a).

A covered corporation or a person treated as a covered corporation that is required to file a stock repurchase excise tax return or pay the stock repurchase excise tax but does not timely file such return or pay such tax may be subject to additions to tax under section 6651 and § 301.6651–1.

III. Tax Return Preparers

Proposed § 58.6107–1(a) would require a person who is a signing tax return preparer (as defined in § 301.7701–15(b)(1) of the Procedure and Administration Regulations) of any stock repurchase excise tax return or claim for refund of the stock repurchase excise tax to furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107–1 of the Income Tax Regulations (26 CFR part 1).

Proposed § 58.6109–1(a) would require each stock repurchase excise tax return or claim for refund of the stock repurchase excise tax prepared by one or more signing tax return preparers to include the identifying number of the preparer required by § 1.6695–1(b) to sign the return or claim for refund in the manner stated in § 1.6109–2.

In addition, proposed § 58.6060–1(a) would require a person that engages or employs one or more signing tax return preparers to prepare a stock repurchase excise tax return or claim for refund of the stock repurchase excise tax (other than for the person itself) to satisfy the recordkeeping and inspection requirements in § 1.6060–1.

These proposed regulations also would provide certain rules relating to penalties that may be assessed against tax return preparers under sections 6694, 6695, and 6696. Under proposed § 58.6694–1(b) and (c), a person who is a tax return preparer of any stock repurchase excise tax return or claim for refund of the stock repurchase excise tax would be subject to penalties under section 6694(a) for an understatement of liability due to an unreasonable position or under section 6694(b) for an understatement of liability due to willful or reckless conduct.

Under proposed § 58.6695–1(a), a person who is a tax return preparer of any stock repurchase excise tax return or claim for refund of the stock repurchase excise tax would be subject to penalties for: (1) a failure to furnish a copy of the tax return or claim for refund to the taxpayer under section 6695(a); (2) a failure to sign the return under section 6695(b); (3) a failure to furnish an identifying number under section 6695(c); (4) a failure to retain a copy or list under section 6695(d); (5) a failure to file a correct information return under section 6695(e); or (6) endorsing or negotiating any check issued to the taxpayer under section 6695(f).

Lastly, proposed § 58.6696–1(a) would require a claim for credit or refund of a penalty assessed against a tax return preparer under section 6694 or 6695 (or the corresponding regulations) to be made in the manner set forth in § 1.6696–1.

Proposed Applicability Date

Proposed § 58.6001–1 would be applicable to repurchases, adjustments, or exceptions required to be shown in any stock repurchase excise tax return required to be filed after the date of publication of final regulations in the **Federal Register**. Proposed §§ 58.6011–1, 58.6060–1, 58.6061–1, 58.6065–1, 58.6071–1, 58.6091–1, 58.6107–1, 58.6109–1, 58.6151–1, 58.6694–1, 58.6695–1, and 58.6696–1 would be applicable to stock repurchase excise tax returns and claims for refund required to be filed after the date of publication of final regulations in the **Federal Register**.

Statement of Availability for IRS Documents

Any IRS Revenue Procedure, Revenue Ruling, Notice, or other guidance cited in this preamble is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that a Federal agency obtain the approval of Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

The collections of information in these proposed regulations contain reporting and recordkeeping requirements in §§ 58.6001–1 and 58.6011–1 necessary for the IRS to accurately determine the stock repurchase excise tax due. The collection of information is required by law to comply with the provisions of section 4501 of the Code as enacted by section 10201 of the IRA. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The recordkeeping requirements mentioned within these proposed regulations are considered general tax records under section 6001. These records are required for the IRS to validate that taxpayers have met the regulatory requirements. For PRA purposes, general tax records are already approved by OMB under 1545–0123 for business filers and 1545–0074 for individual filers.

The reporting requirements, including the written penalty of perjury statement, will be covered within Form 7208 and its instructions. The IRS is seeking OMB approval and requesting a new OMB control number for Form 7208 in accordance with the procedures outlined in 5 CFR 1320.10.

These proposed regulations mention reporting, third-party disclosures, and recordkeeping requirements for tax preparers. These proposed regulations are not changing the requirements contained within § 1.6107–1, which is included in 1545–1231.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations provide specific administrative, procedural, and recordkeeping rules that would apply only to certain tax return preparers and to publicly traded corporations, which tends to consist of larger businesses. Specifically, based on data available to the IRS, for tax year 2021, 4,366 corporations reported publicly traded common stock. Of those corporations, 2,407 (over 55 percent) reported gross receipts over $100 million, and 3,272 (approximately 75 percent) reported gross receipts over $10 million. Meanwhile, for tax year 2021, the IRS received 7,464,790 Corporation Income Tax Returns and 4,710,457 U.S. Returns of Partnership Income. IRS Publication 6292, Fiscal Year Projections for the United States: 2022–2029, Fall 2022, Table 2. Of these corporation and partnership returns for tax year 2021, 11,685,207 reported total assets below $10 million. Thus, the number of corporations affected by these proposed regulations that reported total assets below $10 million is less than one hundredth of one percent of the total number of businesses that reported total assets below $10 million for tax year 2021. Therefore, these proposed regulations will not create additional obligations for, or impose an economic impact on, a substantial number of small entities. Accordingly, the Secretary certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency (to the extent practicable and permitted by law) from promulgating any regulation that has federalism implications, unless the agency meets the consultation and

funding requirements of section 6 of the Executive order, if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law. This proposed 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.

Comments and Requests for a Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations and on forms related to the proposed regulations. All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to the IRS's public docket on *https://www.regulations.gov.*

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, a notice of the date and time for the public hearing will be published in the **Federal Register**. A telephonic option will remain available for those who prefer to attend or testify at a public hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these regulations is Samuel G. Trammell of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 58

Excise taxes, Stock repurchase excise tax, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 58, as proposed to be added elsewhere in this issue of the **Federal Register**, as follows:

PART 58—STOCK REPURCHASE EXCISE TAX

■ **Paragraph 1.** The authority citation for part 58 is revised to read as follows:

Authority: 26 U.S.C. 4501(f) and 7805.

Section 58.6001–1 also issued under 26 U.S.C. 6001;
Section 58.6011–1 also issued under 26 U.S.C. 6011(a);
Section 58.6060–1 also issued under 26 U.S.C. 6060(a);
Section 58.6061–1 also issued under 26 U.S.C. 6061(a);
Section 58.6065–1 also issued under 26 U.S.C. 6065;
Section 58.6071–1 also issued under 26 U.S.C. 6071(a);
Section 58.6091–1 also issued under 26 U.S.C. 6091(a);
Section 58.6107–1 also issued under 26 U.S.C. 6107;
Section 58.6109–1 also issued under 26 U.S.C. 6109(a);
Section 58.6151–1 also issued under 26 U.S.C. 6151;
Section 58.6694–1 also issued under 26 U.S.C. 6694;
Section 58.6695–1 also issued under 26 U.S.C. 6695;
Section 58.6696–1 also issued under 26 U.S.C. 6696.

■ **Par 2.** Add subpart B to read as follows:

Subpart B—Procedure and Administration

Sec.

Subpart B—Procedure and Administration

§ 58.6001–1 Notice or regulations requiring records, statements, and special returns.

(a) *In general.* Any covered corporation (as defined in section 4501(b) of the Internal Revenue Code (Code)), or any person treated as a covered corporation (as described in section 4501(d)(1)(A) or (d)(2)(A)), that makes a repurchase (as defined in section 4501(c)(1)), or that is treated as making a repurchase under section 4501(c)(2)(A), (d)(1)(B), or (d)(2)(B), must keep such complete and detailed records as are sufficient to establish accurately the amount of repurchases, adjustments, or exceptions required to be shown by the covered corporation or person treated as a covered corporation in any stock repurchase excise tax return (as defined in § 58.6011–1(b)).

(b) *Notice by IRS requiring returns, statements, or the keeping of records.* The Internal Revenue Service (IRS) may require any covered corporation or person treated as a covered corporation, by notice served upon such corporation or person, to make such returns, render such statements, or keep such specific records as will enable the IRS to determine whether or not such corporation or person is liable for tax under chapter 37 of the Code.

(c) *Retention of records.* The records required by this section must be kept at all times available for inspection by the IRS and must be retained for so long as the contents thereof may become material in the administration of any internal revenue law.

(d) *Applicability date.* This section applies to repurchases, adjustments, or exceptions required to be shown in any stock repurchase excise tax return required to be filed after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], and during taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

§ 58.6011–1 General requirement of return, statement, or list.

(a) *In general.* Any covered corporation (as defined in the Internal Revenue Code (Code), section 4501 (section 4501), subsection (b)), or any person treated as a covered corporation (as described in section 4501(d)(1)(A) or (d)(2)(A)), that makes a repurchase (as defined in section 4501(c)(1)), or that is treated as making a repurchase under section 4501(c)(2)(A), (d)(1)(B), or (d)(2)(B), after December 31, 2022, must file a stock repurchase excise tax return.

(b) *Stock Repurchase Excise Tax Return.* For purposes of this part, the term *stock repurchase excise tax return* means a Form 720, *Quarterly Federal Excise Tax Return,* with an attached Form 7208, *Excise Tax on Repurchase of Corporate Stock,* or any other forms, schedules, or statements prescribed by

the Commissioner for the purpose of making a return to report the tax under chapter 37 of the Code.

(c) *Special rules for multiple section 4501(d) covered corporations with respect to a covered surrogate foreign corporation.* For special rules applicable for persons treated as a covered corporation (as described in section 4501(d)(2)(A)) with respect to a covered surrogate foreign corporation (as defined in section 4501(d)(3)(B)), *see* § 58.4501–7(d)(2).

(d) *Applicability date.* This section applies to stock repurchase excise tax returns required to be filed after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], and during taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

§ 58.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that engages or employs one or more signing tax return preparers (as defined in § 301.7701–15(b)(1) of this chapter) to prepare a stock repurchase excise tax return (as defined in § 58.6011–1(b)) or claim for refund of tax under chapter 37 of the Internal Revenue Code, other than for the person, at any time during a return period, must satisfy the recordkeeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Applicability date.* This section applies to stock repurchase excise tax returns and claims for refund required to be filed after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], and during taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

§ 58.6061–1 Signing of returns and other documents.

(a) *In general.* Any stock repurchase excise tax return (as defined in § 58.6011–1(b)), statement, or other document required to be made with respect to the tax imposed by chapter 37 of the Internal Revenue Code (chapter 37) must be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such a return, statement, or other document is prima facie evidence that the individual is authorized to sign the return, statement, or other document.

(b) *Applicability date.* This section applies to stock repurchase excise tax returns, statements, or other documents that are required to be made with respect to the tax imposed by chapter 37 and required to be filed after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], and during taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

§ 58.6065–1 Verification of returns.

(a) *In general.* If either a stock repurchase excise tax return (as defined in § 58.6011–1(b)), statement, or other document made with respect to any tax imposed by chapter 37 of the Internal Revenue Code (chapter 37), or the related form and instructions, requires that such return, statement, or other document contain or be verified by a written declaration that it is made under the penalties of perjury, then it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or document submitted under any provision of chapter 37, subtitle F, or regulations under this part with respect to any tax imposed by chapter 37 may be required to contain or be verified by a written declaration that it is made under the penalties of perjury.

(b) *Applicability date.* This section applies to stock repurchase excise tax returns, statements, or other documents that are required to be made with respect to the tax imposed by chapter 37 and required to be filed after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], and during taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

§ 58.6071–1 Time for filing returns.

(a) *In general.* Except as provided in paragraph (c) of this section, a stock repurchase excise tax return required by § 58.6011–1(a) must be filed by the due date of the Form 720, *Quarterly Federal Excise Tax Return,* that is for the first full calendar quarter after the taxable year of the covered corporation, or person treated as a covered corporation (as described in the Internal Revenue Code (Code), section 4501 (section 4501), paragraph (d)(1)(A) or (d)(2)(A)), ends.

(b) *Example.* Corporation X is a covered corporation with a taxable year that ends on December 31. During its 2024 taxable year, Corporation X makes a repurchase within the meaning of section 4501(c)(1). Because Corporation X's taxable year ends in the fourth quarter of the calendar year, Corporation X must file a stock repurchase excise tax return reporting liability for the tax imposed by chapter 37 of the Code by the due date for a first-quarter Form 720 (that is, April 30, 2025).

(c) *Taxable years ending before date of publication of final regulations.* With respect to a covered corporation, or person treated as a covered corporation, with a taxable year ending after December 31, 2022, and on or before [EFFECTIVE DATE OF FINAL RULE], the stock repurchase excise tax return required by § 58.6011–1(a) for such taxable year must be filed by the due date of the Form 720 for the first full calendar quarter after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**]. If a covered corporation, or person treated as a covered corporation, has more than one taxable year ending after December 31, 2022, and on or before [EFFECTIVE DATE OF FINAL RULE], the covered corporation, or person treated as a covered corporation, should file a single Form 720 with two separate Forms 7208 (one for each taxable year) attached.

(d) *Example.* Corporation Y is a covered corporation with a taxable year ending December 31, 2023. During its 2023 taxable year, Corporation Y makes a repurchase within the meaning of section 4501(c)(1). If the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register** were September 16, 2024, Corporation Y would be required to file the stock repurchase excise tax return for its 2023 taxable year by the due date for a fourth-quarter Form 720 (that is, January 31, 2025).

(e) *Applicability date.* This section applies to stock repurchase excise tax returns required to be filed after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], and during taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

§ 58.6091–1 Place for filing tax returns under chapter 37 of the Internal Revenue Code.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, stock repurchase excise tax returns required by § 58.6011–1(a) must be filed in accordance with the instructions applicable to such returns.

(b) *Hand-carried returns.* Notwithstanding paragraph (a) of this section, stock repurchase excise tax returns that are filed by hand carrying must be filed with any person assigned

the responsibility to receive hand-carried returns in the local Internal Revenue Service (IRS) office that serves the principal place of business, principal office, or agency of the taxpayer.

(c) *Exceptional cases.* Notwithstanding paragraph (a) of this section, the Commissioner may permit the filing of any stock repurchase excise tax return in any local IRS office.

(d) *Applicability date.* This section applies to stock repurchase excise tax returns required to be filed after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], and during taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

§ 58.6107–1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer (as defined in § 301.7701–15(b)(1) of this chapter) of any stock repurchase excise tax return required by § 58.6011–1(a) or claim for refund of tax under chapter 37 of the Internal Revenue Code must furnish a completed copy of the stock repurchase excise tax return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Applicability date.* This section applies to stock repurchase excise tax returns and claims for refund required to be filed after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], and during taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

§ 58.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each stock repurchase excise tax return required by § 58.6011–1(a) or claim for refund of tax under chapter 37 of the Internal Revenue Code prepared by one or more signing tax return preparers (as defined in § 301.7701–15(b)(1) of this chapter) must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the stock repurchase excise tax return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Applicability date.* This section applies to stock repurchase excise tax returns and claims for refund required to be filed after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], and during taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

§ 58.6151–1 Time and place for paying of tax shown on returns.

(a) *In general.* The tax shown on any stock repurchase excise tax return required by § 58.6011–1(a) must, without assessment or notice and demand, be paid to the Internal Revenue Service at the time and place for filing such stock repurchase excise tax return. For provisions relating to the time and place for filing the stock repurchase excise tax return required under § 58.6011–1(a), *see* §§ 58.6071–1 and 58.6091–1.

(b) *Applicability date.* This section applies to payments of stock repurchase excise tax required to be paid after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], and during taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

§ 58.6694–1 Section 6694 penalties.

(a) *Penalties applicable to tax return preparer.* For general definitions regarding penalties under section 6694 of the Internal Revenue Code (section 6694) applicable to preparers of tax returns or claims for refund of tax under chapter 37 of the Code, *see* § 1.6694–1 of this chapter.

(b) *Penalties for understatement due to an unreasonable position.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 37 may be subject to penalties under section 6694(a) in the manner stated in § 1.6694–2 of this chapter.

(c) *Penalties for understatement due to willful, reckless, or intentional conduct.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 37 may be subject to penalties under section 6694(b) in the manner stated in § 1.6694–3 of this chapter.

(d) *Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.* The rules under § 1.6694–4 of this chapter, relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment, and collection of the penalties under sections 6694(a) and (b), apply to a tax return preparer who prepared a return or claim for refund for tax under chapter 37 of the Code.

(e) *Applicability date.* This section applies to returns and claims for refund filed, and advice provided, after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], and during taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

§ 58.6695–1 Other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 37 of the Internal Revenue Code (Code) may be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b), failure to furnish an identifying number under section 6695(c), failure to retain a copy or list under section 6695(d), failure to file a correct information return under section 6695(e), and endorsement or negotiation of a check under section 6695(f), in the manner stated in § 1.6695–1 of this chapter.

(b) *Applicability date.* This section applies to returns and claims for refund filed after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], and during taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

§ 58.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* The rules under § 1.6696–1 of this chapter apply to claims for credit or refund by a tax return preparer who prepared a return or claim for credit or refund for tax under chapter 37 of the Internal Revenue Code.

(b) *Applicability date.* This section applies to returns and claims for credit or refund filed, and advice provided, after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], and during taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2024–07118 Filed 4–9–24; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0253]

RIN 1625–AA00

Safety Zone; Annual Fireworks Displays Within the Sector Columbia River Captain of the Port Zone

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulations establishing safety zones for annual fireworks displays in the Captain of the Port Zone Columbia River. This action would include updating 12 existing safety zones, adding 2 safety zones for fireworks displays that were previously published under temporary regulations, and reordering the table alphabetically. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 13, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0253 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Carlie Gilligan, Sector Columbia River Waterways Management Division, U.S. Coast Guard; telephone 503–240–9319, email *SCRWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Coast Guard proposes to revise its regulation for recurring fireworks displays in the geographic boundaries of the Thirteenth Coast Guard District Sector Columbia River Captain of the Port (COTP) Zone, 33 CFR 165.1315. This proposed rule would update the name of 10 events, update the date or location of 2 events, add 2 safety zones for new, recurring fireworks displays that were previously published as temporary safety zones, and reorder the table alphabetically. The purpose of this revision is to provide the public accurate information regarding safety zones for annual fireworks displays in the Captain of the Port Zone Columbia River Zone.

The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034. The Captain of the Port Sector Columbia River has determined that fireworks displays create hazardous conditions for the maritime public because of the large number of vessels near the displays, as well as the noise, falling debris, and explosions that occur during the events. Because firework discharge sites pose a potential hazard to the maritime public, these safety zones are necessary to restrict vessel movement and reduce vessel congregation near firework discharge sites.

III. Discussion of Proposed Rule

The Coast Guard proposes to revise safety zone regulations designated in the table in 33 CFR 165.1315(a). Specifically, this rule would alphabetize the events, make minor updates to the names of 10 events, update the location of 1 event (Newport 4th of July), update the typical date of 1 event (The 4th of July at Pekin Ferry), and add two events (Umatilla Landing Days and City of Richland Lighted Boat Parade Festival).

The Umatilla Landing Days safety zone was previously issued as a temporary final rule (88 FR 32966, May 23, 2023), and after conferring with the event sponsor, the Coast Guard has learned it will be a recurring fireworks display. This safety zone would cover all navigable waters within a 400-foot radius of the fireworks launch site in Umatilla, OR, located at 45°55′37″ N, 119°19′47″ W.

On November 29, 2023, the Coast Guard announced the creation of a temporary safety zone for all navigable waters within a 600-foot radius of a fireworks display on the Columbia River for the City of Richland Christmas Fireworks display in Richland, WA, which ended December 2, 2023. A copy of the announcement is available in the Docket USCG–2024–0253, which can be found using instructions in the **ADDRESSES** section. After conferring with the event sponsor, the Coast Guard has learned it will become a recurring fireworks display. This new reoccurring safety zone would cover all navigable waters within a 600-foot radius of the fireworks launch site in Richland, WA, located at 46°16′29″ N, 119°16′10″ W.

Finally, the Coast Guard is revising twelve existing fireworks display safety zones. These revisions include updating the date for 4th of July at Pekin Ferry to more precisely describe when the fireworks display will occur, updating the location for Newport 4th of July, and making minor name updates to the following events: Brookings, OR July 4th Celebration; Port of Cascade Locks 4th of July Fireworks; Bald Eagle Days; City of Coos Bay July 4th Celebration/Fireworks Over the Bay; The Dalles Area Fourth of July; Ilwaco July 4th Committee Fireworks/Independence Day at the Port; Tri-City Chamber of Commerce Fireworks/Kennewick River of Fire Festival; City of Rainier/Rainier Days; City of St. Helens 4th of July Fireworks; and Cedco Inc./The Mill Casino Independence Day. These updates will eliminate confusion caused by the fireworks display safety zones listed in the 33 CFR 165.1315 table and any subsequently issued temporary safety zones resulting from changes to the dates or locations of the events. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of day of the events. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended,

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves safety zones lasting various times that would prohibit entry within defined areas. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0253 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.1315, revise and republish paragraph (a) to read as follows:

§ 165.1315 Safety Zone; Annual Fireworks Displays within the Sector Columbia River Captain of the Port Zone.

(a) *Safety zones.* The following areas are designated safety zones: Waters of the Columbia River and its tributaries, waters of the Siuslaw River, Yaquina River, Umpqua River, Clatskanie River, Tillamook Bay and waters of the Washington and Oregon Coasts, within a 450 yard radius of the launch site at the approximate locations listed in the following table:

TABLE 1 TO PARAGRAPH (a)

Event name (typically)	Event location	Date of event	Latitude	Longitude
Portland Rose Festival Fireworks	Portland, OR	One day in May or June	45°30′58″ N	122°40′12″ W
The 4th of July at Pekin Ferry	Ridgefield, WA	One day in June or July	45°52′07″ N	122°43′53″ W
Umatilla Landing Days	Umatilla, OR	One day in June	45°55′37″ N	119°19′47″ W
Astoria-Warrenton 4th of July Fireworks	Astoria, OR	One day in July	46°11′34″ N	123°49′28″ W
Bandon 4th of July	Bandon, OR	One day in July	43°07′29″ N	124°25′05″ W
Brookings July 4th Celebration	Brookings, OR	One day in July	42°02′39″ N	124°16′14″ W
Cascade Locks 4th of July Fireworks	Cascade Locks, OR	One day in July	45°40′15″ N	121°53′43″ W
Cathlamet Bald Eagle Days	Cathlamet, WA	One day in July	46°12′14″ N	123°23′17″ W
Clatskanie Heritage Days Fireworks	Clatskanie, OR	One day in July	46°6′17″ N	123°12′02″ W
Fireworks Over the Bay	Coos Bay, OR	One day in July	43°22′06″ N	124°12′24″ W
Florence Independence Day Celebration	Florence, OR	One day in July	43°58′09″ N	124°05′50″ W
Fort Dalles Fourth of July	The Dalles, OR	One day in July	45°36′18″ N	121°10′23″ W
Gardiner 4th of July	Gardiner, OR	One day in July	43°43′55″ N	124°06′48″ W
Garibaldi Days Fireworks	Garibaldi, OR	One day in July	45°33′13″ N	123°54′56″ W
Hood River 4th of July	Hood River, OR	One day in July	45°42′58″ N	121°30′32″ W
Huntington 4th of July	Huntington, OR	One day in July	44°18′02″ N	117°13′33″ W
Ilwaco Independence Day at the Port	Ilwaco, WA	One day in July	46°18′17″ N	124°02′00″ W
Independence Day at the Fort Vancouver	Vancouver, WA	One day in July	45°36′57″ N	122°40′09″ W
July 4th Party at the Port of Gold Beach	Gold Beach, OR	One day in July	42°25′30″ N	124°25′03″ W
Kennewick River of Fire Fireworks	Kennewick, WA	One day in July	46°13′37″ N	119°08′47″ W
Lincoln City 4th of July	Lincoln City, OR	One day in July	44°55′28″ N	124°01′31″ W
Newport 4th of July	Newport, OR	One day in July	44°37′31″ N	124°02′5″ W
Oaks Park Association 4th of July	Portland, OR	One day in July	45°28′22″ N	122°39′59″ W
Port Orford 4th of July Jubilee	Port Orford, OR	One day in July	42°44′31″ N	124°29′30″ W
Rainier Days in the Park	Rainier, OR	One day in July	46°05′46″ N	122°56′18″ W
Roseburg Hometown 4th of July	Roseburg, OR	One day in July	43°12′58″ N	123°22′10″ W
Splash Aberdeen Waterfront Festival	Aberdeen, WA	One day in July	46°58′40″ N	123°47′45″ W
St. Helens 4th of July Fireworks	St. Helens, OR	One day in July	45°51′54″ N	122°47′26″ W
The Mill Casino Independence Day	North Bend, OR	One day in July	43°23′42″ N	124°12′55″ W
Toledo Summer Festival	Toledo, OR	One day in July	44°37′08″ N	123°56′24″ W
Waldport 4th of July	Waldport, OR	One day in July	44°25′31″ N	124°04′44″ W
Washougal 4th of July	Washougal, WA	One day in July	45°34′32″ N	122°22′53″ W
Waterfront Blues Festival Fireworks	Portland, OR	One day in July	45°30′42″ N	122°40′14″ W
Waverly Country Club 4th of July Fireworks	Milwaukie, OR	One day in July	45°27′03″ N	122°39′18″ W
Westport 4th of July	Westport, WA	One day in July	46°54′17″ N	124°05′59″ W
Winchester Bay 4th of July Fireworks	Winchester Bay, OR	One day in July	43°40′56″ N	124°11′13″ W
Yachats 4th of July	Yachats, OR	One day in July	44°18′38″ N	124°06′27″ W
Astoria Regatta	Astoria, OR	One day in August	46°11′34″ N	123°49′28″ W
Oregon Symphony Concert Fireworks	Portland, OR	One day in August or September.	45°30′42″ N	122°40′14″ W
Leukemia and Lymphoma Light the Night Fireworks.	Portland, OR	One day in October	45°30′23″ N	122°40′4″ W
Veterans Day Celebration	The Dalles, OR	One day in November	45°36′18″ N	121°10′34″ W
City of Richland Lighted Boat Parade Fireworks	Richland, WA	One weekend in December.	46°16′29″ N	119°16′10″ W

* * * * *

Dated: April 6, 2024.

J.W. Noggle,

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

[FR Doc. 2024–07779 Filed 4–11–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0592; FRL–11872–01–R4]

Air Plan Approval; Georgia; Gasoline Dispensing Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia through the Georgia Department of Natural Resources (GA DNR), Environmental Protection Division (EPD), via a letter dated May 24, 2022. The revision seeks to remove the requirement for Enhanced Stage I Gasoline Vapor Recovery Systems (*i.e.,* Stage 1 EVR) at existing gasoline dispensing facilities (GDFs) in Catoosa, Richmond, and Walker counties. EPA is proposing to approve this change pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before May 13, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0592 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Weston Freund of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number for Mr. Freund is (404) 562–8773. Mr. Freund can also be reached via electronic mail at *freund.weston@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 3, 1978, EPA designated the Atlanta area [1] as nonattainment for the 1979 1-hour ozone National Ambient Air Quality Standards (NAAQS). *See* 43 FR 8962. This designation required Georgia to revise its ozone SIP for the Atlanta area pursuant to the Part D requirements of the CAA as amended in 1977 (1977 Act). To meet this requirement, Georgia submitted revisions for its ozone SIP and EPA approved them on November 24, 1981. *See* 46 FR 57486. Although Georgia calculated that it would achieve the ozone standard in the Atlanta area by December 31, 1982, the control strategy for ozone that EPA approved did not result in attainment. Consequently, on May 3, 1984, EPA notified the Governor of Georgia that pursuant to CAA section 110(a)(2)(H) of the 1977 Act the SIP was inadequate to achieve the ozone NAAQS and issued a SIP call. *See* 49 FR 18827. Georgia responded by submitting a final SIP revision to EPA on November 21, 1985. Georgia later submitted a modified SIP submittal to EPA on October 1, 1987, to resolve several deficiencies EPA identified in the November 21, 1985, submission. Although the modified submittal resolved many of the issues, several remained with respect to Georgia's volatile organic compounds (VOC) reasonably available control technology (RACT) rules that would require further submittals.

During the same time period that EPA reviewed Georgia's latest submittals to correct its ozone SIP deficiencies, Congress enacted the CAA Amendments of 1990 (November 15, 1990). The amended CAA section 182(b)(2) requires states to adopt RACT rules for VOC sources into their SIPs for all areas in ozone nonattainment areas that were classified as moderate or above. Specifically, CAA section 182(b)(2) requires RACT for: (1) sources covered by an existing control techniques guideline (CTG) (*i.e.,* a CTG issued prior to enactment of the 1990 amendments to the CAA); (2) sources covered by a post-enactment CTG; and (3) all major sources of VOCs not covered by a CTG (*i.e.,* non-CTG sources). Further, section 182(a)(2)(A) requires that all pre-enactment ozone nonattainment areas classified as marginal or above that retained the nonattainment designation fix any deficient RACT rules for ozone within 6 months of the date of classification under section 7511(a) of the CAA. For the areas in Georgia that were already classified as ozone nonattainment areas prior to promulgation of the CAA Amendments, this date was May 15, 1991.

Georgia submitted several SIP revisions to EPA on January 3, 1991, April 3, 1991, and September 30, 1991, to correct VOC RACT deficiencies. Included in these submittals was a revision to Rule 391–3–1–.02(2)(rr), *Gasoline Dispensing Facility,* changing it to comply with the RACT established in a 1975 CTG for addressing the control of VOC emissions from gasoline dispensing facilities.[2] EPA approved these revisions into the SIP on October 13, 1992. *See* 57 FR 46780. Prior to this approval however, EPA classified the Atlanta area as serious ozone nonattainment for the 1979 1-hour ozone NAAQS on November 6, 1991.[3] *See* 56 FR 56694. EPA added Cherokee and Forsyth counties to the 11 counties which were previously classified as nonattainment for the Atlanta area. *Id.* As a result, Georgia submitted further SIP revisions that included additional changes to Rule 391–3–1-.02(2)(rr) on November 15, 1993, and June 17, 1996, that were approved into the SIP on March 26, 1999. *See* 64 FR 20186. Despite the approval, the 13-county area failed to attain the 1979 1-hour ozone NAAQS by November 15, 1999, the CAA deadline for serious ozone nonattainment areas.

EPA issued a final rulemaking action on September 26, 2003, to reclassify the

[1] The 11-county metro Atlanta area identified for the 1979 1-hour ozone NAAQS was comprised of Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry, Spaulding, and Rockdale counties in Georgia.

[2] *See* ''Design Criteria for Stage I Vapor Control Systems Gasoline Service Stations'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards Emission Standards and Engineering Division Research Triangle Park, EPA–450 (November 1975), available at: *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=20013S56.txt.*

[3] The revised 1979 Atlanta nonattainment area consisted of the following thirteen counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale counties.

Atlanta area to severe ozone nonattainment for the 1979 1-hour ozone NAAQS. *See* 68 FR 55469. Subsequently, based on monitoring data for the three-year period of 2002–2004, the Atlanta area attained the 1-hour ozone NAAQS and EPA redesignated the area to attainment. *See* 70 FR 34660 (June 15, 2005). Additionally, on April 30, 2004, EPA issued a final rulemaking action to revoke the 1979 1-hour ozone NAAQS, effective June 15, 2005. *See* 69 FR 23951.

On July 18, 1997, EPA established an 8-hour ozone NAAQS and subsequently designated areas. *See* 62 FR 38856. On April 30, 2004, EPA designated a 20-county area in and around metropolitan Atlanta as a marginal ozone nonattainment area for the 1997 8-hour ozone NAAQS.[4] *See* 69 FR 23858. Additionally, EPA identified counties in Georgia that were close to achieving the new standard and could do so sooner than mandated through additional control measure implementation. *Id.* These counties entered into an Early Action Compact (EAC), an agreement between State, local governments, and EPA to defer the effective date of a nonattainment designation in exchange for implementing measures in these counties not necessarily required by the Act to achieve cleaner air as soon as possible. Georgia submitted revisions to the SIP to accelerate attainment of the 1997 8-hour ozone NAAQS for the EAC counties. *See* 70 FR 50195 (August 26, 2005) and 70 FR 50199 (August 26, 2005). These actions included revisions to Rule 391–3–1–.02(2)(rr) that adopted Stage I vapor control measures for Richmond County (*See* 70 FR 50195) and Catoosa and Walker Counties (*See* 70 FR 50199) as a part of the Lower Savannah EAC and Chattanooga EAC, respectively.

Stage I vapor recovery requires the control of hydrocarbon gasoline vapors, such as VOCs, when dispensing gasoline from tanker trucks into gasoline storage tanks. Stage I vapor recovery systems capture vapors displaced from storage tanks at the GDFs during gasoline cargo truck deliveries. When gasoline is delivered into an above ground or underground storage tank, vapors that were taking up space in the storage tank are displaced by the gasoline entering the storage tank. The Stage I vapor recovery systems route these displaced vapors into the tank of the delivery truck. Some vapors are vented when the storage tank exceeds a specified pressure threshold; however, the Stage I vapor recovery systems greatly reduce the possibility of these displaced vapors being released into the atmosphere.

A Stage I EVR system in Georgia is a gasoline vapor recovery system that has a demonstrated efficiency of 98 percent vapor collection. *See* Rule 391–3–1–.02(2)(rr)15.(iv)(I). One way a system can meet this threshold is to be properly certified as meeting the currently applicable California Air Resources Board (CARB) Executive order for a Stage I EVR system. *Id.* In contrast, a basic Stage I vapor recovery system in Georgia must have a demonstrated efficiency of 95 percent vapor collection. *See* Rule 391–3–1–.02(2)(rr)15.(x)(II). The greater collection ability for Stage I EVR comes from improved pressure/vacuum vent valves.

EPA reclassified the Atlanta area as a moderate ozone nonattainment area on March 6, 2008 (73 FR 12013), because the area failed to attain the 1997 8-hour ozone NAAQS by the required attainment date of June 15, 2007. As a result of this reclassification, Georgia was required to amend its SIP to comply with the moderate area requirements under section 182(b) of the CAA. Georgia therefore submitted several SIP revisions to EPA that established RACT requirements for those major sources of VOC located in the Atlanta 8-hour ozone nonattainment area which EPA approved into the SIP on September 28, 2012. *See* 77 FR 59554. Included in these revisions were changes to Rule 391–3–1–.02(2)(rr) that expanded the applicability of the rule to seven additional counties (*i.e.,* Barrow, Bartow, Carroll, Hall, Newton, Spalding, and Walton) and also established a requirement for all existing and new GDFs to upgrade to, or install Stage I EVR. The amendment requiring Stage I EVR for existing facilities included a compliance date of May 1, 2012, for all of the counties in the Atlanta area as well as the seven new counties. Existing GDFs[5] in Catoosa, Richmond, and Walker counties were required to install a Stage I EVR system by May 1, 2023. Finally, any newly constructed or reconstructed facilities would be required to meet Stage I EVR requirements upon startup of the GDF. *See* Rule 391–3–1–.02(2)(rr)16.(vii) and (viii).

Since the SIP revision was finalized on September 28, 2012, the Atlanta area attained the 1997 8-hour ozone standard, and on December 2, 2013 (78 FR 72040), EPA redesignated the area to attainment. On March 12, 2008, EPA revised the 8-hour ozone NAAQS. *See* 73 FR 16436 (March 27, 2008). EPA designated a 15-county area in and around metropolitan Atlanta as a marginal ozone nonattainment area for the 2008 8-hour ozone NAAQS on April 30, 2012 (effective July 20, 2012).[6] *See* 77 FR 30088 (May 21, 2012). EPA reclassified the 2008 Atlanta area as a moderate ozone nonattainment area on May 4, 2016 (effective June 3, 2016), because the area failed to attain the 2008 8-hour ozone NAAQS by the required attainment date of July 20, 2015. *See* 81 FR 26697 (May 4, 2016). Subsequently, the area attained the 2008 8-hour ozone standard and EPA redesignated the area to attainment. *See* 82 FR 25523 (June 2, 2017).

On October 1, 2015, EPA again revised the 8-hour ozone NAAQS. *See* 80 FR 65292. EPA designated a 7-county area in and around metropolitan Atlanta as a marginal ozone nonattainment area for the 2015 8-hour ozone NAAQS on April 30, 2018 (effective August 3, 2018).[7] *See* 83 FR 25776 (June 4, 2018). Subsequently, the area attained the 2015 8-hour ozone standard and EPA redesignated the area to attainment. *See* 87 FR 62733 (October 17, 2022).

GA DNR submitted a SIP revision to EPA on May 24, 2022, seeking to remove the requirements for Stage 1 EVR at existing GDFs in Catoosa, Richmond, and Walker counties, as found in Georgia Rule 391–3–1–.02(2)(rr)16.(x), ''Gasoline Dispensing Facility—Stage I,'' from the Georgia SIP.[8]

Georgia's May 24, 2022, SIP revision contains a technical demonstration showing that removing Catoosa, Richmond, and Walker counties from the Stage I EVR requirements will not interfere with any applicable requirement concerning attainment of any NAAQS[9] or with any other

[4] The nonattainment area for the 1997 8-hour ozone standard consisted of the following counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton.

[5] Existing gasoline dispensing facility is defined as ''. . . any applicable gasoline dispensing facility with an approved Stage I Gasoline Vapor Recovery System that was in operation on or before April 30, 2008.'' *See* Rule 391–3–1–.02(2)(rr)15.(iv)(I).

[6] The nonattainment area for the 2008 8-hour ozone standard consisted of the following counties: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale.

[7] The nonattainment area for the 2015 8-hour ozone standard consisted of the following counties: Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry.

[8] EPA notes that the May 24, 2022, SIP revision was received by the Regional Office on May 25, 2022. For clarity, EPA will reference the submission by its letter date of May 24, 2022, throughout this document.

[9] The total suite of CAA criteria pollutants are ozone (nitrogen oxides (NO_X) and volatile organic compounds (VOCs) are ozone precursors), carbon monoxide (CO), sulfur dioxide (SO_2), particulate

Continued

applicable requirement of the CAA. EPA's rationale for proposing to remove Catoosa, Richmond, and Walker counties from the requirements for Stage I EVR at existing gasoline dispensing facilities is discussed in section II, below.

II. What is EPA's analysis of Georgia's submittal?

Section 110(l) of the CAA requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. EPA evaluates section 110(l) non-interference demonstrations on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets section 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated but for which EPA has not yet made designations. The degree of analysis focused on any NAAQS in a non-interference demonstration varies depending on the nature of the emissions associated with the proposed SIP revision. In connection with this May 24, 2022, SIP revision, Georgia submitted a non-interference demonstration.

At the time of the development of the May 24, 2022, SIP revision, the estimated number of ''Existing GDFs'' in Catoosa, Richmond, and Walker counties was 180.[10] All existing GDFs in Catoosa, Richmond, and Walker counties were required to adopt Stage I EVR by May 1, 2023. The State consulted with the EPD Mobile and Area Sources Program (Compliance Unit) and the EPD Underground Storage Tank Management Program to understand what removal of the Stage I EVR would entail if the requirement for it was removed. The State found that there is no incentive for existing GDFs to switch back to basic Stage I vapor control technology as it would require these facilities to spend additional money and halt business to access underground tanks to switch back to equipment that is becoming increasingly outdated in the industry. With no economic advantage for doing so, Georgia stated there would not be an increase in the number of facilities using basic Stage I vapor control technologies, and therefore, emissions will not increase as a result of removing this requirement for existing GDFs in these counties. EPA has evaluated the State's analysis and agrees with its findings and conclusions. Furthermore, the CAA does not require Stage I EVR for existing GDFs in these three counties because they are all in attainment for the ozone NAAQS, and the revision does not impact the Stage I EVR requirements for any newly constructed or reconstructed facilities.

Based on the analysis above, EPA is proposing to find that removal of the Stage I EVR requirements for existing GDFs in Catoosa, Richmond, and Walker counties meets the requirements of CAA section 110(l).

III. Incorporation by Reference

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in sections I and II of this preamble, EPA is proposing to incorporate by reference Georgia Rule 391–3–1–.02(rr), *Gasoline Dispensing Facility—Stage I,* state effective on October 25, 2021. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve Georgia's May 24, 2022, SIP revision. Specifically, EPA is proposing to approve the removal of the Stage I EVR requirements for existing GDFs in Catoosa, Richmond, and Walker Counties at Rule 391–3–1–.02(2)(rr).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rulemaking does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and

matter (PM) (NO_X, VOCs, ammonia, and SO_2 are PM precursors), lead (Pb), and nitrogen dioxide (NO_2).

[10] GA EPD estimated the number of existing GDFs using the Land Environmental Management Information Repository (*https://geos.epd.georgia.gov/GA/LEMIR/Public/Doc/LEMIR_User_Guide_v3.0_20160205.pdf*).

commercial operations or programs and policies.''

EPD did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 5, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–07703 Filed 4–11–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2022–0631; FRL–10786–01–R2]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; New Jersey; 2015 Ozone Infrastructure Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove certain elements of a State Implementation Plan (SIP) revision that New Jersey submitted to demonstrate that the State satisfies the infrastructure requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2015 8-hour Ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each State's air quality management program are adequate to meet the State's responsibilities under the CAA. Except as noted, this SIP revision satisfies the infrastructure requirements of the CAA for the 2015 ozone NAAQS.

DATES: Written comments must be received on or before May 13, 2024.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2022–0631 at *https://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Edward Linky, Environmental Protection Agency, Air Programs Branch, Region 2, 290 Broadway, New York, New York 10007–1866, at (212) 637–3764, or by email at *Linky.Edward@epa.gov.*

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What Action is the EPA Proposing?

The EPA is proposing to partially approve and partially disapprove elements of a SIP revision submitted by New Jersey on May 13, 2019, that address infrastructure SIP (iSIP) requirements for the 2015 8-hour ozone (2015 ozone) NAAQS. The EPA is proposing to approve the 2015 ozone infrastructure SIP revision for most elements. EPA is proposing to disapprove the portion of the submission that relates to prevention of significant deterioration (PSD). As explained more fully below, the disapproval portion of this action does not begin a new Federal Implementation Plan (FIP) clock, because the FIP is already in place.

This action does not address the portion of the submission pertaining to the interstate transport requirements of section 110(a)(2)(D)(i)(I) (otherwise known as the ''good neighbor'' provision) with respect to the 2008 ozone NAAQS or the 2015 ozone NAAQS, since each was addressed in a previous EPA rulemaking. *See* 87 FR 55692 (September 12, 2022) (addressing the good neighbor element of the 2008 ozone NAAQS) and 88 FR 9336, (February 13, 2023) (addressing the good neighbor element of the 2015 ozone NAAQS).

This action also does not address New Jersey's negative declaration, demonstrating that no facilities exist in the State that are applicable to the Control Techniques Guidelines (CTG) for the Oil and Natural Gas Industry, which was included in this submittal but was addressed in a separate EPA rulemaking. *See* 85 FR 29627 (May 18, 2020). As explained below, the EPA is proposing to find that the State has the necessary infrastructure, resources, and general authority to implement the 2015 ozone NAAQS, except where specifically noted.

The EPA is proposing to approve the New Jersey infrastructure SIP revision for the 2015 ozone NAAQS for section 110(a)(2) infrastructure elements with the exception of elements, or portions of elements, C, D, and J as explained below. The proposed approval of the other section 110(a)(2) elements of the iSIP is principally based on the New Jersey Department of Environmental Protection (NJDEP) having the authority and resources to develop, enforce and maintain that the elements of an iSIP are in conformance with the requirements

of the CAA section 110(a)(1) and (2). EPA proposes to disapprove the PSD portions of elements (C), D(i)(II), as well as D(ii), and J since New Jersey, even though it accepted delegation of, and implements, the Federal PSD program, does not have a SIP-approved PSD program and is under a Federal Implementation Plan (FIP). *See* 40 CFR 52.1603. This determination is explained in Section VI of this document.

II. Background

On October 1, 2015, the EPA promulgated a revision to the ozone NAAQS.[1] section 110(a)(1) of the CAA provides the procedural and timing requirements for SIPs. Section 110(a)(2) of the CAA lists specific elements that States must meet for SIP requirements related to a newly established or revised NAAQS. Sections 110(a)(1) and (2) of the CAA require, in part, that States submit to the EPA plans to implement, maintain and enforce each of the NAAQS promulgated by the EPA. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by States within three years after promulgation of a new or revised standard. The EPA refers to this type of SIP submission as the ''infrastructure'' SIP because the SIP ensures that States can implement, maintain and enforce the air standards.

On May 13, 2019, the NJDEP submitted to then Regional Administrator, Peter D. Lopez, a SIP revision that addresses infrastructure SIP requirements for the 2015 ozone NAAQS.[2] The submittal was deemed complete by operation of law. We propose to approve all elements of the submittal except a portion of Element (C), Elements (D)(i)(II) and (ii), and a portion of Element (J), which we propose to disapprove. New Jersey does not have a SIP-approved PSD program and therefore has not addressed the PSD permit program requirements of part C if title I of the CAA. The EPA recognizes, however, that New Jersey has elected to comply with the Federal PSD requirements by accepting delegation of the Federal rules and has been successfully implementing this program for many years. New Jersey is already subject to a FIP which incorporates by reference the Federal PSD provisions as codified in 40 CFR 51.21, with the exception of paragraph (a)(1), into the implementation plan for the State. 40 CFR 52.1603. If the proposed disapproval of these aspects of the submittal is finalized, no further action is necessary, beyond the FIP which is in place, until such time as NJDEP submits, and EPA approves, a revision to its SIP regarding the PSD portions of those elements. The 2015 submission states there is no change to the status of these elements, and thus those portions are being disapproved.

The EPA does not anticipate any adverse consequences to New Jersey if this proposed disapproval of the PSD related portions of New Jersey's 2015 ozone infrastructure SIP submittal is finalized. Mandatory sanctions would not apply to New Jersey under CAA section 179 because the failure to submit a PSD SIP is neither required under title I part D of the CAA, nor in response to a SIP call under section 110(k)(5) of the CAA. The EPA would not be subject to any further FIP duty because of the PSD FIP that has already been approved and that addresses the SIP deficiency.

III. What infrastructure elements are required under Sections 110(a)(1) and (2)?

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to ensure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures.
- Section 110(a)(2)(D): Interstate transport.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency powers.
- Section 110(a)(2)(H): Future SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- Section 110(a)(2)(K): Air quality modeling/data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

A description of how the State has met the requirements of these elements is more fully described in section VI.

IV. What is the EPA approach to review of infrastructure SIP submissions?

Due to the ambiguity of some of the language of CAA section 110(a)(2), the EPA believes it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[3] Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting State's SIP for facial compliance with statutory and regulatory requirements, not for the State's implementation of its SIP.[4] The EPA has other authority to address issues concerning a State's implementation of its SIP.

V. What did the State of New Jersey submit?

On May 13, 2019, New Jersey requested EPA review and approve a SIP submittal addressing infrastructure and transport requirements for CAA section 110(a)(1) and (2) for the 2015 ozone NAAQS; transport requirements for CAA section 110(a)(2) for the 2008 ozone NAAQS; and a negative declaration for the Oil and Natural Gas

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] As discussed in section I of this document, the May 2019 SIP submittal addressed infrastructure requirements related to section 110(a)(2)(D)(i)(I) (*i.e.,* good neighbor provision for the 2008 and 2015 ozone NAAQS, which EPA acted on separately. EPA finalized disapproval of the good neighbor provision for the 2008 ozone NAAQS. 87 FR 55692 (September 12, 2022). EPA finalized disapproval of the good neighbor provision for the 2015 ozone NAAQS. 88 FR 9336 (February 13, 2023). The May 2019 SIP submittal also included a negative declaration from the State that the Control Techniques Guidelines (CTG) for the Oil and Natural Gas Industry do not pertain to New Jersey since there are no source operations referenced in the CTG that are located in New Jersey. The EPA approved the State's negative declaration at 85 FR 29627 (May 18, 2020).

[3] The EPA explains and elaborates on these ambiguities and its approach to address them in its ''Guidance on State Infrastructure Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110 (a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[4] United States Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center* v. *Thomas,* 902 F.3d 971 (August 30, 2018).

Control Techniques Guidelines (CTG). The EPA is acting on the portion of the New Jersey SIP submittal that addresses infrastructure SIP requirements for the 2015 ozone NAAQS. As noted previously, the portion pertaining to the ''good neighbor'' provision with respect to the 2008 and 2015 ozone NAAQS and the negative declaration were addressed separately.

The New Jersey 2015 ozone NAAQS infrastructure SIP submission demonstrates how the State, where applicable, has plans in place that meet the requirements of section 110 (a)(1) and (2) for the 2015 ozone NAAQS.

The SIP submission includes a certification that the existing New Jersey SIP contains adequate provisions to address the requirements of the CAA section 110(a)(1) and (2), with the exception of section 110(a)(2)(D)(i)(I) for the ''good neighbor'' SIP, as it pertains to the 2015 ozone NAAQS. New Jersey certified in the submission that there has been no change in authority with respect to the infrastructure requirements for the NJDEP to regulate, carry-out and enforce the 2015 ozone NAAQS.

In its May 2019 submittal, the State indicated that the contents of the SIP remain the same as those approved for the New Jersey Multi-Pollutant Infrastructure SIP submitted to EPA on October 17, 2014 (2014 Multi-Pollutant iSIP), except for the changes described in ''Table 1: Changes to New Jersey's Infrastructure SIP'' of the May 2019 submittal, which include updates of existing rules. New Jersey's 2014 Multi-Pollutant iSIP submittal was approved by EPA. 83 FR 24661 (May 30, 2018).

The State's May 13, 2019, submittal is available within the electronic docket for today's proposed action at *www.regulations.gov.*

VI. How has the State addressed the elements of section 110(a)(1) and (2)?

The EPA's evaluation and rationale for proposing action on New Jersey's Infrastructure SIP for the 2015 ozone NAAQS is discussed below. The EPA notes that for the proposed approval of several elements of this action, which were also addressed in New Jersey's 2014 Multi-Pollutant iSIP and which New Jersey asserts are unchanged, EPA's rationale for approval is consistent.[5]

The State's submission and the EPA's analysis:

Element A—Emissions Limits and Other Control Measures

Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means, or techniques, and schedules for compliance. The submittal indicates that New Jersey has the necessary authority under the Air Pollution Control Act (APCA) at New Jersey Statutes Annotated (NJSA) 26:2C–8, 26:2C–9, and 26:2C–19, and has established enforceable limits for all criteria pollutants in its rules at NJAC 7:27.

Several times in its submittal New Jersey notes that it has adopted rule amendments that affect NJAC 7:27 and NJAC 7:27A certifies that these changes do not affect the State's ability to enforce control measures or regulate the modification and construction of any stationary source within the area covered by the SIP as necessary for the 2015 ozone NAAQS.[6]

The EPA has reviewed the authority identified by New Jersey in its submittal and is proposing to find that New Jersey has met the requirements of section 110(a)(2)(A) of the CAA with respect to the 2015 Ozone NAAQS based on the enforceable emission limits and other control measures identified.

Element B—Ambient Air Quality Monitoring Data System

Section 110(a)(2)(B) requires SIPs to include provisions to provide for the establishment and operation of ambient air quality monitors, to monitor, compile, and analyze ambient air quality data, and to make these data available to the EPA upon request.

New Jersey states that its authority related to Element B remains the same as that approved for the 2014 Multi-Pollutant iSIP. New Jersey identifies its authority at NJSA 26:2C–9.a, to conduct ambient air quality monitoring and to report the results.[7] New Jersey states that its annual air quality reports are posted on New Jersey's air quality monitoring internet site at *https://www.njaqinow.net.*

The EPA is proposing to find that New Jersey has met the requirements of section 110(a)(2)(B) of the CAA with respect to the 2015 Ozone NAAQS.

Element C—Programs for Enforcement of Control Measures and Construction or Modification of Stationary Sources

Section 110(a)(2)(C) requires states to have a plan that includes a program providing for enforcement of all SIP measures, regulation of minor sources and minor modifications, and the regulation of the modification and construction of any stationary source, including a program to meet Prevention of Significant Deterioration (PSD) of Air Quality. The three sub-elements of Element C are addressed below.

Enforcement of SIP Measures

Statewide enforcement of new and modified sources, minor modifications of minor sources, and major modifications in areas designated as an attainment area or as an unclassifiable area for the 2015 Ozone NAAQS, is required by title I of the Clean Air Act part C (Major Sources of Prevention of Significant Deterioration). New Jersey's submittal identifies N.J.S.A. 26:2C–9.b and 9.1 and N.J.S.A. 13:1D–9 as its authority for the creation of enforcement and permitting programs that meet CAA requirements. New Jersey's submittal further explains that the enforcement of all control measures, including the air permitting program for regulating stationary sources, is governed by N.J.S.A. 26:2C–19. New Jersey states that enforcement and permitting programs operate under rules designated in NJAC 7:27 and 7:27A. EPA proposes to find that New Jersey has adequate authority to conduct enforcement programs for the 2015 ozone NAAQS.[8]

Regulation of Minor Sources and Minor Modifications

New Jersey's submittal asserts that its authority at N.J.S.A. 26:2C–9.b and 9.1 and N.J.S.A. 13:1D–9 provide for the creation and enforcement and permitting programs that meet the CAA requirements. New Jersey's indicates that enforcement of all control measures, including the air permitting programs for regulation of stationary sources is governed by N.J.S.A. 26:2C–19. New Jersey's enforcement and permitting programs are operated under rules designated in NJAC 7:27 and NJAC 7:27A.

[5] *See* 83 FR 24661 (May 30, 2018).

[6] New Jersey states that the changes are related to Air Emission Control and Permitting Exceptions, Hazardous Air Pollutant Reporting Thresholds, and the Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Trading Program and the NO_X Budget Trading Program (50 NJR 454(a), January 16, 2018). New Jersey states that these changes are based on New Jersey's experience with Super Storm Sandy, updated data, and new methodologies to determine hazardous air pollutant (HAP) thresholds, changes in Federal requirements regarding State programs to address emissions of Nitrogen Oxides, and discussions New Jersey has held with community and environmental groups. New Jersey advises that rule amendments have also been adopted related to Tertiary Butyl Acetate (TBAC) emissions reporting, to ensuring consistency between major and minor permits, and for Gasoline Transfer Operations (49 NJR 3590(a), November 20, 2017).

[7] See 83 FR 24661.

[8] *See* 83 FR 24661 (May 30, 2018).

The minor source permitting aspect of section 110(a)(2)(C) is not governed by the three-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather due at the time that the nonattainment area plan requirements are due pursuant to CAA title I, part D, section 172. *See* ''Guidance on State Infrastructure Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110 (a)(2),'' Memorandum from Stephen D. Page, September 13, 2013. Therefore, we are not acting on this sub-element.

Preconstruction Permitting Program for Major Sources and Major Modifications

The preconstruction permitting program includes State regulations for both nonattainment and attainment or unclassifiable areas. The Permit program for nonattainment areas (known as ''nonattainment new source review'') is considered by the EPA as outside the scope [9] of infrastructure SIP actions and is not addressed in this action.

The preconstruction permitting program known as ''prevention of significant deterioration'' (PSD) is applicable when a major source located in an attainment area or unclassifiable area, for any criteria pollutant, is constructed or undergoes a major modification.

As NJDEP recognizes in the submittal, New Jersey does not have an approved State PSD preconstruction permitting program for major sources and major modifications. as required by part C of the CAA. New Jersey accepted delegation of the administration of the PSD program from EPA. As a result, EPA's regulations at 40 CFR 52.21 have been incorporated into New Jersey's applicable State plan. See 40 CFR 52.1603(b). New Jersey implements and enforces the Federal PSD program through the delegation agreement. New Jersey's delegated PSD program evaluates the impact of new or modified sources to prevent a violation of the NAAQS and meet the Federal PSD permitting requirements.

EPA is proposing to approve the portion of section 110(a)(2)(C) addressing enforcement with respect to the 2015 ozone NAAQS. EPA is not acting on the minor source permitting aspect of section 110(a)(2)(C) as is not governed by the three-year submission deadline of section 110(a)(1) but is due at the time that the nonattainment area plan requirements are due pursuant to CAA section 172. Because New Jersey does not have a SIP approved PSD program, the EPA is proposing to disapprove the portion of section 110(a)(2)(C) of the CAA addressing PSD.

Element D—Interstate Transport

CAA section 110(a)(2)(D) is divided into two subsections, section 110(a)(2)(D)(i) and section 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) requires SIPs to address four separate elements. Section 110(a)(2)(D)(i)(I) provides that each State's SIP must include provisions prohibiting any source or other type of emissions activity in one State from contributing significantly to: (1) Nonattainment, or (2) interfering with maintenance of the NAAQS in another State (referred to as prongs 1 and 2 or ''good neighbor'' provision). Section 110(a)(2)(D)(i)(II) provides that each State's SIP must include provisions prohibiting any source or other type of emissions activity in one State emitting any pollutants in amounts which will interfere with measures required to (3) prevent significant deterioration of air quality or to (4) protect visibility in another State (referred to as prongs 3 and 4).

CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). CAA section 126 requires notification to neighboring states of potential impacts from a new or modified major stationary source and specifies how a State may petition the EPA when a major source or group of stationary sources in a State is thought to contribute to certain pollution problems in another State. CAA section 115 requires a State to revise its SIP to reduce pollution endangering public health and welfare in a foreign country, where EPA had made a finding that the State's SIP was inadequate.

CAA Section 110(a)(2)(D)(i)

In this action for New Jersey, with respect to CAA section 110(a)(2)(D)(i), the EPA is only addressing section 110(a)(2)(D)(i)(II), specifically prong 3 (*i.e.,* interference with PSD) and prong 4 (*i.e.,* to protect visibility). The EPA has addressed section 110(a)(2)(D)(i)(I) with respect to the 2015 ozone infrastructure SIP, as noted previously, in another action. *See* 88 FR 9336 (February 13, 2023).

New Jersey has certified that its already approved SIP contains provisions to adequately satisfy CAA section 110(a)(2)(D)(i)(II). New Jersey has indicated that there are no changes to how New Jersey previously addressed CAA section 110(a)(2)(D)(i)(II) as indicated in the State's 2014 Multi-Pollutant iSIP. The EPA finalized action on CAA section 110(a)(2)(D)(i)(II), prongs 3 and 4, for New Jersey's 2014 Multi-Pollutant iSIP at 81 FR 64070 (September 19, 2016). The EPA disapproved the portions of New Jersey's October 17, 2014, SIP submission addressing prong 3 based on the State not having an approved PSD program. However, the EPA approved the portions addressing prong 4 based on New Jersey's fully approved regional haze plan from the 1st implementation period, finalized January 3, 2012.

The State has not submitted any additional information regarding how it has satisfied section 110(a)(2)(D)(i)(II), prongs 3 and 4 for its 2015 ozone NAAQS infrastructure SIP.

Under section 110(a)(2)(D)(i)(II), (prong 3), SIPs are required to have provisions prohibiting emissions that would interfere with measures required to be in another state's SIP under part C of the CAA to prevent significant deterioration of air quality.

As discussed earlier in section VI, New Jersey's SIP is not approved with respect to the PSD permit program required by part C of the CAA. As a result, EPA's regulations at 40 CFR 52.21 have been incorporated into New Jersey's applicable State plan. 40 CFR 52.1603(b). New Jersey has been delegated authority by EPA to implement 40 CFR 52.21. Although New Jersey has been successfully implementing the program, a state's infrastructure SIP submittal cannot be considered for approvability with respect to prong 3 until EPA has issued final approval of that State's PSD SIP, or, alternatively, has issued final approval of a SIP that EPA has otherwise found adequate to prohibit interference with other State's measures to prevent significant deterioration of air quality. Therefore, EPA is proposing to disapprove New Jersey's 110(a) submission for the 2015 8-hour Ozone NAAQS for prong 3 of section 110(a)(2)(D)(i)(II) because New Jersey is currently subject to a FIP and does not have a PSD SIP. This disapproval will not trigger any sanctions or additional FIP obligation, since the FIP is already in place. This action will have no discernible effect on the current implementation of the PSD program in New Jersey, as the State is already

[9] *See* Guidance on State Infrastructure Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110 (a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

implementing a well-established PSD program through EPA delegation.

Regarding prong 4, the 2013 Guidance lays out how a State's infrastructure SIP may satisfy prong 4. In the 2nd implementation period, confirmation that the State has a fully approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309 will satisfy the requirements of prong 4.[10] New Jersey addresses its visibility protection requirements for the 2015 Ozone NAAQS through its regional haze SIP submittals. To address regional haze visibility impairment, the EPA promulgated the Regional Haze Rule on July 1, 1999 (64 FR 35714, July 1, 1999), which was then amended in 2017 (82 FR 3078, January 10, 2017). The Regional Haze Rule specifically requires States to periodically submit SIPs to the EPA to ensure that emissions from sources within the State are not interfering with measures to protect visibility in Class I Federal areas both within their State and downwind of their State.[11]

New Jersey submitted its regional haze SIP for the first implementation period to the EPA on July 28, 2009.[12] The EPA published approval of New Jersey's regional haze first implementation period SIP submission on January 3, 2012 (77 FR 19, January 3, 2012). The first implementation period of the regional haze program ran from 2007 through 2018.

On March 26, 2020,[13] New Jersey submitted a revision to the SIP to address its regional haze obligations for the second implementation period, which runs through 2028. The EPA published approval at 88 FR 78650 (November 16, 2023).

The regional haze rule requires that a State participating in a regional planning process include all measures necessary to achieve its apportionment of emission reduction obligations agreed upon through that process.[14] States are also required to consult with States to develop coordinated emission management strategies that contain the emission reductions necessary for visibility improvement.[15] Each State must then include in their regional haze SIP submission all measures agreed to during the state-to-state consultations, or an equivalent regional planning process.[16] In the EPA's approval of New Jersey's Regional Haze Plans, the EPA has determined that the plans contain both New Jersey's apportionment of emission reductions that were determined to be reasonable in the first implementation period for the State through the regional planning process, and that New Jersey has demonstrated that it included in its second implementation period measures that were the result of a coordinated emission management strategy that will provide for visibility improvement. Overall, New Jersey's Regional Haze Plans ensure that emissions from the State would not interfere with the reasonable progress goals for Class I areas that New Jersey's emissions are expected to impact. Thus, New Jersey's approved regional haze SIPs from the 1st and 2nd planning periods ensure that emissions from sources within the State are not interfering with measures to protect visibility in other States. Therefore, EPA proposes to find for the 2015 8-hour ozone NAAQS that New Jersey satisfies the section 110(a)(2)(D)(i)(II) requirement for visibility (prong 4).

CAA Section 110(a)(2)(D)(ii)

New Jersey has certified that its already approved SIP contains provisions to adequately satisfy CAA section 110(a)(2)(D)(ii). New Jersey has indicated that there are no changes to how New Jersey previously addressed CAA section 110(a)(2)(D)(ii) as indicated in the State's 2014 Multi-Pollutant iSIP that was submitted to the EPA on October 17, 2014.

The EPA finalized action on elements of New Jersey's 2014 Multi-Pollutant iSIP at 83 FR 24661 (May 30, 2018). However, as previously indicated, the EPA did not take action on the PSD portions of section 110(a)(2)(C), 110(a)(2)(J), and 110(a)(2)(D) in that action. As explained in the EPA's proposed approval[17] of New Jersey's 2014 Multi-Pollutant iSIP at 83 FR 8818, the EPA found New Jersey's October 17, 2014, infrastructure submittal administratively and technically complete in accordance with 40 CFR part 51, appendix V, except for the portions addressing the infrastructure elements in section 110(a)(2)(C), 110(a)(2)(D)(i (II), 110(a)(2)(D)(ii) relating to the permitting program for PSD, and 110(a)(2)(J). As a result of the incompleteness finding,[18] the EPA did not take action on the PSD portions of section 110(a)(2)(C), 110(a)(2)(J), and 110(a)(2)(D)(ii) and stated that it would not do so until New Jersey submits a SIP to address the PSD permit program requirements of part C of title I of the CAA.

As discussed earlier in this section, the 2015 8-hour ozone infrastructure SIP was determined complete by operation of law. The EPA is therefore taking action on section 110(a)(2)(D)(ii) for the 2015 8-hour ozone infrastructure SIP.

Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement). Section 126(a) requires new or modified major sources to notify neighboring States of potential impacts from the source. Sections 126(b) and 126(c) of the CAA address requirements applicable to State petitions to the EPA concerning a major source or group of sources emitting prohibited amounts of air pollutants which will contribute significantly to nonattainment or interfere with maintenance of the NAAQS in another State. Section 115(a) and 115(b) address requirements applicable to State plans requiring revisions to reduce the air pollutants endangering public or welfare in a foreign country.

In accordance with NJAC 7:27–22.11(k), New Jersey sends communications to all nearby States (Maryland, Pennsylvania, New York, and Connecticut) regarding all T itle V operating permit actions, which include all PSD permits and New Source Review (NSR) permits for new or modified sources.

New Jersey has no source or sources within the State that are the subject of an active finding under section 126 of the CAA with respect to the 2015 8-hour ozone NAAQS. Additionally, there are no final findings under section 115 of

[10] The EPA acknowledges that in the 2013 Guidance, we indicate that the EPA may find it appropriate to supplement the guidance regarding the relationship between regional haze SIPs and prong 4 after second implentation period SIPs become due, which occurred on July 31, 2021. After a review of the 2013 guidance and the second implementation period regional haze requirements, the EPA maintains the interpretation that a fully approved regional haze SIP satisfies Prong 4 requirements in the second implentation period.

[11] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA section 162(a). In accordance with section 169A of the CAA, the EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). When we use the term ''Class I area'' in this action, we mean any one of the 156 ''mandatory Class I Federal areas'' where visibility has been identified as an important value.

[12] New Jersey supplemented its SIP submission on December 9, 2010, March 2, 2011, and December 7, 2011.

[13] New Jersey supplemented its SIP submission on September 8, 2020, and April 1, 2021.

[14] 40 CFR 51.308(d)(3)(ii), (iii).

[15] *Id.* at (f)(2)(ii).

[16] *Id.* at (f)(2)(ii)(A).

[17] *See* 83 FR 24661 (May 30, 2018).

[18] The EPA sent a letter to NJDEP notifying them of the determination on October 28, 2014.

the CAA against New Jersey with respect to the 2015 ozone NAAQS.

Although New Jersey has no pending obligations under section 115 or 126(b), the State relies on the Federal PSD program requirements of 40 CFR 52.21(q), (which provides for notification of affected State and local air agencies) to satisfy the notification requirements under section 126(a) of the CAA. As such, New Jersey's program is considered technically deficient and not approvable. Therefore, we are proposing to disapprove New Jersey's submission for infrastructure element section 110(a)(2)(D)(ii) for the 2015 8-hour ozone NAAQS. This disapproval will not trigger any sanctions or additional FIP obligation, since the FIP is already in place.

Element E—Adequate Resources and Authority, Conflict of Interest and Oversight of Local Governments and Regional Agencies

Section 110(a)(2)(E) requires each State to provide necessary assurances that the State will: (i) Have adequate personnel, funding, and authority under State law to carry out the SIP (and is not prohibited by any provision of Federal or State law from carrying out the SIP or portion thereof), (ii) will comply with the requirements respecting State boards under CAA section 128, and (iii) where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the State has responsibility for ensuring adequate implementation of such SIP provision.

In its submittal, New Jersey states that this element of the SIP is unchanged from New Jersey's 2014 Multi-Pollutant iSIP submittal that EPA previously approved.[19] New Jersey cites NJSA 13:1D–9 to demonstrate that it meets the requirements of section 110(a)(2)(E)(i). In addition, NJSA 26:2C–9.b(6) enables New Jersey to receive funds from Federal, State and interstate bodies for the study and control of air pollution.[20]

New Jersey also meets the requirements of section 110(a)(2)(E)(ii). Since NJDEP does not have any State boards to approve permits or enforcement orders, and NJDEP's Commissioner is responsible for such actions, CAA section 128(a)(1) is not applicable to NJDEP. With respect to CAA section 128(a)(2), New Jersey submitted for approval into the SIP applicable sections of the New Jersey's Conflicts of Interest Law, specifically NJSA 52:13D–14 and 52:13D–16(a) and (b) and 52:13D–21(n), necessary to substantively meet the requirements of CAA section 128(a)(2) that deal with conflict of interest.

To address delegation of authority, section 110(a)(2)(E)(iii), New Jersey identified the specific organizations that will participate in developing, implementing, and enforcing the plan and the responsibilities of such organizations.[21]

The EPA proposes to approve the New Jersey submittal pursuant to section section 110(a)(2)(E) with respect to the 2015 Ozone NAAQS.

Element F—Stationary Source Monitoring and Reporting

Section 110(a)(2)(F) requires States to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. New Jersey's submittal notes that both major and minor sources are required to monitor and report emissions.

The NJDEP has authority, pursuant to NJSA 26:2C–9.2, to require emissions testing from stationary sources, pursuant to NJSA 26:2C–9 and specifically NJSA 26:2C–9.b(3) to require emission statement reports from stationary sources, and NJSA 26:2C–9.b(4) to requires emission information to be made available to the public. Based on the State's legal authority at NJSA 26:2C–9 and the State's regulatory requirements for stationary sources to monitor and report emissions at NJAC 7:27–8 (for minor sources) and NJAC 7:27–22 (for major sources) and at NJAC 7:27–21 to require the submission of annual emission statements from major sources), EPA is proposing to find that New Jersey has met the requirements of section 110 (a)(2)(F).

Based on New Jersey's certification that the updated regulations, NJAC 7:27–8 and 7:27–22, do not affect the State's ability to enforce control measures or regulate the modification and construction of stationary sources within the areas covered by the SIP as necessary for the 2015 ozone NAAQS, and consistent with EPA's previous approval of Element F,[22] the EPA proposes to approve the New Jersey submittal pursuant to section 110(a)(2)(F) with respect to the 2015 Ozone NAAQS.

Element G—Emergency Powers

Section 110(a)(2)(G) requires States to provide for emergency authority to address activities causing imminent and substantial endangerment to public health and requires States to submit adequate contingency plans to implement the emergency episode provisions in their SIPs. The EPA requires that Infrastructure SIP submittals meet the applicable contingency plan requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (''Prevention of Air Pollution Emergency Episodes''). Subpart H requires States that have air quality control regions identified as either Priority I, Priority IA, or Priority II to develop emergency episode contingency plans.

New Jersey continues to be required to prepare emergency episode contingency plans for the 2015 ozone NAAQS, which is required [23] for Priority I areas for ozone. EPA's review of ambient air monitoring data since the previous approval of Element G indicates that since 2018, the 1-hour maximum measured, certified and quality assured values (1-hour varies from 0.070ppm to 0.135ppp ppm) was above the threshold level for ozone (0.10 ppm 1-hour maximum) for Priority I areas.

In its submittal, New Jersey certified there is no change to this element. EPA notes that New Jersey's authority continues to be provided in New Jersey's Air Pollution Emergency Control Act (NJSA 26:2C–26 *et seq.*), which is implemented through NJAC 7:27–12, as incorporated into the SIP, and contains New Jersey's emergency episode contingency plans. The emergency criteria levels are used by the State in announcing air pollution alerts, warnings or emergencies.[24]

Based on this submittal and consistent with EPA's previous approval of Element G,[25] the EPA proposes to approve the New Jersey submittal pursuant to section 110(a)(2)(G) with respect to the 2015 Ozone NAAQS.

Element H—Future SIP Revisions

This section requires that a State's SIP provide for revision as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate. The NJDEP is provided the authority by NJSA 13:1D–9 to formulate comprehensive policies ''for the conservation of the natural resources of the State.'' EPA proposes to find that the State has adequate authority to develop and implement plans and programs that fulfill the requirements of this section.

[19] See 83 FR 24661 (May 30, 2018).

[20] *Id.*

[21] See New Jersey's County Environmental Health Act (CEHA), N.J.S.A. 26:3A2–21.

[22] *See* 83 FR 24662.

[23] *See* 40 CFR 51.150. New Jersey.

[24] *See* 83 FR 24662.

[25] *See,* 83 FR 24662.

In its SIP submittal, New Jersey certifies that there is no change to this element. Based on New Jersey's submittal and, consistent with EPA's prior approval of Element H,[26] the EPA proposes to approve the New Jersey submittal pursuant to section 110(a)(2)(H) with respect to the 2015 Ozone NAAQS.

Element J—Consultation With Government Officials, Public Notification, and PSD and Visibility Protection

In its SIP submittal, New Jersey certifies that there is no change to this element. Section 121 requires a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements. NJSA 26:2C–8 provides the NJDEP with the power to formulate and promulgate codes, rules and regulations preventing, controlling and prohibiting air pollution provided that the public has an opportunity to comment during the public participation process. Further, New Jersey has created a Clean Air Council (NJSA 26:2C–3.2–3.3) which includes members from various associations including the New Jersey State League of Municipalities and New Jersey Freeholder's Association. EPA proposes that New Jersey has adequate authority to meet the requirements of this subsection.

The NJDEP has procedures in place to notify the public when air quality standards deteriorate and exceed the NAAQS. It maintains a website which provides information on current air quality status, air quality forecasts, monitoring information, reports and pertinent information related to air quality readings. NJDEP participates with surrounding States in submitting and compiling air quality data and making this information available to press, news outlets, State websites and through the use of EPA's air notification system, EnviroFlash. EPA is proposing to find that New Jersey has adequate procedures for notifying the public of air quality concerns and disseminating information on ways to avoid health problems and reduce exposure when necessary. EPA proposes to find that New Jersey has adequate authority, under NJSA 13:1D–9, to carry out its SIP obligation.

New Jersey is currently subject to a PSD FIP. The approvability of a State's PSD program in its entirety is essential to the approvability of the PSD sub-element of Element J. EPA is therefore proposing to disapprove the PSD sub-element of Element J. This disapproval will not trigger any sanctions or additional FIP obligation, since the FIP is already in place. This action will have no discernible effect on the current implementation of the PSD program in New Jersey, as the State is already implementing a well-established PSD program through EPA delegation.

EPA is not addressing the section 110(a)(2)(J) sub-element related to visibility. According to EPA's interpretation, there are no newly applicable visibility protection obligations pursuant to Element J after the promulgation of a new or revised NAAQS.[27]

Element K—Air Quality Modeling and Submission of Modeling Data

Section 110(a)(2)(K) requires that SIPs provide for air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutants and submission of such data to EPA upon request. In its submittal New Jersey certifies that this element of the SIP is unchanged from New Jersey's 2014 Multi-Pollutant iSIP previously approved by EPA.

EPA proposes to find that New Jersey's regulations provide for performance of air-quality modeling, including modeling for attainment plans, permits and redesignation requests. NJAC 7:27–8.5 and 7:27–22.8. New Jersey has broad statutory authority under NJSA 13:1D–9 and NJSA 2C–8 and 2C–19. EPA proposes to find that the State has adequate authority to perform air quality modeling that fulfills the requirements of this section.

Element L—Permitting Fees

This section requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit. New Jersey certifies that this element of the SIP is unchanged from New Jersey's 2014 Multi-Pollutant iSIP previously approved by EPA. Effective November 30, 2001, EPA granted full approval to New Jersey's title V Operating Permit Program. 66 FR 63168 (December 5, 2001). New Jersey's operating permits regulation, at NJSA 7:27–22, contains specific detailed provisions for assessing permit fees (contained in NJAC 7:27–22.31). The authority to require these fees in subchapter 22 is provided by NJSA 26:2C–9.b.(7), NJSA 26:2C–9.5 and NJSA 26:2C–9.6. NJDEP's infrastructure SIP submittal meets all the requirements of EPA's October 2013 infrastructure guidance for section 110(a)(2)(L).

Element M—Consultation and Participation by Affected Local Entities

To satisfy section 110(a)(2)(M), a SIP should provide for consultation and participation by affected local entities. New Jersey's submittal certifies that the authority for this element of the SIP is unchanged from the New Jersey 2014 Multi-Pollutant iSIP previously approved by the EPA.

New Jersey provides the opportunity for consultation and participation to local political subdivisions during the public comment period of a proposed State Implementation Plan. New Jersey's Air Pollution Control Act, NJSA 26:2C–8 and NJSA 52:14B–1 *et seq.* require a public process for any rulemaking.

VII. Environmental Justice Considerations

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review State choices, and approve those choices if they meet the minimum criteria of the Act.

On May 16, 2023, New Jersey provided a supplement to the SIP submission being proposed for approval with this rulemaking. The supplemental submission briefed the EPA on Environmental Justice (EJ) considerations within New Jersey by detailing the State's programs and initiatives addressing the needs of communities with EJ concerns that have been ongoing since 1998. Although New Jersey included environmental justice considerations as part of its SIP submittal, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation.

In its supplement, New Jersey discussed how the State has been addressing the needs of communities with EJ concerns since 1998, including assisting in the creation of the Environmental Equity Task Force, which later evolved into the Environmental Justice Advisory Council (EJAC). EJAC and its predecessor have held regular meetings that include EJ advocates and the New Jersey Department of Environmental Protection (NJDEP) to discuss and address environmental justice issues of concern.

New Jersey also noted that the State has implemented numerous initiatives, collaborations, Administrative Orders

[26] *See,* 83 FR 24662.

[27] ''Guidance on Infrastructure State Implementation (SIP) Elements Under Clean Air Act sections 110(a)(1) and (110(a)(2, Memorandum from Stephen D. Page, September 13, 2013, available at *https://www.epa.gov/sites/default/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf.*

and Executive orders to address the needs and concerns of overburdened communities. A timeline of New Jersey's implemented EJ actions, including both prior to and after the SIP submittal on May 13, 2019, was provided and is indicative of the State's continued attention to environmental justice issues.

New Jersey's Administrative Orders (AO) and Executive orders (E.O.) include the State's first EJ E.O. issued by Governor James E. McGreevey in 2004 (E.O. 96), an EJ E.O. issued by Governor Jon Corzine in 2009 (E.O.131), an EJ AO issued by NJDEP Commissioner Bob Martin in 2016 (AO 2016–08) and an EJ E.O. issued by Governor Phil Murphy in 2018 (E.O. 23). Notably, U.S. Senator for New Jersey, Cory Booker, introduced the first Federal EJ bill in 2017 (S.1996—Environmental Justice Act of 2017).

Additionally, New Jersey also created the ''What's In My Community'' [3] tool, a GIS-mapping web application that allows a user to see the air permits issued in their community. The tool also identifies overburdened communities, schools, hospitals, and emergency services. The public users can also see measurements from air monitors and generate a report when using the tool.

The EPA considered EJ when reviewing provisions contained within New Jersey's May 13, 2019, submission detailed above. However, the EPA determined that conducting a comprehensive EJ analysis was not necessary, as the CAA and its applicable implementing regulations neither prohibit nor require such an evaluation of EJ. Additionally, there is no evidence suggesting that this action contradicts the goals of E.O. 12898 or that it will disproportionately harm any specific group or have severe health or environmental impacts.

Consequently, the EPA expects that this action, which assesses whether New Jersey's SIP adequately addresses the infrastructure requirements of the CAA regarding the 2015 8-hour Ozone NAAQS, will generally have a neutral impact on all populations, including communities of color and low-income groups. At a minimum, this proposed action will not worsen air quality within the State.

In summary, the EPA concludes that this proposed rule will not disproportionately harm communities with EJ concerns. New Jersey voluntarily evaluated EJ considerations in its SIP submission, but the EPA's assessment of these considerations is provided for context, not as the basis for the action. The EPA is taking action under the CAA and independently of the State's EJ assessment.

VIII. What action is the EPA taking?

The EPA is proposing to approve New Jersey's May 13, 2019 SIP revision submittal, as fully meeting the infrastructure requirements for the 2015 8-hour ozone NAAQS for the following section 110(a)(2) elements and sub-elements: (A), (B), (C) (enforcement program only), (D)(i)(II) prong 4 (visibility), (E), (F), (H), (J) (consultation and public notification only), (K), (L), and (M) of the CAA.

The EPA is proposing to disapprove New Jersey's submittal for the 2015 8-hour ozone NAAQS section 110(a)(2) sub-elements: (C), prong 3 of (D)(i)(II), and (J) as they relate to the State's lack of a State adopted PSD program, as well as (D)(ii), which relates to interstate and international pollution abatement and PSD. However, these disapprovals will not trigger any sanctions or additional FIP obligation since a PSD FIP is already in place.

IX. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by State law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by State law.

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. This action does not impose additional requirements beyond those imposed by State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

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: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply in this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by State law.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The New Jersey Department of Environmental Protection (NJDEP) did consider environmental justice as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA's evaluation of the NJDEP's EJ considerations is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, and not as a basis of the action. The EPA is taking action under the CAA on bases independent of New Jersey's evaluation of environmental justice. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2024–07775 Filed 4–11–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2023–0057; FRL–11847–01–R4]

Air Plan Approval; North Carolina; Revision to Approved Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the North Carolina State Implementation Plan (SIP), submitted by the North Carolina Department of Environmental Quality (NCDEQ), Division of Air Quality, on December 19, 2022. The revision seeks to update the 2026 on-road and nonroad emissions inventories and safety margins, allocate a portion of the newly available 2026 safety margins in the 2008 8-hour Ozone Maintenance Plan to the 2026 nitrogen oxides (NO_X) and volatile organic compounds (VOC) motor vehicle emissions budgets (''budgets'') for the North Carolina portion of the Charlotte-Rock Hill, NC-SC bi-state Area (hereinafter referred to as the ''North Carolina portion of the Charlotte Maintenance Area'') to accommodate updates from the EPA Motor Vehicle Emissions Simulator (MOVES3) model. The SIP revision also revises the current 2026 budgets based on the MOVES3 updates and recalculates new available safety margins. NCDEQ's December 19, 2022, submission supplements the revised 2008 8-hour Ozone Maintenance Plan submitted by NCDEQ on July 16, 2020, and approved by EPA on August 25, 2021. EPA is proposing to approve North Carolina's December 19, 2022, SIP revision and deem the budgets adequate for transportation conformity purposes because they meet the applicable statutory and regulatory requirements.

DATES: Comments must be received on or before May 13, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2023–0057 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Dianna Myers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9207. Ms. Myers can also be reached via electronic mail at *myers.dianna@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is proposing to approve NCDEQ's December 19, 2022, SIP revision which updates the 2026 on-road and nonroad emissions inventories with the latest (at the time of NCDEQ's submission) approved EPA mobile emissions model, MOVES3, allocates a portion of the newly available safety margin, revises the 2026 NO_X and VOC budgets, and recalculates the available safety margins for the North Carolina portion of Charlotte 2008 8-hour Ozone Maintenance Area [1] for transportation conformity purposes.

If EPA finalizes this proposed approval, the revised 2026 NO_X and VOC budgets from NCDEQ's December 19, 2022, SIP revision will replace the existing budgets in the State's 2008 8-hour Ozone Maintenance Plan approved on August 25, 2021. *See* 86 FR 47387. If approved, these newly revised 2026 budgets must be used in future

[1] The North Carolina portion of the Charlotte Maintenance Area for the 2008 8-hour ozone national ambient air quality standards (NAAQS or standards) is comprised of the following counties: Mecklenburg County in its entirety and portions of Cabarrus, Gaston, Iredell, Lincoln, Rowan, and Union Counties. See section II.B. for more detail.

transportation conformity analyses for the Area according to the Transportation Conformity Rule. *See* 40 CFR 93.118. Therefore, the August 25, 2021, approved budgets would no longer be applicable for transportation conformity purposes.

In the State's submission, the emissions inventories for point and area sources from NCDEQ's July 16, 2020, SIP revision remain the same. This submission revises the 2026 on-road and nonroad emissions inventories and the NO_X and VOC safety margins using MOVES3. The revision also allocates a portion of the revised available safety margins to the 2026 NO_X and VOC budgets and recalculates new available safety margins. As explained below, EPA is proposing to conclude that North Carolina's December 19, 2022, SIP revision continues to demonstrate maintenance for the Charlotte Maintenance Area.

II. Background

A. SIP Budgets and Transportation Conformity

Under the Clean Air Act (CAA or Act), states are required to submit, at various times, control strategy SIP revisions and maintenance plans for nonattainment and maintenance areas for a given NAAQS. These emission control strategy SIP revisions (*e.g.,* reasonable further progress and attainment demonstration SIP revisions) and maintenance plans include budgets of on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars, trucks, and other on-road vehicles. The budgets are the portion of the total allowable emissions that are allocated to on-road-vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. The budgets serve as a ceiling on emissions from an area's planned transportation system.

Under section 176(c) of the CAA, transportation plans, transportation improvement programs (TIPs), and transportation projects must ''conform'' to (*i.e.,* be consistent with) the SIP before they can be adopted or approved. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or an interim milestone. The transportation conformity regulations can be found at 40 CFR parts 51 and 93.

Before budgets may be used in conformity determinations, EPA must affirmatively find the budgets adequate. However, adequate budgets do not supersede approved budgets for the same CAA purpose. If the submitted SIP budgets are meant to replace budgets for the same CAA purpose and year(s) addressed by a previously approved SIP revision, as is the case with this SIP revision, EPA may approve the revised SIP and budgets and also affirm that the budgets are adequate at the same time. Once EPA approves the submitted budgets, the revised budgets must be used by State and Federal agencies in determining whether transportation activities conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of budgets are set out in 40 CFR 93.118(e)(4).

B. Prior Approval of Budgets

Effective July 20, 2012, EPA designated the Charlotte-Rock Hill, NC-SC Area as Marginal nonattainment for the 2008 8-hour ozone NAAQS. The North Carolina portion of the Charlotte 2008 Maintenance Area includes Mecklenburg County in its entirety and portions of Cabarrus, Gaston, Iredell, Lincoln, Rowan, and Union Counties. The Charlotte Maintenance Area also includes a portion of York County located in Rock Hill, South Carolina. *See* 77 FR 30088 (May 21, 2012). The North Carolina portion of the Charlotte Maintenance Area is comprised of three metropolitan planning organizations (MPOs): the Charlotte Regional Transportation Planning Organization (CRTPO) which covers Iredell, Mecklenburg, and Union Counties; the Cabarrus-Rowan Metropolitan Planning Organization (CRMPO) which covers Cabarrus and Rowan Counties; and the Gaston-Cleveland-Lincoln Metropolitan Planning Organization (GCLMPO) which covers Gaston, Cleveland, and Lincoln Counties. Although Cleveland County is included in the GCLMPO planning boundary, it was not included in the North Carolina portion of the Charlotte Maintenance Area. Each MPO has its own budget, which is referred to as a ''sub-area budget.'' The York County, South Carolina, portion of this maintenance area has a separate MPO and budgets. The South Carolina portion of the maintenance area implements transportation conformity independent of the North Carolina portion.

EPA approved the redesignation request and maintenance plan for North Carolina's portion of the Charlotte 2008 8-hour ozone Area on July 28, 2015 (80 FR 44873) with 2014 and 2026 NO_X and VOC sub-area budgets. On August 17, 2015 (80 FR 49164), EPA approved North Carolina's requested relaxation of the Federal Reid Vapor Pressure (RVP) requirement from 7.8 pounds per square inch (psi) to 9.0 psi. *See* 80 FR 44868 (approving the CAA section 110(l) non-interference demonstration that relaxing the Federal RVP requirement from 7.8 psi to 9.0 psi in Mecklenburg and Gaston Counties would not interfere with maintenance of the NAAQS in the Area and approving a revision to the 2026 NO_X and VOC sub-area budgets for Mecklenburg and Gaston Counties only).

On July 25, 2018, NCDEQ submitted a revision to the Charlotte 2008 8-hour ozone maintenance plan to update the emissions forecast and budgets for 2026 to account for the small increase in NO_X and VOC emissions associated with the change in vehicle model year coverage due to changes in the State of North Carolina's inspection and maintenance (I/M) program. On September 11, 2019 (84 FR 47889), EPA approved NCDEQ's July 25, 2018, SIP revision related to North Carolina's I/M Program. The September 11, 2019, SIP approval updated the on-road mobile source inventory and revised the 2026 sub-area VOC and NO_X budgets for Cabarrus and Rowan Counties. The revised 2026 budgets became effective on October 11, 2019.

Subsequently, on August 25, 2021, EPA approved NCDEQ's July 16, 2020, SIP revision which allocated a portion of the available safety margin to the 2026 sub-area NO_X and VOC budgets to accommodate updates to the travel demand model used to calculate vehicle miles traveled in the Area. *See* 86 FR 47387. The revision to the 2026 sub-area budgets became effective on September 24, 2021.

C. MOVES Emissions Model

The MOVES model is designed by EPA to estimate air pollution emissions from mobile sources. MOVES can be used to estimate exhaust and evaporative emissions as well as brake and tire wear emissions from all types of on-road vehicles for any part of the country, except California.[2] On January 7, 2021 (86 FR 1106), EPA announced the availability of MOVES3 for official purposes outside of California. At that time, MOVES3 was the latest state of-the art upgrade to EPA's modeling tools for estimating emissions from cars, trucks, buses, and motorcycles based on the latest data and regulations and was available for use in SIPs and transportation conformity analyses outside of California. The notice of availability started a two-year grace

[2] In California, a different on-road emissions model, EMFAC, is used for regulatory purposes instead of MOVES.

period [3] after which MOVES3 was required to be used in new regional-emissions and hot-spot analyses for transportation conformity determinations outside of California.

On September 12, 2023 (88 FR 62567), EPA announced the availability of MOVES4 for official purposes outside of California. MOVES4 is the latest state-of-the art upgrade to EPA's modeling tools for estimating emissions from cars, trucks, buses, and motorcycles based on the latest data and regulations. MOVES4 is available for use in SIPs and transportation conformity analyses outside of California. The notice of availability started a two-year grace period [4] after which MOVES4 is required to be used in new regional-emissions and hot-spot analyses for transportation conformity determinations outside of California. States should use the latest version of MOVES that is available at the time that a SIP is developed. However, state and local agencies that have already completed significant work on a SIP with a version of MOVES3 (*e.g.,* attainment modeling has already been completed with MOVES3) may continue to rely on this earlier version of MOVES. It would be unreasonable to require states to revise such SIPs using MOVES4 since significant work has already occurred based on the latest information available at the time the SIP was developed, and EPA intends to act on these SIPs in a timely manner. North Carolina developed and submitted the SIP revision that is the subject of this proposed rulemaking before the MOVES3 grace period ended and before MOVES4 was available. Therefore, use of MOVES3 is appropriate here.

III. EPA's Analysis of North Carolina's Submittal

EPA's analysis involves an emissions comparison between the current SIP-approved on-road and nonroad emissions inventory and budgets and the revised inventories and budgets that North Carolina has requested that EPA approve in the December 19, 2022, SIP submittal. Section III.A. provides information regarding the current SIP-approved and revised inventories and safety margins, while sections III.B. and III.C. contain information and analysis regarding the proposed percentages and revisions to the 2026 budgets and new safety margins, respectively. Section III.D. contains EPA's analysis of the adequacy of North Carolina's revised budgets pursuant to 40 CFR 93.118(e)(4).

As discussed further below, EPA's analysis of North Carolina's December 19, 2022, SIP submittal indicates that maintenance will continue to be demonstrated after allocation of a portion of the safety margin to the budgets because the total level of emissions from all source categories remains equal to or less than the attainment level of emissions. Thus, EPA is proposing to approve North Carolina's December 19, 2022, SIP submittal.

A. Maintenance Demonstration and Emissions Inventory

This section contains information regarding the previous and current SIP-approved budgets and inventories. The point and area source inventories are provided for illustrative purposes only since, in this action, EPA is not proposing any changes to the September 11, 2019, SIP point and area source inventories.[5] The 2026 on-road and nonroad [6] emissions inventories were modeled using MOVES3, which, as discussed in section II.C. above, is based on the latest modeling assumptions and input data available at the time it was released. The on-road mobile source emissions for all other years were unchanged as compared to the currently approved version of the maintenance plan.

As discussed above, EPA originally approved NCDEQ's 2008 8-hour ozone maintenance SIP for the North Carolina portion of the Charlotte Maintenance Area on July 28, 2015, with the following inventories for NO_X and VOC emissions: base year actual emissions inventories for 2014; projected, future, and interim year inventories for 2015, 2018, and 2022; and projected final year emission inventory for 2026. On September 11, 2019 (84 FR 47889), EPA approved NCDEQ's July 25, 2018, SIP, which revised the budgets and the inventories. EPA subsequently approved NCDEQ's July 16, 2020, SIP revision (86 FR 47387), which revised the sub-area budgets. These remain the current SIP-approved budgets and inventories. See tables 1 through 3, below.

Maintenance for the Charlotte Maintenance Area is demonstrated when the emissions in the final year of the maintenance plan (''maintenance year'') are less than the emissions in the baseline attainment year. In the current SIP-approved inventories, the baseline year is 2014 and the maintenance year is 2026. *See* 80 FR 29250.

TABLE 1—CURRENT TOTAL MAN-MADE NO_X EMISSIONS FOR NORTH CAROLINA PORTION OF THE CHARLOTTE MAINTENANCE AREA

[Tons/day]

County	2014	2015	2018	2022	2026
Cabarrus *	11.49	10.73	6.78	5.44	4.44
Gaston *	27.89	27.62	12.03	6.41	7.87
Iredell *	6.86	6.49	5.41	4.68	4.16
Lincoln *	4.36	4.71	6.41	4.29	2.34
Mecklenburg	56.71	52.97	39.16	33.52	31.33
Rowan *	11.74	11.31	8.28	7.01	6.10
Union *	11.13	10.36	6.63	5.09	4.05
Total	130.18	124.19	84.69	66.44	60.28

* Emissions for the portion of the county included in the maintenance area.

[3] The two-year grace period ended on January 9, 2023.

[4] The two-year grace period will end on September 12, 2025.

[5] As discussed above, if EPA approves NCDEQ's December 19, 2022, SIP submittal, emissions inventories for the point and area sources from NCDEQ's September 11, 2019, SIP revision will remain the same.

[6] Information on the changes to the revised nonroad emissions inventory for 2026 can be found on pages 39–40 and in tables 3.9 and 3.10 of the December 19, 2022, submittal. The nonroad mobile sources, referred to as off-road mobile sources, are pieces of equipment that can move but do not use the roadways (*i.e.,* lawn mowers, construction equipment, railroad locomotives, etc.). The nonroad emissions inventory is separate from the on-road emissions inventory and does not impact the budgets but does impact the amount of the available safety margins. The MOVES3 nonroad modeling data for the nonroad emissions can be found in Appendix B of the submittal.

TABLE 2—CURRENT TOTAL MAN-MADE VOC EMISSIONS FOR NORTH CAROLINA PORTION OF THE CHARLOTTE MAINTENANCE AREA

[Tons/day]

County	2014	2015	2018	2022	2026
Cabarrus *	11.50	11.27	9.51	9.23	9.02
Gaston *	12.96	12.74	11.53	10.94	10.74
Iredell *	6.33	6.22	5.29	5.11	4.97
Lincoln *	6.55	6.47	4.81	4.66	4.51
Mecklenburg	50.10	49.16	45.31	44.47	43.99
Rowan *	12.59	12.38	12.47	12.19	12.32
Union *	13.09	12.85	10.91	10.68	10.45
Total	113.12	111.09	99.82	97.28	95.99

* Emissions for the portion of the county included in the maintenance area.

TABLE 3—CURRENT MAINTENANCE DEMONSTRATION FOR NORTH CAROLINA PORTION OF THE CHARLOTTE MAINTENANCE AREA

Year	NO_X (tons/summer day)	VOC (tons/summer day)
2014	130.18	113.12
2015	124.19	111.09
2018	84.69	99.82
2022	66.44	97.28
2026	60.28	95.99
Reduction in emissions from 2014 to 2026	69.90	17.13

As shown in table 4, the revised NO_X emissions for all years (interim years and maintenance year) are under the baseline of 130.18 tons per summer day (tons/day); in the maintenance year of 2026, emissions are now projected to be 64.75 tons/day. Additionally, as shown in table 5, the revised VOC emissions for all years (interim years and maintenance year) are under the baseline of 113.12 tons/day; in the maintenance year of 2026, emissions are projected to be 94.57 tons/day. The downward trend in revised NO_X and VOC emissions based on the updated MOVES3 2026 NO_X and VOC on-road emissions inventory continues to show maintenance of the NAAQS. See table 6, below.

TABLE 4—REVISED TOTAL MAN-MADE NO_X EMISSIONS FOR NORTH CAROLINA PORTION OF THE CHARLOTTE MAINTENANCE AREA

[Tons/day]

County	2014	2015	2018	2022	2026
Cabarrus *	11.49	10.73	6.78	5.44	4.61
Gaston *	27.89	27.62	12.03	6.41	7.87
Iredell *	6.86	6.49	5.41	4.68	4.42
Lincoln *	4.36	4.71	6.41	4.29	2.48
Mecklenburg	56.71	52.97	39.16	33.52	34.95
Rowan *	11.74	11.31	8.28	7.01	6.02
Union *	11.13	10.36	6.63	5.09	4.40
Total	130.18	124.19	84.69	66.44	64.75

* Emissions for the portion of the county included in the maintenance area.

TABLE 5—REVISED TOTAL MAN-MADE VOC EMISSIONS FOR NORTH CAROLINA PORTION OF THE CHARLOTTE MAINTENANCE AREA

[Tons/day]

County	2014	2015	2018	2022	2026
Cabarrus *	11.50	11.27	9.51	9.23	8.57
Gaston *	12.96	12.74	11.53	10.94	10.42
Iredell *	6.33	6.22	5.29	5.11	4.88
Lincoln *	6.55	6.47	4.81	4.66	4.63
Mecklenburg	50.10	49.16	45.31	44.47	43.72
Rowan *	12.59	12.38	12.47	12.19	11.96
Union *	13.09	12.85	10.91	10.68	10.39

TABLE 5—REVISED TOTAL MAN-MADE VOC EMISSIONS FOR NORTH CAROLINA PORTION OF THE CHARLOTTE MAINTENANCE AREA—Continued

[Tons/day]

County	2014	2015	2018	2022	2026
Total	113.12	111.09	99.82	97.28	94.57

* Emissions for the portion of the county included in the maintenance area.

TABLE 6—REVISED MAINTENANCE DEMONSTRATION FOR NORTH CAROLINA PORTION OF THE CHARLOTTE MAINTENANCE AREA

Year	NO_X (tons/day)	VOC (tons/day)
2014	130.18	113.12
2015	124.19	111.09
2018	84.69	99.82
2022	66.44	97.28
2026	64.75	94.57
Reduction in emissions from 2014 to 2026	65.43	18.55

Table 7 provides the revised NO_X and VOC on-road mobile emissions inventory for 2014 (base year) and 2026 (maintenance year) for the 2008 8-hour ozone NAAQS for the North Carolina portion of the Charlotte Maintenance Area. The emissions are expressed in tons/day and in kg/day because the budgets are expressed in kilograms per day (kg/day). The MOVES3 output emissions values were rounded to the nearest kg/day and were divided by 907.1847 to convert them to units of tons/day. The resulting values in tons/day were rounded to two decimal places.

TABLE 7—REVISED ON-ROAD MOBILE SOURCE NO_X AND VOC SUMMER DAY EMISSIONS IN 2014 AND 2026 FOR THE NORTH CAROLINA PORTION OF THE CHARLOTTE MAINTENANCE AREA

County	2014 NO_X		2014 VOC		2026 NO_X		2026 VOC	
	tons/day	kg/day	tons/day	kg/day	tons/day	kg/day	tons/day	kg/day
Cabarrus *	6.60	5,989	4.15	3,765	2.43	2,208	1.76	1,600
Gaston *	8.11	7,357	4.61	4,179	2.45	2,224	1.68	1,524
Iredell *	3.36	3,045	1.95	1,768	1.29	1,171	0.86	782
Lincoln *	3.00	2,723	1.91	1,737	1.06	963	0.76	688
Mecklenburg *	26.99	24,488	14.40	13,060	12.08	10,957	7.14	6,476
Rowan *	6.42	5,825	3.76	3,408	1.94	1,757	1.37	1,246
Union *	5.67	5,146	3.54	3,210	2.29	2,074	1.62	1,471
Total	60.15	54,572	34.32	31,127	23.54	21,354	15.19	13,787

* Emissions for the portion of the county included in the maintenance area.

A safety margin is the difference between the attainment level of emissions from all source categories (*i.e.,* point, area, on-road, and nonroad) (2014 in this case) and the projected level of emissions from all source categories in the maintenance year (2026 in this case). The State may choose to allocate some of the safety margin to the budgets, for transportation conformity purposes, so long as the total level of emissions from all source categories remains equal to or less than the attainment level of emissions. As noted above, North Carolina previously chose to allocate a portion of its NO_X and VOC safety margin to the budgets for the entire North Carolina portion of the Charlotte Maintenance Area for the year 2026. *See* 86 FR 32850 (June 23, 2021) and 86 FR 47387 (August 25, 2021). Tables 8 and 9, below, show the revised MOVES3 safety margins and percentages North Carolina is proposing to allocate to the 2026 NO_X and VOC budgets from the newly calculated safety margins, respectively, in the North Carolina portion of the Charlotte Maintenance Area.

TABLE 8—REVISED SAFETY MARGINS FOR THE NORTH CAROLINA PORTION OF THE CHARLOTTE MAINTENANCE AREA

Year	NO_X (tons/day)	VOC (tons/day)
2014	N/A	N/A
2015	−5.99	−2.03
2018	−45.49	−13.30
2022	−63.74	−15.84
2026	−65.43	−18.55

B. Revised Budgets

In the December 19, 2022, SIP revision, North Carolina requested that EPA approve revisions to the budgets for the North Carolina portion of the Charlotte 2008 Ozone Maintenance Area by allocating a portion of the remaining safety margin to the budgets.[7] The budget revisions are proposed to accommodate updates from the mobile emissions model MOVES3. The proposed percentages of the on-road emissions allocated to the 2026 budgets for the North Carolina counties in the Charlotte 2008 Ozone Maintenance Area are listed in the table 9, below.

TABLE 9—PROPOSED PERCENTAGE OF ON-ROAD EMISSIONS ALLOCATED TO THE 2026 MOTOR VEHICLE EMISSIONS BUDGET

County	NO_X (percent)	VOC[8] (percent)
Cabarrus	65	67
Gaston	60	62
Iredell	62	62
Lincoln	62	62
Mecklenburg	57	57
Rowan	65	67
Union	60	62

Based on the on-road emissions inventory revisions in table 7, the following tables provide the proposed NO_X and VOC sub-area budgets with the proposed safety margin allocations in kg/day for transportation conformity purposes for 2026 (2014 is only shown for illustration because no changes are being made to the budgets for that year).

TABLE 10—PROPOSED CABARRUS-ROWAN METROPOLITAN PLANNING ORGANIZATION (CRMPO) BUDGETS IN 2014 AND 2026

[kg/day] *

	2014 NO_X	2014 VOC	2026 NO_X	2026 VOC
Base On-road Emissions	11,814	7,173	3,965	2,846
Safety margin allocated to budget			2,578	1,907
Conformity budget	11,814	7,173	6,543	4,753

* Includes the portions of Cabarrus and Rowan Counties in the maintenance area.

TABLE 11—PROPOSED GASTON-CLEVELAND-LINCOLN METROPOLITAN PLANNING ORGANIZATION (GCLMPO) BUDGETS IN 2014 AND 2026

[kg/day] *

	2014 NO_X	2014 VOC	2026 NO_X	2026 VOC
Base On-road Emissions	10,079	5,916	3,187	2,212
Safety margin allocated to budget			1,930	1,371
Conformity budget	10,079	5,916	5,117	3,583

* Includes the portions of Gaston and Lincoln Counties in the maintenance area. Although Cleveland County is included in the MPO, it is not included in the Charlotte ozone maintenance area.

TABLE 12—PROPOSED CHARLOTTE REGIONAL TRANSPORTATION PLANNING ORGANIZATION (CRTPO)—ROCKY RIVER RURAL PLANNING ORGANIZATION (RRRPO) BUDGETS IN 2014 AND 2026

[kg/day] *

	2014 NO_X	2014 VOC	2026 NO_X	2026 VOC
Base On-road Emissions	32,679	18,038	14,202	8,729
Safety margin allocated to budget			8,215	5,089
Conformity budget	32,679	18,038	22,417	13,818

* Includes all of Mecklenburg County and a portion of Iredell and Union Counties in the maintenance area.

[7] As with the original SIP revision approved on July 15, 2015, and the last revision approved on August 25, 2021, NCDEQ utilized a five-step approach for determining a factor to use to calculate the amount of safety margin to apply to the budgets for 2026. See Appendix A of the submittal for more detailed information.

[8] These VOC percentages were not clearly delineated in NCDEQ's December 19, 2022, submittal (at table 4.1 in the narrative portion of the submittal and table 4.4–1 in Appendix A). NCDEQ submitted a correction to the December 19, 2022, submittal via a letter dated March 15, 2024, which is in the docket for this proposed rulemaking.

C. Revised Safety Margin

As mentioned above, a safety margin is the difference between the attainment level of emissions from all source categories (*i.e.,* point, area, on-road, and nonroad) and the projected level of emissions from all source categories. NCDEQ has requested that EPA approve the proposed allocation of some of the available safety margin to the 2026 NO_X and VOC budgets for transportation conformity purposes. The total level of emissions from all source categories remains equal to or less than the attainment level of emissions.

EPA is proposing to approve changes to the budgets that include a proposed allocation of 2,577 and 1,907 kg/day of NO_X and VOC, respectively, for the Cabarrus-Rowan MPO; 1,931 and 1,371 kg/day of NO_X and VOC, respectively, for the Gaston-Cleveland MPO; and 8,215 and 5,089 kg/day of NO_X and VOC, respectively, for the Charlotte Regional TPO. Thus, if EPA's action is finalized as proposed, the amount of the safety margin allocated to the 2026 budgets will be 12,723 kg/day (14.02 tons/day) of NO_X and 8,367 kg/day (9.22 tons/day) of VOC. The proposed new safety margins available for the North Carolina portion of the Charlotte Maintenance Area are listed below.

TABLE 15—NEW SAFETY MARGINS FOR THE NORTH CAROLINA PORTION OF THE CHARLOTTE MAINTENANCE AREA

Year	NO_X (tons/day)	VOC (tons/day)
2014	*N/A	N/A
2015	−5.99	−2.03
2018	−45.49	−13.30
2022	−63.74	−15.84
2026	−51.41	−9.33

D. Adequacy of the Budgets

EPA evaluated NCDEQ's December 19, 2022, SIP revision allocating a portion of the available safety margin to the 2026 MOVES3 based budgets in the revised 2008 8-hour ozone Charlotte maintenance plan for use in determining transportation conformity in the North Carolina portion of the Charlotte Maintenance Area. EPA is proposing this action based on its evaluation of these budgets using the adequacy criteria found in 40 CFR 93.118(e)(4) and its evaluation of NCDEQ's submittal and SIP requirements. EPA is proposing to approve this SIP revision because the SIP continues to serve its intended purpose of maintenance of the 2008 8-hour ozone standard with the newly revised MOVES3 based budgets. EPA is also proposing to deem the budgets adequate for transportation conformity purposes because they meet the adequacy criteria in the conformity rule at 40 CFR 93.118(e)(4). Specifically:

- NCDEQ's SIP was endorsed by the Governor's designee and was subject to a State public hearing ((e)(4)(i));
- Before NCDEQ submitted the SIP revision to EPA, consultation among Federal, State, and local agencies occurred and full documentation was provided to EPA and EPA had no concerns ((e)(4)(ii));
- The budgets are clearly identified and precisely quantified ((e)(4)(iii));
- The budgets, when considered together with all other emissions sources, are consistent with applicable requirements for reasonable further progress, attainment, or maintenance ((e)(4)(iv));
- The budgets are consistent with and clearly related to the emissions inventory and control measures in the SIP revision ((e)(4)(v); and
- The December 19, 2022, SIP revision explains and documents changes to the previous budgets, impacts on point, area, nonroad and on-road source emissions, and changes to established safety margins, and reasons for the changes (including the basis for any changes related to emission factors or vehicle miles traveled) ((e)(4)(vi)).

IV. Proposed Action

EPA is proposing to approve NCDEQ's December 19, 2022, SIP revision, requesting approval of a revision to the Charlotte 2008 8-hr Ozone Maintenance Plan that updates the 2026 on-road and nonroad emissions inventories and safety margins with MOVES3, allocates a portion of the newly available 2026 safety margins. The SIP revision also updates the current 2026 budgets with MOVES3 and recalculates new available safety margins. The revised budgets ensure continued attainment of the 2008 8-hour ozone NAAQS through the maintenance year 2026. In addition, EPA is proposing to deem the budgets adequate for transportation conformity purposes because the budgets meet the adequacy criteria in the conformity rule at 40 CFR 93.118(e)(4). If approved, the newly revised MOVES3 2026 budgets for NO_X and VOC identified in tables 10 through 12 will be used by the MPOs in future transportation conformity determinations. The remaining safety margins are 51.41 tons/day and 9.33 tons/day for NO_X and VOC, respectively. EPA has evaluated North Carolina's submittal and has determined that it meets the applicable requirements of the CAA and EPA regulations and is consistent with EPA policy.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rulemaking does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

NCDEQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Carbon monoxide, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 5, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–07701 Filed 4–11–24; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Legal Services Corporation's (LSC) FY 2024 appropriation enacted on March 9, 2024, included language that lowered the proportion of attorneys required to serve on the governing bodies of LSC grant recipients from 60% to 33%, and eliminated the requirement that bar associations appoint the majority of attorneys. LSC is revising its regulation pertaining to recipient governing bodies to be consistent with this directive from Congress.

DATES: Comments must be received by LSC by 11:59 p.m. Eastern on May 13, 2024.

FOR FURTHER INFORMATION CONTACT: Stefanie K. Davis, Deputy General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295–1563 (phone), (202) 337–6519 (fax), or *sdavis@lsc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The LSC Act of 1974 requires grant recipients to have governing bodies composed of at least 60% attorneys. 42 U.S.C. 2996f(c). LSC adopted part 1607 and the 60% requirement in 1976. 41 FR 25899, June 23, 1976. Subsequently, LSC's fiscal year (FY) 1983 appropriation included a requirement that a majority of each recipient's governing body be composed of attorneys appointed by state or local bar associations, also known as the ''McCollum Amendment''. Public Law 97–276, 96 Stat. 1186. LSC revised part 1607 in 1983 to implement the McCollum Amendment. 48 FR 1971, Jan. 17, 1983. The McCollum Amendment currently appears in § 502(2)(b)(ii) of LSC's FY 1996 appropriation, which is incorporated through § 502 of LSC's FY 1998 appropriation, as referenced in all LSC appropriations from 1998 through 2024. *See, e.g.,* Public Law 104–134, 110 Stat. 1321; Public Law 105–119, 111 Stat. 2440; Public Law 118–42.

LSC's FY 2024 appropriation changed the minimum attorney percentage to 33% and eliminated the McCollum Amendment requirement. The Administrative Provision of this appropriation reiterates the incorporation of prior appropriations' restrictions by reference. It also includes language stating that for purposes of applying the board composition requirements described in LSC's FY 1998 appropriation, the requirements would be satisfied if at least 33% of a grant recipient's board were composed of attorneys licensed in the state in which legal assistance is to be provided. Finally, it includes language stating that the McCollum Amendment does not apply. Public Law 118–42, Div. C, Title IV, 141 (2024) (emphasis in original). LSC is proposing to revise § 1607.3 of its regulations to reflect this change.

LSC proposes to make the following changes to incorporate the statutory changes and to reorganize § 1607.3 for ease of reference. First, LSC proposes to delete § 1607.3(b)(1) in its entirety and replace it with a new paragraph (b)(1) stating that a recipient's governing body must be composed of at least 33% attorneys. By doing so, LSC will remove the language implementing the McCollum Amendment. LSC also proposes to redesignate existing paragraphs (b)(2) and (3) as (b)(1)(i) and (ii), respectively.

Second, LSC proposes to reorganize the section by relocating the categories of governing body members currently located in paragraphs (c) and (d) to paragraphs (b)(2) and (3), respectively, and placing the processes for appointments into paragraphs under each category. LSC believes that restructuring § 1607.3 in this way will make it easier for readers to understand the categories of membership on LSC recipients' governing bodies and the considerations recipients use to recruit and select members.

Third, LSC proposes to redesignate paragraphs (f), (g), and (h) as (c), (d), and (e).

Finally, LSC proposes to revise redesignated paragraph (e) paragraph to reflect the statutory change and allow recipient staff to recommend candidates to their governing bodies. LSC believes this change would empower recipient staff to identify and propose, clients,

attorneys, or other community members with relevant expertise for appointment to their respective governing bodies.

On April 2, 2024, the Committee voted to recommend that the Board authorize LSC to open rulemaking on part 1607 and authorize publication of this NPRM in the **Federal Register** for notice and comment. On April 8, 2024, the Board accepted the Committee's recommendation and voted to approve publication of this NPRM.

List of Subjects in 45 CFR Part 1607

Grant program—law, Legal services.

For the reasons discussed in the preamble, the Legal Services Corporation proposes to amend 45 CFR part 1607 as follows:

PART 1607—GOVERNING BODIES

■ 1. The authority citation for part 1607 is revised to read as follows:

Authority: 42 U.S.C. 2996g(e).

■ 2. Amend § 1607.3 by:
■ a. Revising paragraph (b);
■ b. Removing paragraphs (c) through (e);
■ c. Redesignating paragraphs (f) through (h) as paragraphs (c) through (e), respectively; and
■ d. Revising newly redesignated paragraph (e).

The revisions read as follows.

§ 1607.3 Composition.

* * * * *

(b) A recipient's governing body must be composed of:

(1) At least 33% attorneys.

(i) Attorney members may be selected by the recipient's governing body or may be selected by other organizations designated by the recipient which have an interest in the delivery of legal services to the poor.

(ii) Selections shall be made to ensure that the attorney members reasonably reflect the diversity of the legal community and the population of the areas served by the recipient, including race, ethnicity, gender, and other similar factors.

(2) At least one-third eligible client members who are eligible client members when initially selected by the recipient.

(i) Recipients must solicit recommendations for eligible client members from a variety of appropriate groups designated by the recipient that may include, but are not limited to, client and neighborhood associations and community-based organizations that advocate for or deliver services or resources to the client community served by the recipient.

(ii) Recipients should solicit recommendations from groups in a manner that reflects, to the extent possible, the variety of interests within the client community, and eligible client members should be selected so that they reasonably reflect the diversity of the eligible client population served by the recipient, including race, gender, ethnicity, and other similar factors.

(3) Other members selected by the recipients' governing body or in another manner described in the recipient's bylaws or policies. Recipients must appoint or select members so that the governing body as a whole reasonably reflects the diversity of the areas served by the recipient, including race, ethnicity, gender, and other similar factors.

(i) Recipients should consider recruiting and selecting members possessing fiscal or nonprofit governance expertise or other skills necessary to effectively govern the recipient's operations.

(ii) Members of a governing body shall not be dominated by persons serving as the representatives of a single association, group or organization, except that eligible client members may be selected from client organizations that are composed of coalitions of numerous smaller or regionally based client groups.

* * * * *

(e) Recipient staff may recommend candidates for governing body membership to its governing body and other appointing groups and should consult with the appointing organizations to ensure that:

(1) Appointees meet the criteria for board membership set out in this part, including financial eligibility for persons appointed as eligible clients, bar admittance requirements for attorney board members, and the general requirements that all members be supportive of the purposes of the Act and have an interest in and knowledge of the delivery of legal services to the poor;

(2) The particular categories of board membership and the board as a whole meet the diversity requirements described in paragraphs (b)(1)(ii), (b)(2)(ii), and (b)(3)(ii) of this section;

(3) Appointees do not have actual and significant individual or institutional conflicts of interest with the recipient or the recipient's client community that could reasonably be expected to influence their ability to exercise independent judgment as members of the recipient's governing body.

* * * * *

Dated: April 8, 2024.

Stefanie Davis,

Deputy General Counsel, Legal Services Corporation.

[FR Doc. 2024–07762 Filed 4–11–24; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 240404–0099; RTID 0648–XD707]

Fisheries of the Exclusive Economic Zone off Alaska; Cook Inlet; Proposed 2024 Harvest Specifications for Salmon

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

ACTION: Proposed rule; harvest specifications and request for comments.

SUMMARY: NMFS proposes 2024 harvest specifications for the salmon fishery of the Cook Inlet exclusive economic zone (EEZ) Area. This action is necessary to establish harvest limits for salmon during the 2024 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for Salmon Fisheries in the EEZ off Alaska (Salmon FMP). The intended effect of this action is to conserve and manage the salmon resources in Cook Inlet EEZ Area in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by May 13, 2024.

ADDRESSES: A plain language summary of this proposed rule is available at *https://www.regulations.gov/docket/NOAA-NMFS-2024-0028.* You may submit comments on this document, identified by NOAA–NMFS–2024–0028, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit *https://www.regulations.gov* and type NOAA–NMFS–2024–0028 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the Environmental Assessment (EA)/Regulatory Impact Review/Social Impact Review (collectively, the Analysis) for proposed amendment 16 to the Salmon FMP are available from *https://www.regulations.gov* or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/action/amendment-16-fmp-salmon-fisheries-alaska.*

A preliminary version of the Stock Assessment and Fishery Evaluation (SAFE) was presented at the February 2024 North Pacific Fishery Management Council (Council) meeting and is available at *https://meetings.npfmc.org/CommentReview/DownloadFile?p=776facb0-a186-460f-a689-9269c831da5a.pdf&fileName=C3%20Cook%20Inlet%20Salmon%20SAFE.pdf.* NMFS incorporated the recommendations of the Council's Scientific and Statistical Committee (SSC) and published a draft SAFE on the Alaska Region website at *https://www.fisheries.noaa.gov/alaska/population-assessments/alaska-stock-assessments.* The final 2024 SAFE report for Cook Inlet salmon will be available from the same source.

FOR FURTHER INFORMATION CONTACT: Adam Zaleski, 907–586–7228, *adam.zaleski@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS prepared the Salmon FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations governing U.S. fisheries and implementing the Salmon FMP appear at 50 CFR parts 600 and 679 and as proposed for the Cook Inlet EEZ Area salmon fishery will also appear at 50 CFR part 679.

The proposed harvest specifications include catch limits that NMFS could implement—subject to further consideration after public comment—assuming the Secretary of Commerce (Secretary) approves amendment 16 to the Salmon FMP and adopts implementing regulations. NMFS is required under a court order to implement regulations for the Cook Inlet EEZ Area salmon fishery by May 1, 2024. If approved, amendment 16 and implementing regulations would incorporate the Cook Inlet EEZ Area into the FMP and would establish Federal fishery management for all salmon fishing that occurs in the Cook Inlet EEZ, which includes commercial drift gillnet and recreational fishing sectors, consistent with that court order. The notice of availability and proposed rule that would implement amendment 16 to the Salmon FMP (Amendment 16 Proposed Rule) are available at 88 FR 72314 (October 19, 2023, comment period closed December 18, 2023). As proposed, amendment 16 and implementing regulations would include as management measures the specification of harvest limits and the annual specifications process for five species of salmon.

Though NMFS may make some changes from the Amendment 16 Proposed Rule after considering public comments, NMFS assumes the harvest specification process will proceed as described in the proposed amendment 16 and Amendment 16 Proposed Rule for the purpose of these proposed harvest specifications. These proposed harvest specifications follow the process and substance of proposed amendment 16 and implementing regulations. NMFS will publish final harvest specifications only if and after the Secretary approves amendment 16 and NMFS publishes a final rule implementing amendment 16.

The final harvest specifications will take effect only after publication of a final rule for the instant action. NMFS would publish the final 2024 harvest specifications after: (1) considering comments received within the comment period (see **DATES**); (2) considering information presented in the draft EA (see **ADDRESSES**); and (3) considering information presented in the final 2024 SAFE report prepared for the 2024 Cook Inlet EEZ Area salmon fisheries (see 50 CFR 679.118(b)(2) of the Amendment 16 Proposed Rule at 88 FR 72314).

Proposed Overfishing Levels (OFL), Acceptable Biological Catch (ABC), and Total Allowable Catch (TAC) Specifications

NMFS compiled and presented the preliminary draft 2024 SAFE report for the Cook Inlet EEZ Area salmon stocks and stock complexes, dated February 2024 (see **ADDRESSES**) at the February North Pacific Fishery Management Council (Council) meeting. The SAFE report contains a review of the latest scientific analyses and estimates of biological parameters for five salmon species. Because harvest specifications must be in place before the fishery begins, the SAFE report relies on forecasts of the coming year's salmon runs. If amendment 16 is approved as proposed, and the Amendment 16 Proposed Rule is implemented through a subsequent final rulemaking, NMFS would use the Alaska Department of Fish and Game (ADF&G) pre-season salmon forecasts (subject to NMFS and SSC review) or develop suitable alternate forecasts. Status determination criteria and harvest specifications would be calculated in terms of potential yield for the Cook Inlet EEZ Area. The potential yield is the total forecasted run size minus the number of salmon required to achieve spawning escapement targets and the estimated mortality from other sources including in other fisheries. If no forecasts are available, NMFS would use fishery catch from prior years to inform harvest specifications. For the draft 2024 SAFE report, NMFS developed suitable alternative forecasts based on historical data for some stocks and used fishery catch in prior years for other stocks and stock complexes.

If amendment 16 is approved as proposed, and the Amendment 16 Proposed Rule is implemented through a subsequent final rulemaking, the Salmon FMP would specify the tiers to be used to calculate OFLs and ABCs. The tiers applicable to a particular stock or stock complex would be determined by the level of reliable information available. This information would be categorized into a successive series of three tiers to define OFLs and ABCs, with tier 1 representing the highest level of information quality available and tier 3 representing the lowest level of information quality available. NMFS used the proposed FMP tier structure to calculate OFLs and ABCs for each salmon stock or stock complex (a stock complex is an aggregate of multiple stocks of a species).

If the Amendment 16 Proposed Rule is implemented through a subsequent final rulemaking for the Cook Inlet EEZ Area salmon fishery, NMFS, after consultation with the Council, would specify the annual TAC amounts for commercial fishing for each salmon species after accounting for projected recreational fishing removals (see § 679.118(a) as proposed at 88 FR 72314). The SSC, Advisory Panel (AP), and Council reviewed NMFS's preliminary 2024 SAFE report for the Cook Inlet EEZ Area salmon fishery in February 2024. From these data and analyses, the SSC recommended an OFL and ABC for each salmon stock and

stock complex. The SSC further recommended changing the buffers that reduce the OFL for aggregate Chinook, aggregate pink, and aggregate chum salmon to be sufficiently precautionary. The SSC made recommendations regarding OFLs and ABCs and the AP recommended TACs, but after NMFS's consultation with the Council, the Council took no action to recommend Cook Inlet EEZ Area salmon harvest specifications. NMFS is therefore proposing the OFL and ABC recommended by the SSC and TACs consistent with the SSC's fishing level recommendations and that account for the significant management uncertainty associated with this new fishery. In making its motion at the February Council meeting, NMFS discussed the sources of scientific and management uncertainty in detail.

Following the February SSC and Council meeting, NMFS updated the 2024 SAFE report to include SSC recommendations (see **ADDRESSES**). The proposed specifications are based on this draft 2024 SAFE report, which represents the best scientific information available on the biological condition of salmon stocks in Cook Inlet and other social and economic considerations.

If implementing regulations are adopted as proposed for the Cook Inlet EEZ Area salmon fishery, NMFS would be required to publish and solicit public comment on proposed annual TACs as soon as practicable after consultation with the Council (see § 679.118(b)(1) of the Amendment 16 Proposed Rule at 88 FR 72314), and the proposed harvest specifications in table 1 of this rule satisfy these proposed requirements. The recommended specifications of OFL, ABC, and TAC would prevent overfishing consistent with National Standard 1. ABC would be less than or equal to the OFL for each stock or stock complex. TACs would be established for species rather than stocks or stock complexes because it is not possible to differentiate among stocks of the same species through catch accounting inseason. TACs for each species would be set less than the aggregate ABC for each component stock and stock complex, and these TACs account for the assumed contribution of each stock or stock complex to total catch to ensure ABC is not exceeded for any stock or stock complex.

If implementing regulations are adopted as proposed for the Cook Inlet EEZ Area salmon fishery, NMFS will publish the final 2024 harvest specifications after: (1) considering comments received within the comment period (see **DATES**); (2) considering information presented in the draft EA (see **ADDRESSES**); and (3) considering information presented in the final 2024 SAFE report prepared for the 2024 Cook Inlet EEZ Area salmon fisheries (see § 679.118(b)(2) of the Amendment 16 Proposed Rule at 88 FR 72314).

The proposed 2024 OFLs, ABCs, and TACs are based on the best scientific information available. The proposed 2024 TACs are less than the aggregate ABCs for each species and the proposed 2024 ABCs are less than the OFLs for all salmon stocks or stock complexes listed in table 1. These amounts are consistent with the biological condition of the salmon stocks as described in the draft 2024 SAFE report. The SAFE report was subject to peer review by the SSC, which recommended ABCs that NMFS proposes in table 1, consistent with §§ 600.310(f)(3) and 600.315(c) through (d). The proposed TACs are adjusted to account for other relevant biological and social and economic considerations presented in the resource assessment documents (*i.e.,* the 2024 SAFE report) (see § 679.118(a)(2) of the Amendment 16 Proposed Rule at 88 FR 72314), including to account for management uncertainty for this new fishery, the estimated contribution of each stock or stock complex to total catch of a species, and to prevent catch in the Cook Inlet EEZ Area from exceeding the ABC for any stock or stock complex. These proposed OFLs, ABCs, and TACs are subject to change pending consideration of the final 2024 SAFE report and public comment.

TABLE 1—PROPOSED 2024 COOK INLET EEZ AREA SALMON OFL, ABC, AND TAC IN NUMBERS OF FISH

Stock	OFL	ABC	TAC
Kenai River Late-Run sockeye salmon	902,000	431,100	492,100
Kasilof River sockeye salmon	541,100	375,500	
Aggregate Other sockeye salmon	887,500	177,500	
Aggregate Chinook salmon	2,700	270	240
Aggregate coho salmon	357,700	35,800	25,000
Aggregate chum salmon	441,700	110,400	99,400
Aggregate pink salmon	270,400	135,200	121,700
Total	3,403,100	1,265,770	738,440

Classification

NMFS is issuing this rulemaking pursuant to section 305(d) of the Magnuson-Stevens Act. The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Magnuson-Stevens Act, the Salmon FMP, the proposed amendment 16 and the Amendment 16 Proposed Rule, and other applicable law, subject to further consideration after public comment.

This action is exempt from review under Executive Order 12866 because it only implements annual catch limits for the Cook Inlet EEZ Area salmon fishery.

NMFS prepared a draft EA for amendment 16 to the Salmon FMP, which included analysis of the Cook Inlet EEZ Area salmon harvest specifications process and expected harvest levels (see **ADDRESSES**) and made it available to the public on October 19, 2023 (see the Amendment 16 Proposed Rule at 88 FR 72314). The draft EA analyzes the environmental, social, and economic consequences of the proposed salmon harvest specifications on resources in the action area. NMFS will publish a final rule that implements amendment 16 that considers the public comments received during the comment period for the Amendment 16 Proposed Rule (if consistent with the Magnuson-Stevens Act, the Salmon FMP, and other applicable law) and a final EA and finding of no significant impact (if consistent with the National Environmental Policy Act and implementing regulations, prior to the publication of the final harvest specifications).

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act

(RFA) (5 U.S.C. 603), to describe the economic impact that this proposed rule, if adopted, would have on small entities. The IRFA: (1) describes the action; (2) the reasons why this proposed rule is proposed; (3) the objectives and legal basis for this proposed rule; (4) the estimated number and description of directly regulated small entities to which this proposed rule would apply; (5) the recordkeeping, reporting, and other compliance requirements of this proposed rule; and (6) the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained earlier in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System (NAICS) code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and has combined annual gross receipts not in excess of 11 million dollars for all its affiliated operations worldwide. In addition, the Small Business Administration has established a small business size standard applicable to charter fishing vessels (NAICS code 713990) of 9 million dollars.

Number and Description of Small Entities Regulated by This Proposed Rule

This proposed rule would directly regulate commercial salmon fishing vessels that operate in the Cook Inlet EEZ Area, and charter guides and charter businesses fishing for salmon in the Cook Inlet EEZ Area. Because NMFS expects the State to maintain current requirements for commercial salmon fishing vessels landing any salmon in upper Cook Inlet to hold a Commercial Fisheries Entry Commission (CFEC) S03H permit, NMFS does not expect participation from non-S03H permit holders in the federally managed salmon fishery in the Cook Inlet EEZ Area. Therefore, the number of S03H permit holders represents the maximum number of directly regulated entities for the commercial salmon fishery in the Cook Inlet EEZ Area. From 2018 to 2022, there was an average of 567 S03H permits in circulation, with an average of 325 active permit holders, all of which are considered small entities based on the 11 million dollar threshold. The evaluation of the number of directly regulated small entities and their revenue was conducted via custom query by staff of the Alaska Fish Information Network utilizing both ADF&G and Fish Ticket revenue data and the Alaska CFEC permits database. Similarly, the Analysis prepared for amendment 16 provides the most recent tabulation of commercial charter vessels that could potentially fish for salmon within the Cook Inlet EEZ Area (see **ADDRESSES**).

The commercial fishing entities directly regulated by the salmon harvest specifications are the entities operating vessels with Salmon Federal fisheries permits (SFFPs) catching salmon in Federal waters. For purposes of this analysis, NMFS assumes that the number of small entities with SFFPs that are directly regulated by the salmon harvest specifications is the average number of S03H permits in circulation (567 permits). This may be an overstatement of the number of directly-regulated small entities since some entities may hold more than one permit.

The commercial charter fishing entities directly regulated by the salmon harvest specifications are the entities that hold commercial charter licenses and that choose to fish for salmon in the Cook Inlet EEZ Area where these harvest specification will apply. Salmon charter operators are required to register with the State of Alaska annually and the numbers of registered charter operators in the Cook Inlet area varies. Available data indicates that from 2015 to present the total number of directly regulated charter vessel small entities that have participated in the Cook Inlet EEZ Area has been as high as 91. However, from 2019 to 2021, there was an average of 58 charter guides that fished for salmon at least once in the Cook Inlet EEZ Area. All of these entities, if they choose to fish in the Cook Inlet EEZ Area, are directly regulated by this action and all are considered small entities based on the 9 million dollar threshold.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The action under consideration is the proposed 2024 harvest specifications for the Cook Inlet EEZ Area salmon fishery. The TAC may be set conservatively to reduce the risk of overfishing without the benefit of inseason harvest data but is likely to remain near existing levels. As is possible under the status quo management by the State of Alaska, salmon harvest in the EEZ could be reduced or prohibited in years when a harvestable surplus is not certain, with an appropriate buffer to account for scientific and management uncertainty.

This action is necessary to establish harvest limits for Cook Inlet salmon harvested within the EEZ during the 2024 fishing years and is taken in accordance with the Salmon FMP pursuant to the Magnuson-Stevens Act. If amendment 16 is approved, and NMFS publishes a final rule that implements the regulations as proposed in the Amendment 16 Proposed Rule, the establishment of the proposed harvest specifications would be governed by the process for determining harvest levels for salmon in the Cook Inlet EEZ Area in the FMP. Under this process, harvest specifications typically would be made annually for specifying OFL, ABC, and TAC. This includes identifying the stocks and stock complexes for which specifications are made. Salmon stocks or stock complexes may be split or combined for purposes of establishing a new harvest specification unit if such action is desirable based on the commercial importance of a stock or stock complex or if sufficient biological information is available to manage a stock or stock complex as a single unit. Those stocks and stock complexes also would be separated into three tiers based on the level of information available for each stock and stock complex, and the corresponding tier is used to calculating OFL and ABC.

For each stock and stock complex, NMFS would each year establish harvest specifications prior to the commercial salmon fishing season. To inform the harvest specifications, NMFS would prepare the annual SAFE report, based on the best available scientific information at the time it is prepared, for review by the SSC, AP, and the Council. The SAFE report would provide information needed for (1) determining annual harvest specifications; (2) documenting significant trends or changes in the stocks, marine ecosystem, and fisheries over time; and (3) assessing the performance of existing State and Federal fishery management programs. The SAFE report would provide a summary of the most recent biological condition of the salmon stocks, including all reference points, and the social and economic condition of the fishing and processing industries.

For the proposed 2024 salmon specifications, NMFS prepared the draft SAFE and consulted with the Council consistent with the proposed amendment 16 and the Amendment 16 Proposed Rule. The proposed TACs are based on the draft SAFE, which represents the best scientific information currently available, for the stock and stock complexes identified by NMFS. The SSC reviewed the stock structure and associated tiers for each stock and stock complex. In February 2024, NMFS consulted with the Council but the Council ultimately did not recommend any harvest specifications. However, the SSC recommended OFLs and ABCs. NMFS is publishing the proposed OFLs, ABCs, and TACs as informed by the recommendations of the SSC and the consultation with the Council. The proposed TACs are therefore consistent with the proposed process for determining harvest levels for salmon in the Cook Inlet EEZ Area.

The OFLs and ABCs are based on recommendations prepared by NMFS in January 2024 and reviewed by the Council's SSC in February 2024. The proposed 2024 OFLs and ABCs are based on the best available biological science and revised analyses to calculate stock abundance. The proposed 2024 OFLs, ABCs, and TACs are consistent with the biological condition of the salmon stocks as described in the draft 2024 SAFE report, which is the most recent SAFE report.

Under this action, the proposed ABCs reflect harvest amounts that are less than the specified OFLs. The TACs proposed by NMFS do not exceed the biological limits (*i.e.,* the ABCs and OFLs) recommended by the SSC. The proposed TACs are adjusted to account for other social and economic considerations consistent with Salmon FMP goals for the Cook Inlet EEZ Area and proposed implementing regulations that annual TAC determinations would be made based on social and economic considerations, including the need to promote efficiency in the utilization of fishery resources (*e.g.,* minimizing costs; the desire to conserve, protect, and rebuild depleted salmon stocks; the importance of a salmon fishery to harvesters, processors, local communities, and other salmon users in Cook Inlet; and the need to promote utilization of certain species) (see § 679.118(a)(2)(ii) of the Amendment 16 Proposed Rule at 88 FR 72314). The proposed TACs are less than the ABCs to more comprehensively address management uncertainty and associated conservation concerns, as well as social, economic, and ecological considerations.

This action is economically beneficial to entities operating in the Cook Inlet EEZ Area salmon fishery, including small entities. The action proposes TACs for commercially-valuable salmon and salmon stocks and would allow for the prosecution of the salmon fishery in the Cook Inlet EEZ Area, thereby creating the opportunity for fishery revenue. The TACs proposed by NMFS for each commercially-valuable salmon stock or stock complex, except for aggregate coho, are higher than the recent ten-year average catch estimated to have been harvested in the Cook Inlet EEZ Area, which may help to reduce foregone yield and allow for additional harvest opportunity.

Based upon the best scientific information available and in consideration of the objectives for this proposed action, it appears that there are no significant alternatives to this proposed rule for salmon harvest specifications that have the potential to comply with applicable court rulings, accomplish the stated objectives of the Magnuson-Stevens Act or any other statutes, and minimize any significant adverse economic impact of the action on small entities while preventing overfishing. After public process during which the Council solicited input from stakeholders and after consultation with the Council, NMFS proposes TACs that NMFS has determined would best accomplish the stated objectives articulated in the preamble for this proposed rule, and in applicable statutes, and would minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

This action does not modify recordkeeping or reporting requirements or duplicate, overlap, or conflict with any Federal rules.

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

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

Dated: April 8, 2024.

Samuel D. Rauch III,

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

[FR Doc. 2024–07763 Filed 4–11–24; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 89, No. 72
Friday, April 12, 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

Rural Housing Service

[Docket No.: RHS–24–MFH–0007]

60-Day Notice of Proposed Information Collection: Supervised Bank Accounts; OMB Control No.: 0575–0158

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: The United States Department of Agriculture (USDA), Rural Housing Service (RHS) announces its' intention to request a revision of a currently approved information collection and invites comments on this information collection.

DATES: Comments on this notice must be received by June 11, 2024 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal, *http://www.regulations.gov.* In the ''Search for dockets and documents on agency actions'' box, enter the docket number ''RHS–24–MFH–0007,'' and click the ''Search'' button. From the search results: click on or locate the document title: ''60-Day Notice of Proposed Information Collection: Supervised Bank Accounts; OMB Control No.: 0575–0158'' and select the ''Comment'' button. Before inputting comments, commenters may review the ''Commenter's Checklist'' (optional). To submit a comment: Insert comments under the ''Comment'' title, click ''Browse'' to attach files (if available), input email address, select box to opt to receive email confirmation of submission and tracking (optional), select the box ''I'm not a robot,'' and then select ''Submit Comment.''

Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

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

FOR FURTHER INFORMATION CONTACT: Barbara Chism, Finance and Loan Analyst, Multi-Family Housing Asset Management Division, Policy and Budget Branch, STOP 0782-Room 1263S, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–0782. Telephone: (202) 690–1436. Email: *Barbara.Chism@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1902–A, Supervised Bank Accounts.

OMB Number: 0575–0158.

Expiration Date of Approval: December 31, 2024.

Type of Request: Revision of a currently approved information collection.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 0.83 hours per response.

Respondents: Small Business.

Estimated Number of Respondents: 13,052.

Estimated Number of Annual Responses: 4,625.

Estimated Total Annual Burden Hours of Respondents: 5.33.

Abstract: The Agency extends financial assistance to applicants that do not qualify for loans under commercial rates and terms.

The Agency uses Supervised Bank Account (SBA) as a mechanism to: (1) ensure correct disbursement and expenditure of funds designated for a project; (2) help a borrower properly manage its financial affairs; (3) ensure that the Government's security is protected adequately from fraud, waste, and abuse.

SBAs are mandatory for Multi-Family Housing (MFH) reserve accounts. The MFH funds must be kept in the SBA for the full term of a loan. Any funds withdrawn for disbursement for an authorized purpose requires prior approval from an Agency Loan Servicing official. Countersignature from an Agency Loan Servicing official may or may not be required.

This regulation prescribes the policies and responsibilities for the use of SBAs. In carrying out the mission as a supervised credit Agency, this regulation authorizes the use of supervised accounts for the disbursement of funds. The use may be necessitated to disburse Government funds consistent with the various stages of any development (construction or rehabilitation) work achieved. On limited occasions, a supervised account is used to provide temporary credit counseling and oversight of those being assisted who demonstrate an inability to handle their financial affairs responsibly. Another use is for depositing MFH reserve account funds in a manner that may require Agency co-signature for withdrawals. MFH reserve account funds are held in a reserve account for the future capital improvement needs for MFH properties. Supervised accounts are established to ensure Government security is adequately protected against fraud, waste, and abuse.

The legislative authority for requiring the use of supervised accounts is contained in section 510 of the Housing Act of 1949, as amended (42 U.S.C. 1480). These provisions authorize the Secretary of Agriculture to make such rules and regulations as deemed necessary to carry out the responsibilities and duties the Government is charged with administering.

Comments are invited on:

(a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Copies of this information collection can be obtained from Crystal Pemberton, Rural Development Innovation Center—Regulations Management Division, at (202) 202–260–8621. Email: *Crystal.Pemberton@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2024–07782 Filed 4–11–24; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–63–2023]

Foreign-Trade Zone (FTZ) 17; Authorization of Production Activity; Panasonic Energy Corporation of North America; (Lithium-Ion Battery Cells); De Soto, Kansas

On December 11, 2023, Panasonic Energy Corporation of North America submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 17F, in De Soto, Kansas.

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 87403, December 18, 2023). On April 9, 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: April 9, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–07827 Filed 4–11–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Technical Advisory Committees; Notice of Recruitment of Members

The Bureau of Industry and Security (BIS), Department of Commerce is announcing its recruitment of candidates to serve on one of its six Technical Advisory Committees (''TACs'' or ''Committees''). TAC members advise the Department of Commerce on the technical parameters for export controls applicable to dual-use items (commodities, software, and technology) and on the administration of those controls. The TACs are composed of representatives from industry, academia, and the U.S. Government and reflect diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of items currently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls. Representation from the private sector is balanced to the extent possible among large and small firms.

Six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within specified areas: Information Systems TAC: Control List Categories 3 (electronics), 4 (computers), and 5 (telecommunications and information security); Materials and Equipment TAC: Control List Categories 1 (materials, chemicals, microorganisms, and toxins) and 2 (materials processing); Sensors and Instrumentation TAC: Control List Category 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine), and 9 (propulsion systems, space vehicles, and related equipment); and the Emerging Technology TAC (identification of emerging and foundational technologies that may be developed over a period of five to ten years with potential dual-use applications). The sixth TAC, the Regulations and Procedures TAC, focuses on the Export Administration Regulations (EAR) and procedures for implementing the EAR.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. TAC members must obtain secret-level clearances prior to their appointment. These clearances are necessary so that members may be permitted access to classified information that may be needed to formulate recommendations to the Department of Commerce. Applicants are strongly encouraged to review materials and information on each Committee website, including the Committee's charter, to gain an understanding of each Committee's responsibilities, matters on which the Committee will provide recommendations, and expectations for members. Members of any of the six TACs may not be registered as foreign agents under the Foreign Agents Registration Act. No TAC member may represent a company that is majority owned or controlled by a foreign government entity (or foreign government entities). TAC members will not be compensated for their services or reimbursed for their travel expenses.

If you are interested in becoming a TAC member, please provide the following information: 1. Name of applicant; 2. affirmation of U.S. citizenship; 3. organizational affiliation and title, as appropriate; 4. mailing address; 5. work telephone number; 6. email address; 7. summary of qualifications for membership; 8. An affirmative statement that the candidate will be able to meet the expected commitments of Committee work. Committee work includes: (a) attending in-person/teleconference Committee meetings roughly four times per year (lasting 1–2 days each); (b) undertaking additional work outside of full Committee meetings including subcommittee conference calls or meetings as needed, and (c) frequently drafting, preparing or commenting on proposed recommendations to be evaluated at Committee meetings. Finally, candidates must provide an affirmative statement that they meet all Committee eligibility requirements.

The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Advisory Committee membership.

To respond to this recruitment notice, please send a copy of your resume to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov*.

Deadline: This Notice of Recruitment will be open for 60 days from its date of publication in the **Federal Register**.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2024–07573 Filed 4–11–24; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Investment Advisory Council Charter Renewal

AGENCY: SelectUSA, International Trade Administration, Global Markets, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Investment Advisory Council (IAC). is renewed for an additional two-year period, as a necessary committee that is in the public interest.

DATES: The IAC charter was renewed on April 2, 2024 and is valid until April 2, 2026.

FOR FURTHER INFORMATION CONTACT: Claire Pillsbury, Designated Federal Officer, SelectUSA, U.S. Department of Commerce; telephone: (202) 578–8239; email: *IAC@trade.gov.*

SUPPLEMENTARY INFORMATION: The United States Investment Advisory Council (Council) was established by the Secretary of Commerce (Secretary) pursuant to duties imposed by 15 U.S.C. 1512 upon the Department and in compliance with the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

The Council functions solely as an advisory committee in accordance with the provisions of FACA. In particular, the Council advises the Secretary on government policies and programs that affect businesses engaging in foreign direct investment (FDI), the expansion of domestic operations, or the transferring of operations to the United States from overseas. The IAC identifies and recommends programs and policies to help the United States attract and retain business investment and recommends ways to support the United States in remaining the world's preeminent investment destination. The Council acts as a liaison among the stakeholders represented by the membership and provides a forum for the stakeholders to provide feedback on current and emerging issues regarding FDI and business expansion.

The Council reports to the Secretary of Commerce on its activities and recommendations regarding FDI and business investment. In creating its reports, the Council is to survey and evaluate the investment and investment-facilitating activities of stakeholders, identifies and examines specific problems facing potential business investors and examines the needs of stakeholders to inform the Council's efforts. The Council is to recommend specific solutions to the problems and needs that it identifies.

Each member is to be appointed for a term of two years and serves at the pleasure of the Secretary. The Secretary may at his/her discretion reappoint any member to an additional term or terms, provided that the member proves to work effectively on the Council and his/her knowledge and advice is still needed.

The Council consists of no more than forty (40) members appointed by the Secretary. Members are to represent companies and organizations investing, seeking to invest, seeking foreign investors, or facilitating investment across many sectors, including but not limited to:

U.S.-incorporated companies that are majority-owned by foreign companies or by a foreign individual or individuals, or that generate significant foreign direct investment (*e.g.,* through their supply chains);

Companies or entities whose business includes FDI-related activities or the facilitation of FDI; and

U.S. incorporated companies, regardless of ownership, that are considering expanding their operations in the United States or transferring to the United States operations that are currently being conducted overseas;

Economic development organizations and other U.S. governmental and non-governmental organizations and associations whose missions or activities include the promotion or facilitation of business investment and/or FDI.

All members must be a U.S. citizen or permanent resident. Members shall be selected based on their ability to carry out the objectives of the IAC, in accordance with applicable Department of Commerce guidelines, in a manner that ensures that the IAC is balanced in terms of points of view, industry sector or subsector, and organizational type. Members shall also represent a broad range of products and services and shall be drawn from large, medium, and small enterprises, private-sector organizations that have invested or are considering investing in the United States, and other investment-related entities, including non-governmental organizations, associations, and economic development organizations.

For members selected on the basis of their involvement in FDI and FDI-related activities, the IAC should also be balanced in terms of the geographic sources and destinations of the FDI and the volume and nature of FDI involved. For members selected on the basis of their interest in expanding their operations in, or transferring operations to the United States, the IAC should also be balanced in terms of the size and nature of the operations under consideration for expansion or transfer.

In selecting members, priority may be given to the selection of executives, *i.e.,* Chief Executive Officer, Executive Chairman, President, or an officer with a comparable level of responsibility.

Members serve in a representative capacity, representing the views and interests of their sponsoring entity and those of their particular sector (if applicable), and they are, therefore, not Special Government Employees. Members will receive no compensation for their participation and will not be reimbursed for travel expenses related to Council activities. Appointments to the Council shall be made without regard to political affiliation.

The Secretary designates a Chair and Vice Chair from among the members. The Council will meet a minimum of two times a year, to the extent practical, with additional meetings called at the discretion of the Secretary or his/her designee. Meetings will be held in Washington, DC or elsewhere in the United States, or by teleconference, as feasible. Members are expected to attend a majority of Council meetings.

Note: A request for applications was posted in a **Federal Register** Notice on February 7, 2024. If you applied in response to that notice, your application remains valid and is in the review process.

Jasjit Kalra,

Executive Director, SelectUSA.

[FR Doc. 2024–07780 Filed 4–11–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–841]

Mattresses From Thailand: Final Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Saffron Living Co., Ltd. (Saffron), the sole producer/exporter subject to this administrative review, made sales of subject merchandise at below normal value during the period of review (POR) May 1, 2022, through April 30, 2023.

DATES: Applicable April 12, 2024.

FOR FURTHER INFORMATION CONTACT: Paola Aleman Ordaz, 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) 482–4031.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 2024, Commerce published the *Preliminary Results* in this administrative review in the **Federal Register**.[1] Although we provided interested parties with an opportunity to comment on the *Preliminary Results,* no interested party submitted comments.

[1] *See Mattresses from Thailand: Preliminary Results of the Antidumping Duty Administrative Review; 2022–2023,* 89 FR 5206 (January 26, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

Scope of the Order [2]

The products covered by the *Order* are mattresses from Thailand. For a complete description of the scope of the *Order, see* the *Preliminary Results.*[3]

Final Results of the Review

Because no party commented on the *Preliminary Results,* we made no changes to the preliminary findings, therein; thus, no decision memorandum accompanies this **Federal Register** notice. For these final results, we determine that the following estimated weighted-average dumping margin exists for the period of review of May 1, 2022, through April 30, 2023:

Producer and/or exporter	Weighted-average dumping margin (percent)
Saffron Living Co., Ltd	* 763.28

* Adverse facts available.

Disclosure

Normally, Commerce discloses to parties to the proceeding the calculations performed in connection with a final results of review within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of the final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we made no changes from the *Preliminary Results,* there are no calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Saffron will be equal to the weighted-average dumping margin established in these final results of this administrative review; (2) for merchandise exported by companies not covered in this review but covered in a prior completed segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, or the less-than-fair-value (LFTV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be the all-other rate (*i.e.,* 572.56 percent).[4] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return, or destruction, of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination is being issued and published in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: April 5, 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. 2024–07765 Filed 4–11–24; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders and Amended Final Affirmative Antidumping Determination for Cambodia,* 86 FR 26460 (May 14, 2021), amended by *Mattresses from Thailand: Notice of Court Decision Not in Harmony with the Final Determination of Antidumping Investigation; Notice of Amended Final Determination; Notice of Amended Order, in Part,* 89 FR 456 (January 4, 2024) (*Amended Order*) (collectively, *Order*).

[3] *See Preliminary Results* PDM at 2–4.

[4] *See Amended Order,* 89 FR at 457.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed changes

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed changes to the Procurement List.

SUMMARY: The Committee is proposing to change requirements for products already existing on the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: May 12, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 489–1322, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Changes

If the Committee approves the proposed changes, the entities of the Federal Government identified in this notice will be required to procure the product(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

NSN(s)—Product Name(s):

8415–01–670–9017—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XS–XXS

8415–01–670–7853—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XS–S

8415–01–670–7874—Coat, Improved Hot Weather Combat Uniform (IHWCU),

Permethrin, Unisex, Army, OCP 2015, XS–R
8415–01–670–7904—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XS–XL
8415–01–670–7886—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XS–L
8415–01–670–7962—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, S–XS
8415–01–670–7964—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, S–S
8415–01–670–7966—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, S–R
8415–01–670–7968—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, S–L
8415–01–670–7973—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, S–XL
8415–01–670–7977—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, M–XS
8415–01–670–7984—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, M–S
8415–01–670–8044—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, M–R
8415–01–670–8060—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, M–L
8415–01–670–8074—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, M–XL
8415–01–670–8096—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, L–XS
8415–01–670–8106—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, L–S
8415–01–670–8123—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, L–R
8415–01–670–8129—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, L–L
8415–01–670–8145—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, L–XL
8415–01–670–8150—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XL–S
8415–01–670–8187—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XL–R
8415–01–670–8189—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XL–L
8415–01–670–8196—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XL–XL
8415–01–670–8205—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XXL–R
8415–01–670–8212—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XXL–L
8415–01–670–8214—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XXL–XL
8415–01–670–8430—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XS–XS
8415–01–670–8436—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, S–XXS
8415–01–670–8442—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, M–XXS
8415–01–670–9026—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, M–XXL
8415–01–670–9038—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, L–XXS
8415–01–670–9043—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, L–XXL
8415–01–670–9048—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XL–XXS
8415–01–670–9064—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XL–XS
8415–01–670–9081—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XL–XXL
8415–01–670–9086—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex, Army, OCP 2015, XXL–XXL
8415–01–687–0952—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 39–L
8415–01–687–0987—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 39–S
8415–01–687–0990—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 36–L
8415–01–687–0991—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 36–S
8415–01–687–0994—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 30–XS
8415–01–687–1001—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 33–L
8415–01–687–1005—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 33–S
8415–01–687–1010—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 30–R
8415–01–687–1018—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 39–R
8415–01–687–1021—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 36–XL
8415–01–687–1052—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 36–R
8415–01–687–1059—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 36–XS
8415–01–687–1073—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 33–XS
8415–01–687–1290—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 30–S
8415–01–687–1296—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 39–XL
8415–01–687–1301—Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Women's, Army, 33–R

Authorized Source of Supply: Goodwill Industries of South Florida, Inc., Miami, FL

Authorized Source of Supply: ReadyOne Industries, Inc., El Paso, TX

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

The Unisex Improved Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex and Women's, Army were administratively added to the Procurement List 10/25/2017 in accordance with 41 CFR 51–6.13(b), as an additional size, color or other variation of an existing PL product to meet 50% of the requirement for the Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division, with DLA Troop Support added later. However, when possible and to ensure clarity on existing PL requirements for military garments, or other applicable products, the Committee is departing from stating the mandatory purchase requirement as a percentage of a contracting activity's overall requirement and is instead stating the mandatory purchase requirement as a specified annual quantity of a garment or product. For the Coat, Improved Hot Weather Combat Uniform (IHWCU), Permethrin, Unisex and Women's, the contracting activity and the authorized sources of supply, assisted by the central nonprofit agency, have agreed that the mandatory purchase requirement is 70,900 (Unisex) and 20,100 (Women's) units annually. The Committee intends to amend the

Procurement List and reflect the agreed annual quantity. Additionally, for administrative purposes, the Committee is assigning a new PL number to the IHWCU Coat, Women's, which will sever the Women's IHWCU garments as a legacy from garments no longer being produced and increase the Committee's overall efficiency when processing future transactions.

NSN(s)—Product Name(s):
8415–01–642–0079—Shirt, Combat, Army, Type II, FR, OCP2015, X–Small
8415–01–642–0080—Shirt, Combat, Army, Type II, FR, OCP2015, Small
8415–01–642–0082—Shirt, Combat, Army, Type II, FR, OCP2015, Medium
8415–01–642–0083—Shirt, Combat, Army, Type II, FR, OCP2015, Large
8415–01–642–0086—Shirt, Combat, Army, Type II, FR, OCP2015, X–Large
8415–01–642–0087—Shirt, Combat, Army, Type II, FR, OCP2015, XX–Large
8415–01–642–0097—Shirt, Combat, Army, Type II, FR, OCP2015, XXX–Large
Authorized Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC
Authorized Source of Supply: San Antonio Lighthouse for the Blind, San Antonio, TX
Authorized Source of Supply: Alphapointe, Kansas City, MO
Authorized Source of Supply: Mount Rogers Community Services Board, Wytheville, VA
Authorized Source of Supply: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY
Authorized Source of Supply: Goodwill Industries of South Florida, Inc., Miami, FL
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

The Shirt, Combat, Army, Type II, FR, OCP2015 were administratively added to the Procurement List 5/15/2015 in accordance with 41 CFR 51–6.13(b), as an additional size, color or other variation of an existing PL product to meet 88% of the requirement for Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division. The Defense Logistics Agency—Troop Support (DLA) was later added as an additional contracting activity to meet 65% of DLA's requirement. For the Shirt, Combat, Army, Type II, FR, OCP2015, the contracting activity and the authorized sources of supply, assisted by the central nonprofit agency, have agreed that the revised mandatory purchase requirement is 75% of future Army Combat Shirt requirements. The Committee intends to amend the Procurement List and reflect the agreed and revised percentage requirement.

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–07789 Filed 4–11–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed additions and deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add product(s) and service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) previously furnished by such agencies.

DATES: Comments must be received on or before: May 12, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product(s) and service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Custodial Service
Mandatory for: US Army, Air National Guard Readiness Center, Joint Base Andrews, Maryland
Authorized Source of Supply: Chimes District of Columbia, Baltimore, MD
Contracting Activity: DEPT OF THE ARMY, W39L USA NG READINESS CENTER

In accordance with 41 CFR 51–5.3(b), the Committee intends to add this services requirement to the Procurement List as a mandatory purchase only for DEPT OF THE ARMY, W39L USA NG READINESS CENTER at the US Army, Air National Guard Readiness Center, Joint Base Andrews, Maryland with the proposed qualified nonprofit agency as the authorized source of supply. Prior to adding the service to the Procurement List, the Committee will consider other pertinent information, including information from Government personnel and relevant comments from interested parties regarding the Committee's intent to geographically limit this services requirement.

Product(s)

NSN(s)—Product Name(s):
8415–01–710–2784—Liner Jacket, Parka, US Coast Guard, Blue, X-Small/X-Short
8415–01–710–2790—Liner Jacket, Parka, US Coast Guard, Blue, X-Small/Short
8415–01–710–2792—Liner Jacket, Parka, US Coast Guard, Blue, X-Small/Regular
8415–01–710–2795—Liner Jacket, Parka, US Coast Guard, Blue, Small/X-Short
8415–01–710–2796—Liner Jacket, Parka, US Coast Guard, Blue, Small/Short
8415–01–710–2798—Liner Jacket, Parka, US Coast Guard, Blue, Small/Regular
8415–01–710–2800—Liner Jacket, Parka, US Coast Guard, Blue, Small/Long
8415–01–710–2802—Liner Jacket, Parka, US Coast Guard, Blue, Medium/X-Short
8415–01–710–2803—Liner Jacket, Parka, US Coast Guard, Blue, Medium/Short
8415–01–710–2805—Liner Jacket, Parka, US Coast Guard, Blue, Medium/Regular
8415–01–710–2806—Liner Jacket, Parka, US Coast Guard, Blue, Medium/Long
8415–01–710–2808—Liner Jacket, Parka, US Coast Guard, Blue, Medium/X-Long
8415–01–710–2809—Liner Jacket, Parka, US Coast Guard, Blue, Large/Short
8415–01–710–2811—Liner Jacket, Parka, US Coast Guard, Blue, Large/Regular
8415–01–710–2813—Liner Jacket, Parka, US Coast Guard, Blue, Large/Long
8415–01–710–2814—Liner Jacket, Parka, US Coast Guard, Blue, X Large/X-Long
8415–01–710–2815—Liner Jacket, Parka, US Coast Guard, Blue, Large/XX-Long
8415–01–710–2819—Liner Jacket, Parka, US Coast Guard, Blue, X-Large/Regular
8415–01–710–2821—Liner Jacket, Parka, US Coast Guard, Blue, X-Large/Long
8415–01–710–2823—Liner Jacket, Parka, US Coast Guard, Blue, X-Large/X-Long
8415–01–710–2824—Liner Jacket, Parka, US Coast Guard, Blue, X-Large/XX-Long
8415–01–710–2826—Liner Jacket, Parka, US Coast Guard, Blue, XX-Large/Regular
8415–01–710–2827—Liner Jacket, Parka, US Coast Guard, Blue, XX-Large/Long
8415–01–710–2830—Liner Jacket, Parka, US Coast Guard, Blue, XX-Large/X-Long
8415–01–710–2831—Liner Jacket, Parka, US Coast Guard, Blue, XX-Large/XX-Long

Authorized Source of Supply: Bestwork Industries for the Blind, Inc., Cherry Hill, NJ
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT (DLATS)

In accordance with 41 CFR 51–6.13(b), the Parka Liners above are being proposed for administrative addition to the Procurement List (PL) as a different size, color, or other variation of an existing Parka Liner already on the PL for the U.S. Navy, NSN: 8415–01–691–1301(s)). The Committee intends to approve the administrative addition, and provided the new product has not been procured within the preceding 12 months, the new Parka Liner will be automatically added to the PL.

NSN(s)—Product Name(s):
8415–01–702–6109—Trousers, Chemical Protective, UIPE FoS General Purpose, XS-Short
8415–01–702–6507—Trousers, Chemical Protective, UIPE FoS General Purpose, XS-Regular
8415–01–702–6594—Trousers, Chemical Protective, UIPE FoS General Purpose, S-Regular
8415–01–702–7002—Trousers, Chemical Protective, UIPE FoS General Purpose, M–XLong
8415–01–702–7009—Trousers, Chemical Protective, UIPE FoS General Purpose, L–XLong
8415–01–702–7006—Trousers, Chemical Protective, UIPE FoS General Purpose, L-Regular
8415–01–702–6597—Trousers, Chemical Protective, UIPE FoS General Purpose, S-Long
8415–01–702–7004—Trousers, Chemical Protective, UIPE FoS General Purpose, L-Long
8415–01–702–7017—Trousers, Chemical Protective, UIPE FoS General Purpose, XL–XLong
8415–01–702–7019—Trousers, Chemical Protective, UIPE FoS General Purpose, 2XL-Regular
8415–01–702–7022—Trousers, Chemical Protective, UIPE FoS General Purpose, 2XL–XLong
8415–01–702–5735—Shirt, Chemical Protective, UIPE FoS General Purpose, XS–XShort
8415–01–702–5751—Shirt, Chemical Protective, UIPE FoS General Purpose, XS-Short
8415–01–702–5761—Shirt, Chemical Protective, UIPE FoS General Purpose, S-Regular
8415–01–702–5763—Shirt, Chemical Protective, UIPE FoS General Purpose, S-Long
8415–01–702–5772—Shirt, Chemical Protective, UIPE FoS General Purpose, M–XShort
8415–01–702–5804—Shirt, Chemical Protective, UIPE FoS General Purpose, L–XShort
8415–01–702–5821—Shirt, Chemical Protective, UIPE FoS General Purpose, XL-Short
8415–01–702–5829—Shirt, Chemical Protective, UIPE FoS General Purpose, XL–XLong
8415–01–702–5806—Shirt, Chemical Protective, UIPE FoS General Purpose, L-Short
8415–01–702–5814—Shirt, Chemical Protective, UIPE FoS General Purpose, L–XLong
Authorized Source of Supply: Goodwill Industries of South Florida, Inc., Miami, FL and ReadyOne Industries, Inc., El Paso, TX
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–APG NATICK

In accordance with 41 CFR 51–6.13(b), the Trousers, Chemical Protective, Uniform Integrated Protection Ensemble (UIPE) Family of Systems (FOS) General Purpose are being proposed for administrative addition to the PL as a different size, color, or other variation of an existing Trouser, Integrated Chemical Biological Lightweight Improved Thermal Ensemble (ICB Lite) already on the PL for the U.S. Army (840068001S(s)). The Committee intends to approve the administrative action, and provided the new product has not been procured within the preceding twelve (12) months, the new Trousers will be automatically added to the PL.

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7530–01–517–2729—Folder, File, Pressboard, Expanding, Two 1½″ Fasteners, Green, Letter
7530–01–517–2730—Folder, File, Pressboard, Expanding, One 1½″ Fastener, Green, Letter
7530–01–484–1865—Folder, File, Pressboard, Expanding, One 1½″ Fastener, Green, Legal
Authorized Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
8520–01–555–2891—Cleaner, Hand, Biorenewable, Waterless, Pumice, 1 gl
8520–01–555–2902—Cleaner, Hand, Biorenewable, Waterless, 1 gl
Authorized Source of Supply: Outlook Nebraska, Inc, Omaha, NE
*Authorized Source of Supply: V*isionCorps, Lancaster, PA
Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

NSN(s)—Product Name(s):
7530–00–NIB–0675—Classification Folder, Pressboard, 4 Part, 1 Divider, Legal Size, Dark Green
7530–00–NIB–0676—Classification Folder, Pressboard, 4 Part, 1 Divider, Legal Size, Yellow
7530–00–286–7287—Folder, File, Pressboard, ⅕ Cut Tab, Light Green, Legal
7530–00–926–8984—Folder, File, Pressboard, End or Side Self Tab, 1″ Fastener, Light Green, Legal
7530–00–985–7009—Folder, File, Pressboard, 1″ Capacity, Straight Cut Tab, Red, Letter
Authorized Source of Supply: Georgia Industries for the Blind, Bainbridge, GA
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
2815–01–464–5543—Parts Kit, Piston Assembly, HMMWV Engine
Authorized Source of Supply: Georgia Industries for the Blind, Bainbridge, GA
Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–07787 Filed 4–11–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* May 12, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 489–1322, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 3/8/2024, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal

Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

7350–01–574–8714—Cup, Paper, Biobased, Biodegradable, Hot, Tall Style, White, 8 oz, with Handle

7350–01–574–8735—Cup, Paper, Biobased, Biodegradable, Cold, Tall Style, White, 16 oz

7350–01–574–8736—Cup, Paper, Biobased, Biodegradable, Hot, Tall Style, White, 16 oz

7350–01–574–8730—Cup, Paper, Biobased, Biodegradable, Hot and Cold, Tall Style, White, 6 oz

7350–01–574–8732—Cup, Paper, Biobased, Biodegradable, Cold, Tall Style, White, 9 oz

7350–01–574–8733—Cup, Paper, Biobased, Biodegradable, Cold, Tall Style, White, 12 oz

7350–01–574–8734—Cup, Paper, Biobased, Biodegradable, Hot, Tall Style, White, 12 oz

7350–01–574–8737—Cup, Paper, Biobased, Biodegradable, Hot, Tall Style, White, 8 oz

7350–01–574–8717—Cup, Paper, Biobased, Biodegradable, Hot, Squat Style, White, 12 oz

7350–01–645–7874—Cup, Disposable, Paper, BioBased, Cold Beverage, White, 21 oz.

Designated Source of Supply: The Lighthouse for the Blind in New Orleans, Inc., New Orleans, LA

Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

Service(s)

Service Type: Switchboard Operation

Mandatory for: Greater Los Angeles Health Care System: Los Angeles Ambulatory Care Center, Los Angeles, CA

Mandatory for: Greater Los Angeles Health Care System: Sepulveda Ambulatory Care Center

Mandatory for: Greater Los Angeles Health Care System: VA Medical Center, West Los Angeles

Authorized Source of Supply: Lighthouse for the Blind of Houston, Houston, TX

Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Service Type: Supply Room Support Services

Mandatory for: DCMA, DCMA Headquarters, 3901 A Ave., Fort Gregg-Adams, VA

Designated Source of Supply: Virginia Industries for the Blind, Charlottesville, VA

Contracting Activity: DEFENSE CONTRACT MANAGEMENT AGENCY (DCMA), DEFENSE CONTRACT MANAGMENT OFFICE

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–07788 Filed 4–11–24; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0161]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of the REL Appalachia Teaching Math to Young Children Toolkit

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a review of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 13, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Johnson, (202) 453–7439.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of the REL Appalachia Teaching Math to Young Children Toolkit.

OMB Control Number: 1850–0991.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 7,040.

Total Estimated Number of Annual Burden Hours: 792.

Abstract: Mathematics knowledge acquired in early childhood provides a critical foundation for long-term student success in math as well as reading (Duncan et al., 2007; Watts et al., 2014), but the professional development (PD) and curricular support for preschool teachers often lack specific content and training on high-quality math instruction delivered by math content experts. To address this problem, the REL Appalachia toolkit development team is developing a toolkit to provide preschool teachers with support in implementing core teaching practices essential to promoting early math skills and knowledge in children. The toolkit is based on the Teaching Math to Young Children IES practice guide (Frye et al., 2013) and is being developed in collaboration with state and district partners in Virginia.

In this revision, IES requests clearance for data collection instruments and the collection of district administrative data for an efficacy study of the toolkit as part of the REL Appalachia (REL AP) contract.

The study will assess the efficacy of the professional development resources included in the toolkit. The evaluation

will also assess how teachers implement the toolkit to provide context for the efficacy findings and guidance to improve the toolkit and its future use. The evaluation will take place in 50 schools across approximately 10 school divisions in Virginia and focus on mathematics teaching practices and student mathematics knowledge and skills in preschool classrooms. The purpose of this study will be to measure the efficacy and implementation of the REL AP-developed toolkit designed to improve teacher practice and preschool students' math learning outcomes. The toolkit evaluation will produce a report for district and school leaders who are considering strategies to improve math learning in preschool. The report will be designed to help them decide whether and how to use the toolkit to help them implement the practice guide recommendations.

Dated: April 9, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–07783 Filed 4–11–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0019]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Vocational Rehabilitation Program Corrective Action Plan (CAP)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a reinstatement without change of a previously approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 13, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ed Vitelli, 202–987–1923.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Vocational Rehabilitation Program Corrective Action Plan (CAP).

OMB Control Number: 1820–0694.

Type of Review: A reinstatement without change of a previously approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 60.

Total Estimated Number of Annual Burden Hours: 975.

Abstract: Section 107(a)(1) of the Rehabilitation Act of 1973 (Rehabilitation Act) requires the Commissioner of the Rehabilitation Services Administration (RSA) to conduct annual reviews and periodic on-site monitoring of the vocational rehabilitation (VR) program to determine whether a state agency is complying substantially with the provisions of its State Plan under section 101 of the Rehabilitation Act and with the evaluation standards and performance indicators established under section 106 of the Rehabilitation Act subject to the performance accountability provisions described in Section 116(b) of the Workforce Innovation and Opportunity Act (WIOA). To fulfill its monitoring responsibility, RSA reviews a maximum of 15 VR agencies in each Federal fiscal year. When, based on its monitoring, RSA determines that a state agency has not administered and operated the VR program in compliance with its State Plan, the Rehabilitation Act, and implementing regulations at 34 CFR part 361, the agency must develop a corrective action plan (CAP), established by RSA in accordance with the requirement of section 107(b)(2) of the Rehabilitation Act, for RSA approval within 45 days from the issuance of the final monitoring report.

Dated: April 9, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–07818 Filed 4–11–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1711–000]

Split Rail Solar Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Split Rail Solar Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure

(18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 29, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 8, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07812 Filed 4–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–544–000]

Northern Border Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Bison Xpress Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Bison XPress Project proposed by Northern Border Pipeline Company (Northern Border) in the above-referenced docket. Northern Border requests authorization to replace and expand compression facilities at Northern Border's existing Arnegard, Manning, and Glen Ullin Compressor Stations in McKenzie, Dunn, and Morton Counties, North Dakota, respectively. The project purpose is to improve system reliability and provide 300,000 dekatherms per day of incremental capacity, which Northern Border would lease to Wyoming Interstate Company, LLC.

The EA assesses the potential environmental effects of the construction and operation of Northern Border's Bison XPress Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

The Bison XPress Project includes the following components:

- abandoning by removal the existing 20,000 HP Rolls Royce Avon gas-fired, turbine compressor, installing two new 23,470 HP Solar Turbine Titan 130 gas-fired, turbine compressors, and installing associated piping, six new gas cooling bays and appurtenances at the existing Arnegard (No. 4) Compressor Station;
- placing the existing 38,000 HP Rolls Royce RB211 gas-fired, turbine compressor on standby for planned and unplanned outages up to 500 hours annually, installing two new 31,900 HP Solar Turbine Titan 250 gas-fired, turbine compressors, and installing associated piping and appurtenances at the existing Manning (No. 5) Compressor Station; and
- placing the existing 38,000 HP Rolls Royce RB211 gas-fired, turbine compressor on standby for planned and unplanned outages up to 500 hours annually, installing two new 31,900 HP Solar Turbine Titan 250 gas-fired, turbine compressors, and installing associated piping, four new gas cooling bays and appurtenances at the existing Glen Ullin (No. 6) Compressor Station.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners, religious organizations and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.* CP23–544). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00pm Eastern Time on May 8, 2024.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment

feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23–544–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/how-intervene.*

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

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.*

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. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: April 8, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07813 Filed 4–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–67–000.

Applicants: Golden Maple Infrastructure Partners, L.P., American Transmission Systems, Incorporated, Mid-Atlantic Interstate Transmission, LLC, Trans-Allegheny Interstate Line Company.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Golden Maple Infrastructure Partners, L.P., et al.

Filed Date: 4/5/24.

Accession Number: 20240405–5265.

Comment Date: 5 p.m. ET 4/26/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–161–000.

Applicants: Split Rail Solar Energy LLC.

Description: Split Rail Solar Energy LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 4/5/24.

Accession Number: 20240405–5211.

Comment Date: 5 p.m. ET 4/26/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–99–000.

Applicants: Virginia Municipal Electric Association #1 v. Virginia Electric and Power Co.

Description: Complaint of Virginia Municipal Electric Association #1 v. Virginia Electric and Power Co.

Filed Date: 4/5/24.

Accession Number: 20240405–5262.

Comment Date: 5 p.m. ET 4/25/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2635–002; ER23–1251–002; ER23–1252–002; ER23–1594–001.

Applicants: Hecate Energy Desert Storage 1 LLC, Ortega Grid, LLC, San Jacinto Grid, LLC, Hecate Energy Johanna Facility LLC.

Description: Notice of Change in Status of Hecate Energy Johanna Facility LLC, et al.

Filed Date: 4/4/24.

Accession Number: 20240404–5183.

Comment Date: 5 p.m. ET 4/25/24.

Docket Numbers: ER24–134–002.

Applicants: Three Rivers District Energy, LLC.

Description: Notice of Change in Status of Three Rivers District Energy, LLC.

Filed Date: 4/5/24.

Accession Number: 20240405–5271.

Comment Date: 5 p.m. ET 4/26/24.

Docket Numbers: ER24–1716–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA No. 6423, AG1–197 (consent_amend) to be effective 6/8/2024.

Filed Date: 4/8/24.

Accession Number: 20240408–5051.

Comment Date: 5 p.m. ET 4/29/24.

Docket Numbers: ER24–1717–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amended ISA, Service Agreement No. 4401; AA1–095 to be effective 6/10/2024.

Filed Date: 4/8/24.

Accession Number: 20240408–5061.

Comment Date: 5 p.m. ET 4/29/24.

Docket Numbers: ER24–1718–000.

Applicants: Switched On, LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 6/8/2024.

Filed Date: 4/8/24.

Accession Number: 20240408–5082.

Comment Date: 5 p.m. ET 4/29/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any

of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 8, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07814 Filed 4–11–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–121]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed April 1, 2024 10 a.m. EST

Through April 8, 2024 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20240063, Final, USFS, CA, Meeks Bay Restoration, Review Period Ends: 05/20/2024, Contact: Ashley Sibr 530–543–2615.

EIS No. 20240064, Final, NMFS, MA, ADOPTION—New England Wind Project, Contact: Karolyn Lock 301–427–8401.

The National Marine Fisheries Service (NMFS) has adopted the Bureau of Ocean Energy Management's Final EIS No. 20240033 filed 02/23/2024 with the Environmental Protection Agency. The NMFS was a cooperating agency on this project. Therefore, republication of the document is not necessary under Section 1506.3(b)(2) of the CEQ regulations.

Dated: April 8, 2024.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2024–07777 Filed 4–11–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0047; Docket No. 2024–0053; Sequence No. 4]

Submission for OMB Review; Place of Performance

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding place of performance.

DATES: Submit comments on or before May 13, 2024.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

OMB Control No. 9000–0047, Place of Performance.

B. Need and Uses

This clearance covers the information that bidders or offerors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

- FAR 52.214–14, Place of Performance-Sealed Bidding.

This FAR provision is prescribed for invitation for bids (*i.e.,* FAR part 14 procurements) where the Government did not specify the place of performance.

- FAR 52.215–6, Place of Performance.

This FAR provision is prescribed for solicitations, when contracting by negotiation (*i.e.,* FAR part 15 procurements), where the Government did not specify the place of performance.

Both provisions ask for identical information from bidders or offerors: whether or not they intend to use one or more plants or facilities located at a different address from the address of the bidder or offeror as indicated in their bid or offer. If the response indicates the intention to use plants or facilities located at a different location than the bidder's or offeror's address, the provisions require that bidders or offerors provide the address(es) of the other place(s) of performance, along with name and address of the owner and operator of such plant or facility (if other than the bidder or offeror).

Contracting officers use the place of performance and the owner of the plant or facility to—

(a) Determine prospective contractor responsibility;

(b) Determine price reasonableness;

(c) Conduct plant or source inspections; and

(d) Determine whether the prospective contractor is a manufacturer or a regular dealer.

C. Annual Burden

Respondents: 6,086.
Total Annual Responses: 964,331.
Total Burden Hours: 43,877.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 89 FR 8200, on February 6, 2024. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing

GSARegSec@gsa.gov. Please cite OMB Control No. 9000–0047, Place of Performance.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2024–07822 Filed 4–11–24; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0293; Docket No. 2024–0001; Sequence No. 5]

Information Collection; Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements

AGENCY: Office of Technology Strategy/Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of the currently approved information collection requirement on the reporting and use of information concerning integrity and performance of recipients of grants and cooperative agreements.

DATES: Submit comments on or before June 11, 2024.

ADDRESSES: Submit comments identified by Information Collection 3090–0293; Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements to *http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number 3090–0293. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0293, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0293, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements'' on your attached document. If your comment cannot be submitted using *regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite Information Collection 3090–0293, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements, in all correspondence related to this collection. Comments received generally will be posted without change to *regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Salomeh Ghorbani, Director, IAE Outreach and Stakeholder Engagement Division, at 703–605–3467 or *IAE_Admin@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection requirement, OMB Control No. 3090–0293, currently titled ''Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements'' is necessary in order to comply with section 872 of the Duncan Hunter National Defense Authorization Act of 2009, Public Law 110–417, as amended by Public Law 111–212, hereafter referred to as ''the Act.'' The Duncan Hunter National Defense Authorization Act of 2009 (Pub. L. 110–417) was enacted on October 14, 2008. Section 872 of this Act required the development and maintenance of an information system that contains specific information on the integrity and performance of covered Federal agency contractors and grantees.

The Federal Awardee Performance and Integrity Information System (FAPIIS) was developed to address these requirements and has been superseded by the System for Award Management (SAM) at *SAM.gov.* SAM provides users access to integrity information from the FAPIIS reporting module in the Contractor Performance Assessment Reporting System (CPARS), proceedings information from the Entity Management section of the SAM database, and suspension/debarment information from the Exclusions section of SAM.

As required by 2 CFR part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, effective January 1, 2016, Federal agencies are required to review and consider any information about the applicant that is in SAM before making any award in excess of the simplified acquisition threshold, defined in 41 U.S.C. 134, over the period of performance.

Non-Federal entities (NFEs) are required to disclose 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), as required by 45 CFR part 75, Appendix XII, of the Uniform Guidance, for any period of time during the period of performance of an award/project.

B. Annual Reporting Burden

Proceedings Screening Question #1

Respondents: 19,152.
Responses per Respondent: 1.
Total annual responses: 19,152.
Hours per response: .1.
Total response burden hours: 1,915.

Proceedings Screening Question #2

Respondents: 141.
Responded per Respondent: 1.
Total annual responses: 141.
Hours per response: .1.
Total response burden hours: 14.

Proceedings Details

Respondents: 141.
Responses per respondent: 2.
Total annual responses: 282.
Hours per response: .5.
Total response burden hours: 141.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of theinformation to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriatetechnological collection techniques or other forms of information technology.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. OMB Control No. 3090–0293, Reporting and Use of Information

Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements, in all correspondence.

Lois Mandell,

Director, Regulatory Secretariat Division, General Services Administration.

[FR Doc. 2024–07804 Filed 4–11–24; 8:45 am]

BILLING CODE 6820–WY–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–24EK; Docket No. CDC–2024–0026]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled *B. multivorans* Ice Machine Multistate Investigation. This is an outbreak investigation which aims to evaluate the associations between Burkholderia multivorans infections among hospitalized patients and potential exposures to nonsterile ice and water from ice machines to help inform measures to prevent ongoing transmission.

DATES: CDC must receive written comments on or before June 11, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0026 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

B. multivorans Ice Machine Multistate Investigation—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC has been assisting state and local jurisdictions investigate clusters of *Burkholderia multivorans* infections among patients admitted across four hospitals in two non-contiguous states. The outbreak strain of the bacteria has been identified in environmental samples from ice machines. Molecular analysis has shown that the bacterial strain identified in ice machines is genetically highly similar to the patient isolates. Further investigation revealed that the same brand of ice machine and the same filters, descaling/cleaning, and sanitizing products were used by the four hospitals. Epidemiologic and laboratory evidence suggest the possibility of contaminated nonsterile ice and water from the same brand of ice machines as a common source of exposure.

Further investigation is needed to identify the scope of the outbreak and the source of the ice machine contamination. CDC has deemed it necessary to conduct a national call for cases requesting that public health authorities report cases and clusters of *B. multivorans.* A case report form (CRF) was developed by CDC to assist jurisdictions in this effort. Jurisdictions will gather information using this case report form to assist in determining epidemiologic characteristics and risk factors of patients with *B. multivorans* as well as potential source(s) of *B. multivorans,* including ice machines and ice machine-related products (*e.g.,* cleaning solutions).

The Centers for Disease Control and Prevention will share findings and recommendations with public health and healthcare partners to prevent further spread of *B. multivorans* infections; findings may also be shared with other relevant stakeholders and/or published in scientific journals to disseminate investigation outcomes. CDC requests OMB approval for an estimated 120 annual burden hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
HAI/AR Program staff ...	*Burkholderia multivorans* outbreak investigation case report form.	40	1	3	120
Total	.....	.....	.....	.....	120

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–07806 Filed 4–11–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-24–23HD]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Exposures, Health Effects, and Controls of Chemicals from Thermal Spray Coating'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 7, 2023 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Exposures, health effects, and controls of chemicals from thermal spray coating—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Thermal spray coating (TSC) is a surface treatment process that enables different types of feedstock material to be deposited on to various substrates—metals, metal alloys, ceramics, and plastics. The process involves spraying a liquid or molten metal coating product under pressure onto a surface where it solidifies and forms a solid coating. The coating material can be pure metals, metal alloys, carbides, oxides, ceramics, and ceramic metals in wire or powder form that will not decompose when melted. Although TSC technology has been around for decades, recently it has been refined and optimized to impart new properties and functionalities to the coatings, applied through numerous processes such as flame-, cold-, plasma-, and electric arc-spraying, arising from the different combinations of sources of thermal and kinetic energy, form and composition of the feedstock material and other system configurations. TSC processes are relatively simple to use, economical, and have been applied to almost all industrial sectors such as automotive, aerospace, machine shops, electronics, medical, shipyards, and printing. Important uses include coatings for wear prevention, repair, restoration, thermal insulation/conduction, corrosion/oxidation resistance, seals, and decoration.

TSC is a fast-growing and emerging industry and generates exposures that are known to be hazardous in other settings. However, effects of TSC processes, quantitative exposures, and subsequent health effects remain mostly unknown because of paucity of epidemiologic and exposure studies. Limited data on exposures of workers engaged in TSC and associated operations and personal communications with industrial hygienists in this industry suggests exposures can greatly exceed the current occupational exposure limits, but the prevalence of respiratory abnormalities including occupational asthma and chronic obstructive pulmonary disease in this population remains unknown. In addition, many workplaces conduct TSC work manually or semi-automatically, and some TSC tasks may not be easily amenable to installation of ventilation controls (*e.g.,* during spray-coating of parts with wide surface area).

The purpose of the proposed data collection is to conduct a survey of thermal spray coating facilities to: (1) better understand work practices and controls related to metals, particles, and gases generated during thermal spray coating; (2) identify areas for potential intervention; and (3) identify thermal spray coating facilities willing to participate in future NIOSH exposure and health research. The burden hours are estimated based on limited pilot testing conducted internally using the

survey instrument and previous pilot testing done using a similar survey instrument. In these pilot tests, the amount of time for instruction review, collection of mock information, and the survey completion was between 10–30 minutes. The median time of 20 minutes was used to estimate annual burden hours. Currently, the total number of thermal spray coating businesses in the United States is unknown. In 2004, the Air Resources Board (ARB) in California Environmental Protection Agency conducted the Thermal Spraying Facility Survey of facilities performing thermal spray coating throughout California, and reported 97 companies that potentially used TSC. Based on the California ARB report, we estimated approximately 5,000 thermal spray coating businesses. CDC requests OMB approval for an estimated 1,667 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Thermal spray coating facility managers/owners.	Survey	5000	1	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–07805 Filed 4–11–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–1353]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Integrated Viral Hepatitis Surveillance and Prevention Funding for Health Departments (CDC–RFA–PS21–2103)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on July 14, 2023, to obtain comments from the public and affected agencies. CDC received one non-substantive comment related to the 60-day **Federal Register** notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Integrated Viral Hepatitis Surveillance and Prevention Funding for Health Departments (CDC–RFA–PS21–2103) (OMB Control No. 0920–1353, Exp. 11/30/2024)—Revision—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) requests 3-year OMB approval for the Extension of an information collection request (ICR) package (OMB #0920–1353 Exp. Date 11/30/2024). CDC is authorized under section 318 of the Public Health Service Act (42 U.S.C. 247c) to collect information on viral hepatitis (VH) prevention and control projects.

In 2021, CDC implemented activities under a new cooperative agreement Integrated Viral Hepatitis Surveillance and Prevention Funding for Health Departments (CDC–RFA–PS21–2103). Tools exist to prevent new cases of hepatitis A, hepatitis B, and hepatitis C, to treat people living with hepatitis B, and to cure people living with hepatitis C. Yet, new cases of VH continue to rise, many people infected with VH remain undiagnosed, and far too many VH-related deaths occur in the U.S. each year. The purpose of these activities is to enable state and local health departments to collect data to evaluate disease burden and trends and to analyze and disseminate that data to develop or refine recommendations, policies, and practices that will ultimately reduce the burden of VH in their jurisdictions. The goals of the activities are to reduce new VH infections, VH-related morbidity and mortality, and VH-related disparities and to establish comprehensive national VH surveillance, which are in accordance with the Division of Viral Hepatitis 2025 Strategic Plan. In addition, the cooperative agreement supports VH elimination planning in these jurisdictions and maximize access to testing, treatment, and prevention

services for populations at high risk for VH (including service provision in in high-impact settings).

The activities of this cooperative agreement include three components. Component 1: Surveillance and Component 2: Prevention contain six strategies: 1.1, develop, implement, and maintain a plan to rapidly detect and respond to outbreaks for hepatitis A, B, and C; 1.2, collect, analyze, interpret, and disseminate data to characterize trends, and implement public health interventions for hepatitis A, acute hepatitis B and acute and chronic hepatitis C; 1.3 (contingent on available funding), collect, analyze, interpret, and disseminate data to characterize trends and implement public health interventions for chronic hepatitis B and perinatal hepatitis C; 2.1, support VH elimination planning and surveillance, and maximize access to testing, treatment, and prevention; 2.2 (contingent on available funding), increase access to HCV and HBV testing and referral to care in high-impact settings; and 2.3 (contingent on available funding), improve access to services preventing VH among persons who inject drugs. Contingent on funding, a third, optional component (Component 3: Special Projects) will support improved access to prevention, diagnosis, and treatment of viral, bacterial, and fungal infections related to drug use in settings disproportionately affected by drug use.

In 2023, CDC will also fund health department recipients to implement additional activities through supplemental funding. These activities relate to increasing access to VH testing and linkage to care in high-impact settings. Specific activities include increasing routine VH testing in high-impact settings; providing counseling, linkage to treatment, and referral to prevention services in high-impact settings; and building public health laboratory capacity. These activities are similar to activities described in the cooperative agreement for Component 3 but provide additional funding to health department recipients to expand/increase these services in their jurisdictions.

Performance measures are monitored to assess recipient performance, including quality of data, effective program implementation, and accountability of funds. Data collection via the Annual Performance Report is used for program accountability and to inform performance improvement.

Outbreak reporting is submitted throughout the year. These data are a key component of national VH surveillance and are critical to determining both the level of VH activity within a jurisdiction as well as the effectiveness of each jurisdiction's approach to cluster and outbreak response. Required activities of this project include developing, implementing, and maintaining a plan to rapidly detect and respond to outbreaks for hepatitis A, hepatitis B, and hepatitis C and to report and notify CDC of outbreaks within 5 business days of identifying the outbreak. Timely reporting of clusters and outbreaks is essential to ensuring that recipients have the assistance they need to implement a prompt and effective response.

In the first three years of this cooperative agreement, health department recipients worked toward establishing a jurisdictional framework to respond to VH-related outbreaks; assessed public health reporting of chronic and perinatal hepatitis C and chronic hepatitis B infection, and undetectable hepatitis C RNA and hepatitis B DNA laboratory results; increased engagement with community partners in elimination planning across their jurisdiction; and increased the level of hepatitis testing services in a variety of setting types (including linkage to care and treatment for individuals diagnosed with VH).

With the data submitted through the Annual Performance Report data collection forms in Years 1–3, CDC assessed the progress of jurisdictions in meeting the deliverables of CDC–RFA–PS21–2103. Additionally, CDC developed and provided annual feedback reports to recipients to summarize progress made toward meeting the overarching objectives of the funding award which include: establishment of comprehensive national VH surveillance, reduced new VH infections, increased access to care for persons with VH, improved health outcomes for people with VH, reduced deaths among people with VH, reduced VH-related health disparities and decreased overdose deaths. Specifically, jurisdictions reported developing VH outbreak response plans and elimination plans and serving persons who inject drugs, including number of clients tested for hepatitis B and hepatitis C and number of clients vaccinated against hepatitis A and hepatitis B.

CDC requests OMB approval for an estimated 245 annual burden hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)
Health Departments	APR: Component 1	59	1	70/60
Health Departments	APR: Component 2	59	1	70/60
Health Departments	APR: Component 3	20	1	70/60
Health Departments	Supplemental APR	8	1	45/60
Health Departments	Initial Outbreak Report Form	59	2	20/60
Health Departments	Outbreak Summary Report Form	59	2	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–07803 Filed 4–11–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10831 and CMS–1696]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by June 11, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10831 Transitional Coverage and Retroactive Medicare Part D Coverage for Certain Low-Income Beneficiaries through the Limited Income Newly Eligible Transition (LI NET) Program

CMS–1696 Appointment of Representative and Supporting Regulations in 42 CFR 405.910

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Transitional Coverage and Retroactive Medicare Part D Coverage for Certain Low-Income Beneficiaries through the Limited Income Newly Eligible Transition (LI NET) Program; *Use:* Section 118 of the Consolidated Appropriations Act, 2021 (CAA) (Pub. L. 116–260) enacted on December 27, 2020, amended Section 1860D–14 of the Social Security Act (the Act) (42 U.S.C. 1395w–114) and authorized CMS to make transitional coverage and retroactive Medicare Part D coverage for certain low-income beneficiaries, called the Limited Income Newly Eligible Transition (LI NET) program a permanent part of the Part D program. The LI NET program under this statute must begin no later than January 1, 2024.

CMS established the Medicare Part D Demonstration for Retroactive and Point-of-Sale Coverage for Certain Low-Income Beneficiaries (also known as Medicare's Limited Income Newly Eligible Transition (LI NET) demonstration). The LI NET demonstration consolidates administration of transitional and retroactive Part D coverage for eligible beneficiaries to a single Part D sponsor. The LI NET demonstration provides an exception to the 36-month maximum period of retroactive enrollment if there is a Medicaid determination within the last 90 days that confers Medicaid eligibility going back further than 36 months. In these situations, LI NET enrollment under the demonstration goes back to the start of Medicaid eligibility.

The information provided by LI NET beneficiaries is largely paper based, such as showing a Medicaid eligibility letter to a pharmacist or sending a signed direct reimbursement request through the mail or by fax. Beneficiaries could also opt to email a digital copy of their documentation to the LI NET sponsor. *Form Number:* CMS–10831 (OMB control number: 0938–1441); *Frequency:* Occasionally; *Affected Public:* Individuals and Households, Private Sector and Business or other for-profit; *Number of Respondents:* 73,705; *Total Annual Responses:* 110,686; *Total Annual Hours:* 11,701. (For policy questions regarding this collection contact Marie Gutierrez at 410–786–4486).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Appointment of Representative and Supporting Regulations in 42 CFR 405.910; *Use:* The requirements for appointing representatives for claims and appeals processed under 42 CFR part 405 Subpart I were codified into regulation at 42 CFR 405.910. In summary, section 405.910 states an individual or entity may appoint a representative to act on their behalf in exercising their rights relative to an initial claim determination or an appeal. The appointment of representation must be in writing and must include all the required elements specified in 405.910(c). The burden associated with this requirement is the

time and effort of the individual or entity to prepare an appointment of representation containing all the required information of this section. To reduce some of the burden associated with this requirement, we developed a standardized form that the individual/entity may opt (but is not required) to use.

This form would be completed by Medicare beneficiaries, providers and suppliers (typically their billing clerk, or billing company), and any party who wish to appoint a representative to assist them with their initial Medicare claims determinations and filing appeals on Medicare claims. The information supplied on the form is reviewed by Medicare claims and appeals adjudicators. The adjudicators make determinations whether the form was completed accurately, and if the form is correct and accepted, the form is appended to the claim or appeal that it was filed with. *Form Number:* CMS–1696 (OMB control number: 0938–0950); *Frequency:* Occasionally; *Affected Public:* Individuals and Households and Private Sector; *Number of Respondents:* 213,208; *Total Annual Responses:* 213,208; *Total Annual Hours:* 53,302. (For policy questions regarding this collection contact Liz Hosna at 410–786–4993.

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–07790 Filed 4–11–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; System of Records

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of a modified system of records and rescindment of a system of records notice.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is modifying a system of records maintained by the Office of Family Assistance (OFA) within the Administration for Children and Families (ACF), 09–80–0375 OFA Temporary Assistance for Needy Families (TANF) Data System. The modification will add Tribal TANF records from a separate system of records, 09–80–0373 OFA Tribal Temporary Assistance for Needy Families (Tribal TANF), which is now being rescinded; and will change the name of the system of records 09–80–0375 to Temporary Assistance for Needy Families (TANF) Data.

DATES: In accordance with 5 U.S.C. 552a(e)(4), this notice is effective April 12, 2024; however, the public may submit comments on the notice.

ADDRESSES: The public should submit written comments by mail or email to Anita Alford, Senior Official for Privacy, Administration for Children and Families, 330 C Street SW, Washington DC 20201, or *Anita.Alford@acf.hhs.gov.* Please include ''09–80–0375'' in the subject line. Comments received, if any, will be available for public inspection at the above address during business hours, or otherwise upon request; please contact Anita Alford at (202) 401–4628 or *Anita.Alford@acf.hhs.gov* for an appointment or to request a copy. We do not edit personal identifying information from submissions; therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: General questions about the systems of records may be submitted by mail or email to TANF Data Division, Office of Family Assistance, Administration for Children and Families, 330 C Street SW, Washington, DC 20201, or *tanfdata@acf.hhs.gov;* or may be submitted by telephone to Anita Alford, Senior Official for Privacy, at (202) 401–4628.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Family Assistance (OFA) oversees the cash welfare block grant called the Temporary Assistance for Needy Families (TANF) program. The TANF program provides assistance and work opportunities to needy families through grants that provide states, certain U.S. territories, and Tribes with federal funds and flexibility to develop and implement their welfare programs. Each state and U.S. territory that operates a program of cash assistance for low-income families using TANF funding is required by statute to collect data about the recipients of that cash assistance. Federally recognized tribes administering TANF programs are also required to collect similar data. Given the similar nature of the data collections for states, territories, and Tribes, OFA determined that it is unnecessary to have a separate System of Records Notice (SORN) for Tribal TANF data, hence the recission of SORN 09–80–0373. Instead, Tribal TANF data will be covered under the updated SORN 09–80–0375.

In addition, OFA is in the process of replacing the legacy TANF Data Reporting System. With this development, OFA is updating SORN 09–80–0375 to be IT system-agnostic, to no longer mention particular types of electronic storage media, which can become outdated over time, to describe the specific safeguards used to secure the data, and to cite the sources of the retention periods applicable to the data.

II. Modifications to SORN 09–80–0375

The changes to SORN 90–80–0375 include:

- Reformatting the SORN to use the format prescribed in Office of Management and Budget (OMB) Circular A–108, issued December 23, 2016.
- Changing the name of the system of records from ''OFA Temporary Assistance for Needy Families (TANF) Data System'' to ''Temporary Assistance for Needy Families (TANF) Data.''
- Updating the System Location address and System Manager contact information.
- In the Authority section, removing references to no longer relevant statutory and regulatory provisions, *i.e.,* ''42 U.S.C. 603(a)(4), 613(d) (secs. 403 and 413 of the Social Security Act); 45 CFR part 270 (collection of information for performance measures),'' and adding authorities for maintenance of Tribal TANF data, from SORN 09–80–0373.
- Revising the Purpose(s) section to refer to ''grantees'' instead of ''states'' (to encompass territories and Tribes); to change ''prescribed work'' to ''work participation'' in the first purpose description; to change the third purpose description from computing states' scores on work measures and ranking states' performance in assisting TANF recipients to obtain and retain employment to ''perform[ing] research on the caseload dynamics and employment trajectories of TANF recipients;'' and, in the paragraph at the end of the section, inserting ''Tribal TANF programs'' and omitting statements that data is pooled to create a national database and that some data may be matched with records of individual employment information in the National Directory of New Hires system of records but would be transmitted back to OFA in a form that is not individually identifiable.
- In the Categories of Records section, no longer including lists of data elements, which were similar, but not identical, in the two SORNs; but retaining the same three categories of

records that were listed in both SORNs: ''family-level data; adult-level or minor-child-head-of-household data; and child data.''

• Changing the Record Source Categories description from ''states'' to ''TANF grantee agencies in the states, territories, and Tribal organizations.''

• Removing or not including three unnecessary routine uses (two of them were in only the Tribal TANF SORN, numbered as 3. *Disclosure Incident to Requesting Information* and 4. *Disclosure for Employee Retention, Security Clearance, Contract, or Other Benefit;* and the other one was in both SORNs, formerly numbered in SORN 09–80–0375 as 9. *Disclosure to Office of Personnel Management*); and combining two litigation-related routine uses that were in both SORNs into one routine use, thereby removing the routine use that was formerly numbered in SORN 09–80–0375 as 10. *Disclosure in Connection with Litigation.* Former Tribal TANF routine uses 3 and 4 authorized disclosures to aid personnel-related, procurement-related, and other administrative decisions by HHS or another agency, and former routine use 9 authorized disclosures to the Office of Personnel Management to discharge its personnel management responsibilities, and such disclosures are not, in fact made with records from this system of records. Former routine use 10 authorized disclosures in connection with litigation or settlement discussions, and such disclosures are now adequately covered in revised routine use 5, which authorizes disclosures to the Department of Justice or in proceedings.

• Revising three existing routine uses, as follows:

○ Routine use 1, *Disclosure of Identifiable Data for Research,* has been reworded but not substantively changed except to remove redundant wording requiring the disclosures to be compatible with the original collection purpose (such wording is part of the definition of a routine use).

○ Routine use 5, which was formerly captioned *Disclosure to Department of Justice (DOJ) or in Proceedings,* has been revised to change ''Proceedings'' to ''Litigation'' in the caption (to reflect the combination with former routine use 10 which was captioned *Disclosure in Connection with Litigation*); to change ''relevant and necessary to the litigation'' to ''arguably relevant to the litigation''; and to change ''deemed'' to ''determined.'' In addition, the proviso at the end of the routine use that stated ''provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected'' has been removed because that is part of the definition of a routine use, so is redundant to include in the wording of a routine use.

○ Routine use 7, *Disclosure to Contractors, Grantees, and Others,* has been revised to require that the matters performed by agency contractors, grantees, and others on behalf of HHS for which they need access to records from this system of records, must be ''related to the purposes of this system of records,'' so that the routine use wording is not overly broad.

• Changing ''State provided data'' to ''grantee-provided data'' in the Note about matching at the end of the Routine Uses section.

• Updating the Storage section to state that records are ''stored in electronic media'' without describing particular types of electronic storage media, which could become outdated over time.

• Updating the Retrieval section to state how records ''are'' (not ''may be'') retrieved; to omit ''name'' as a personal identifier used for retrieval; to change ''assigned case or family identification-number'' to ''assigned case number;'' and to change ''state-assigned'' to ''grantee-assigned'' to reflect that identifiers may be assigned by territories and Tribes, not just states.

• Updating the Retention section to cite the disposition schedule which applies to the data (no schedules were cited in either SORN) and provide a shorter summary of the applicable retention periods.

• Improving the Safeguards section by identifying the specific administrative, technical, and physical safeguards used to protect the data from unauthorized disclosure.

• Improving the sections describing procedures for making access, amendment, and notification requests, so that:

○ the requirements (including identity verification requirements) that apply to all three types of requests are now directly included in the Access procedures section and then incorporated by reference in the Contesting Records and Notification procedures sections;

○ the information that ''must'' be included in a request now includes ''telephone number and/or email address'' and ''date of birth;'' and

○ the procedures now state that ''the state, Tribe, or territory where the requester participated in the TANF program'' should be identified in the request.

III. Rescindment of SORN 09–80–0373

HHS is rescinding SORN 09–80–0373 OFA Tribal Temporary Assistance for Needy Families (Tribal TANF) as duplicative of modified SORN 09–80–0375. The records that were covered in SORN 09–80–0373 are still maintained by ACF/OFA but are now covered in SORN 09–80–0375.

Beth Kramer,

HHS Privacy Act Officer, FOIA—Privacy Act Division, Office of the Assistant Secretary for Public Affairs.

SYSTEM NAME AND NUMBER:

Temporary Assistance for Needy Families (TANF) Data, 09–80–0375.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Family Assistance, Administration for Children and Families, 330 C St. SW, Washington, DC 20201.

SYSTEM MANAGER(S):

The System Manager is the Deputy Director of the TANF Data Division, Office of Family Assistance, Administration for Children and Families, 330 C Street SW—3rd Floor, Washington, DC 20201; Email: *tanfdata@acf.hhs.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

TANF: 42 U.S.C. 601 through 619 (Title IV–A of the Social Security Act); 45 CFR part 265 (TANF data collection and reporting regulations);

Tribal TANF: 42 U.S.C. 612 (sec. 412 of the Social Security Act). Tribal TANF data collection and reporting regulations are found in 45 CFR part 286.

PURPOSE(S) OF THE SYSTEM:

The purposes for which TANF data are used are:

1. to determine whether grantees are meeting certain requirements prescribed by the Social Security Act, including work participation and time-limit requirements;

2. to compile information used to report to Congress on the TANF program; and

3. to perform research on the caseload dynamics and employment trajectories of TANF recipients.

The monthly TANF data are reported by the individual grantees for each Federal fiscal quarter. (The term ''grantees'' is used in this notice to refer to the Tribal TANF programs, 50 states, the District of Columbia, and the jurisdictions of Puerto Rico, the U.S. Virgin Islands, and Guam.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are about the following categories of individuals:

1. Members of families (as defined at 45 CFR 265.2) who received assistance under the TANF program in any month. For data collection and reporting purposes only, family means:

a. all individuals receiving assistance as part of a family under the State's TANF or separate State program (including noncustodial parents, where required under 45 CFR 265.3(f)); and

b. the following additional persons living in the household, if not otherwise included:

○ parent(s) or caretaker relative(s) of any minor child receiving assistance;

○ minor siblings of any child receiving assistance; and

○ any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

2. Members of families no longer receiving assistance under the TANF program.

CATEGORIES OF RECORDS IN THE SYSTEM:

There are three distinct categories of TANF data: family-level data; adult-level or minor-child-head-of-household data; and child data.

RECORD SOURCE CATEGORIES:

All information is obtained from TANF grantee agencies in the states, territories, and Tribal organizations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, as amended, at 5 U.S.C. 552a(b), under which ACF may release information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible.

1. *Disclosure of Identifiable Data for Research.* Information from this system of records may be disclosed with personal identifiers included for use solely as a statistical, research, or reporting record in response to specific requests from public or private entities. No data will be disclosed until the requester has agreed in writing not to use such data to identify any individuals and has provided advance adequate written assurance that the records will be used solely as a statistical, research, or reporting record.

2. *Disclosure for Law Enforcement Purpose.* Information may be disclosed to the appropriate federal, state, local, Tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

3. *Disclosure for Private Relief Legislation.* Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

4. *Disclosure to Congressional Office.* Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of the individual.

5. *Disclosure to Department of Justice (DOJ) or in Litigation.* Information may be disclosed to DOJ, or in a proceeding before a court, adjudicative body, or other administrative body before which HHS is authorized to appear, or in proceedings arguably relevant to the litigation, when: HHS, or any component thereof; or any employee of HHS in his or her official capacity; or any employee of HHS in his or her individual capacity where DOJ or HHS has agreed to represent the employee; or the United States, if HHS determines that litigation is likely to affect HHS or any of its components, is a party to the proceedings or has an interest in such proceedings, and the use of such records by DOJ or HHS is determined by HHS to be arguably relevant to the litigation.

6. *Disclosure to the National Archives and Records Administration (NARA).* Information may be disclosed to NARA in records management inspections.

7. *Disclosure to Contractors, Grantees, and Others.* Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for HHS related to the purposes of this system of records and who have a need to have access to the information in the performance of their duties or activities for HHS.

8. *Disclosure in the Event of a Security Breach Experienced by HHS.* Records may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records, (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including information systems, programs, and operations), the federal government, or national security, and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected of confirmed breach or to prevent, minimize, or remedy such harm.

9. *Disclosure to Assist Another Agency Experiencing a Security Breach.* Records may be disclosed to another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

Note: Data produced by matching grantee-provided data in this system of records with data from the Office of Child Support Enforcement's National Directory of New Hires system of records will only be disclosed in accordance with applicable routine use disclosures set forth in SORN 09–80–0381 OCSE National Directory of New Hires.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by a grantee-defined unique identifier (which may be an SSN) or assigned case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records (family-level data; adult-level or minor-child-head-of-household data; and child data) are retained for administrative, audit, legal, or operational purposes, and in accordance with records schedule DAA–292–2016–0006, Item 7.1 *Data, Reports and Tables* and Item 7.2 *Other Reports,* approved by the National Archives and Records Administration (NARA).

- Item 7.1 *Data, Reports and Tables* provides for records related to cash assistance caseloads, work participation data, and caseload characteristics to be cut off at the end of the fiscal year and transferred to NARA 20 years after cutoff, for permanent retention, due to its significant research value.
- Item 7.2 *Other Reports* provides for routine administrative supporting documents for the National Directory of New Hires (NDNH) match reports, and

Temporary Assistance for Needy Families and maintenance of effort reports submitted by states, territories, and tribes, to be cut off at the end of the fiscal year the reports are completed and destroyed three years after cutoff.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Safeguards conform to the HHS Information Security and Privacy Program, *https://www.hhs.gov/ocio/securityprivacy/index.html.* The information technology system used to store the records leverages cloud service providers that maintain an authority to operate in accordance with applicable laws, rules, and policies, including Federal Risk and Authorization Management Program (FedRamp) requirements.

Information is safeguarded in accordance with applicable laws, rules and policies, including the HHS information security policies, the E-Government Act of 2002, which includes the Federal Information Security Management Act of 2002 (FISMA), 44 U.S.C. 3541 through 3549, as amended by the Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 through 3558, all pertinent National Institutes of Standards and Technology (NIST) publications, and OMB Circular A–130, Managing Information as a Strategic Resource. Records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Agency personnel, contractors, and grantees who have access to the records are required to maintain confidentiality by assuring that case records are kept in a safe, secure environment within agency, contractor, or grantee facilities. They are also required to sign a confidentiality agreement and to receive annual training on records management, cybersecurity, privacy, and confidentiality policies and procedures, including methods of protecting client confidentiality.

Case records are filed electronically according to OFA protocols, and access to records is controlled through log-in/out processes for computer logs. The records are accessible only to authorized users using two-factor authentication through a secured system that is protected by encryption, firewalls, and intrusion detection systems and requires additional encryption for any records stored on removable media. Records that become eligible for destruction are disposed of in alignment with the secure destruction methods prescribed by the NIST Special Publication (SP) 800–88. The associated information technology (IT) system(s) receive Authority to Operate (ATO) under the guidance of NIST SP 800–53.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about them in this system of records must submit a written access request to the relevant System Manager identified in the ''System Manager(s)'' section of this SORN. The request must contain the requester's full name, Social Security Number, address, telephone number and/or email address, date of birth, and signature, and should identify the state, Tribe, or territory where the requestor participated in the TANF program.

So that HHS may verify the requester's identity, the requester's signature must be notarized or the request must include the requester's written certification that the requester is the individual who the requester claims to be and that the requester understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine of up to $5,000.

You may also request an accounting of disclosures that have been made of records about you, if any.

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend records about them in this system of records must submit a written amendment request to the relevant System Manager identified in the ''System Manager(s)'' section of this SORN, containing the same information required for an access request. The request must include verification of the requester's identity in the same manner required for an access request; must reasonably identify the record and specify the information contested, the corrective action sought, and the reasons for requesting the correction; and should include supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

Individuals who wish to know if this system of records contains records about them must submit a written notification request to the relevant System Manager identified in the ''System Manager(s)'' section of this SORN. The request must contain the same information required for an access request and must include verification of the requester's identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 17903 (Apr. 2, 2015), 83 FR 6591 (Feb. 14, 2018).

NOTICE OF RESCINDMENT:

For the reasons explained in the Supplementary Information section at III., the following system of records is rescinded:

SYSTEM NAME AND NUMBER:

OFA Tribal Temporary Assistance for Needy Families (Tribal TANF), 09–80–0373.

HISTORY:

80 FR 17901 (Apr. 2, 2015), 83 FR 6591 (Feb. 14, 2018).

[FR Doc. 2024–07823 Filed 4–11–24; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The cooperative agreement applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the cooperative agreement applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; NCATS CTSA UM1 Review.

Date: June 4, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Victor Henriquez, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1066, Bethesda, MD 20892, (301) 435–0813, *henriquv@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry

Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 8, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–07746 Filed 4–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Eunice Kennedy Shriver National Institute of Child Health and Human Development.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual grant applications conducted by the *Eunice Kennedy Shriver* National Institute Of Child Health & Human Development, 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.

Date: June 7, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 31 Center Drive, 2A Conference Room, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Chris J. McBain, Ph.D., Scientific Director, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 31 Center Drive, 2A Conference Room, Bethesda, MD 20892, (301) 594–5984, *mcbainc@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *https://www.nichd.nih.gov/about/advisory/bsc,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 9, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–07799 Filed 4–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Center for Advancing Translational Sciences Advisory Council.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations, 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/.*

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Advisory Council.

Date: May 23, 2024.

Closed: 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, Building 35A, Room 620/630, 9000 Rockville Pike, Bethesda, MD 20892 (Hybrid Meeting).

Open: 10:30 a.m. to 4:30 p.m.

Agenda: Report from the Center Director, NCATS 2024 Strategic Plan, Invited Speaker presentation, Program Updates, Clearance of Concepts.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, Building 35A, Room 620/630, 9000 Rockville Pike, Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, National Institutes of Health, 1 Democracy Plaza, Room 1072, Bethesda, MD 20892, *anna.ramseyewing@nih.gov,* (301) 435–0809.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice no later than 15 days after the meeting at *NCATSCouncilInput@mail.nih.gov.* The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://ncats.nih.gov/advisory/council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 8, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–07745 Filed 4–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Resource-Related Research Projects (R24 Clinical Trial Not Allowed).

Date: May 8, 2024.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20852 (Video Assisted Meeting).

Contact Person: Caitlin A. Brennan, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20852, (301) 761–7792, *caitlin.brennan2@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 9, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–07796 Filed 4–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel; Conflicts, R01s and Multiple Programs.

Date: July 25, 2024.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ali Sharma, Ph.D., Scientific Review Officer, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892–7968, *ali.sharma@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: April 9, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–07791 Filed 4–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Resource Support Program for AIDS Vaccine Development (N01).

Date: May 6, 2024.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71, Rockville, MD 20852 (Video Assisted Meeting).

Contact Person: Samita S. Andreansky, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71, Rockville, MD 20852, 240–669–2915, *samita.andreansky@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 9, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–07801 Filed 4–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Cancer Biology.

Date: May 2, 2024.

Time: 2:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jian Cao, M.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–5902, *caojn@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 8, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–07757 Filed 4–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; HEAL Initiative: Novel Targets for Opioid Use Disorders and Opioid Overdose.

Date: May 28–29, 2024.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Accelerating the Pace of Drug Abuse Research Using Existing Data.

Date: May 30, 2024.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Li Rebekah Feng, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–7245, *rebekah.feng@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Applying Imaging Pipelines for Spatial Characterization of Cellular Interactions in HIV-related CNS Pathology and/or Substance Use.

Date: May 31, 2024.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Mechanistic Research on Neuromodulation for Substance Use Disorders Treatment.

Date: June 27, 2024.

Time: 1:00 p.m. to 5:00 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Stefan Wolff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 480–1448, *brian.wolff@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 9, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–07797 Filed 4–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel; NLM Scholarly Works (G13).

Date: July 12, 2024.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ali Sharma, Ph.D., Scientific Review Officer, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892–7968, *ali.sharma@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: April 9, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–07792 Filed 4–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Eunice Kennedy Shriver National Institute of Child Health and Human Development.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the Eunice Kennedy Shriver National Institute of Child Health & Human Development, 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: Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Study Section.

Date: June 28, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health 6710 Rockledge Drive, Bethesda, MD 20817, (Virtual Meeting).

Contact Person: Jolanta Maria Topczewska, Ph.D., Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Rm. 2131B Bethesda, MD 20892, (301) 451–0000, *jolanta.topczewska@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 9, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–07798 Filed 4–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2024–0041]

Area Maritime Security Advisory Committee Sector Honolulu

AGENCY: Coast Guard, DHS.

ACTION: Solicitation for Membership.

SUMMARY: The Coast Guard requests individuals interested in serving on the Hawaii and American Samoa Area Maritime Security Committee (AMSC) submit their applications for membership to the Captain of the Port Sector Honolulu (COTP). The Committee assists the COTP as the Federal Maritime Security Coordinator (FMSC), Honolulu, in developing, reviewing, and updating the Area Maritime Security Plan (AMSP) for their area of responsibility.

DATES: Requests for membership should reach the COTP Sector Honolulu by 11:59 p.m. on May 31, 2024.

ADDRESSES: Applications for membership should be submitted to the COTP at the following address: USCG Sector Honolulu, 400 Sand Island Parkway, Honolulu, HI 96819.

FOR FURTHER INFORMATION CONTACT: For questions about submitting an application, or about the AMSC in general, contact Scott Higbee, 808–842–2693, *scott.m.higbee2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Basis and Purpose

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295) added section 70112 to title 46 of the U.S. Code and authorized the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Committees (AMSC) for any port area of the United States. (See 33 U.S.C. 1226; 46 U.S.C. 70112; 33 CFR 1.05–1, 6.01; Department of Homeland Security Delegation No. 00170.1(II)(71), Revision No. 01.3.) The MTSA includes a provision exempting these AMSCs from the *Federal Advisory Committee Act* (Pub. L. 117–286, 5 U.S.C., ch. 10).

The AMSCs shall assist the Federal Maritime Security Coordinator (FMSC) in the development, review, update, and exercising of the Area Maritime Security Plan (AMSP) for their area of responsibility. Such matters may include, but are not limited to: identifying critical port infrastructure and operations, identifying risks (threats, vulnerabilities, and consequences), determining mitigation strategies and implementation methods, developing strategies to facilitate the recovery of the Maritime Transportation System after a Transportation Security Incident, developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied, and providing advice to, and assisting the FMSC in developing and maintaining the AMSP.

AMSC Composition

The composition of an AMSC is prescribed under 33 CFR 103.305. Pursuant to the regulation, members may be selected from the Federal, Territorial, or Tribal government; the State government and political subdivisions of the State; local public safety, crisis management, and emergency response agencies; law enforcement and security organizations; maritime industry, including labor; other port stakeholders having a special competence in maritime security; and port stakeholders affected by security practices and policies. Members of the AMSC should have at least five years of experience related to maritime or port security operations.

AMSC Membership

The Hawaii and American Samoa AMSC has approximately 15 members. The Committee is seeking to fill two vacancies with this solicitation. Applicants may be required to pass an appropriate security background check prior to appointment to the committee. Members' terms of office will be for five years; however, a member is eligible to serve additional terms of office. Members will not receive any salary or other compensation for their service on an AMSC.

Request for Applications

Those seeking membership are not required to submit formal applications to the local COTP. However, because the Hawaii and American Samoa AMSC does have an obligation to ensure that a specific number of members have the prerequisite maritime security experience, the submission of resumes highlighting experience in the maritime and security industries is encouraged.

The Coast Guard does not discriminate in selection of committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. The Coast Guard strives to achieve a widely diverse candidate pool for all of its recruitment actions.

Dated: March 4, 2024.

Aja L. Kirksey,

Captain, U.S. Coast Guard, Captain of the Port/Federal Maritime Security Coordinator Honolulu.

[FR Doc. 2024–07794 Filed 4–11–24; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2424]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations.

The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colorado:						
Douglas	Town of Castle Rock (23-08-0509P).	The Honorable Jason Gray, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	Water Department, 175 Kellogg Court, Castle Rock, CO 80109.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 21, 2024	080050
Jefferson	Unincorporated areas of Jefferson County (23-08-0204P).	Lesley Dahlkemper, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 5, 2024	080087
Larimer	Town of Timnath (23-08-0412P).	The Honorable Mark Soukup, Mayor, Town of Timnath, 4750 Signal Tree Drive, Timnath, CO 80547.	Town Hall, 4100 Main Street, Timnath, CO 80547.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 25, 2024	080005
Larimer	Unincorporated areas of Larimer County (23-08-0412P).	Jody Shadduck-McNally, Chair, Larimer County Board of Commissioners, 200 West Oak Street, Fort Collins, CO 80521.	Larimer County Courthouse, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 25, 2024	080101
Summit	Town of Silverthorne (22-08-0673P).	The Honorable Ann-Marie Sandquist, Mayor, Town of Silverthorne, P.O. Box 1309, Silverthorne, CO 80498.	Town Hall, 601 Center Circle, Silverthorne, CO 80498.	*https://msc.fema.gov/portal/advanceSearch.*	May 13, 2024	080201
Summit	Unincorporated areas of Summit County (22-08-0673P).	Tamara Pogue, Chair, Summit County Board of Commissioners, P.O. Box 68, Breckenridge, CO 80424.	Summit County Commons, 37 Peak One Drive, Frisco, CO 80443.	*https://msc.fema.gov/portal/advanceSearch.*	May 13, 2024	080290

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Weld	Town of Firestone (23-08-0123P).	The Honorable Drew Peterson, Mayor, Town of Firestone, 9950 Park Avenue, Firestone, CO 80504.	Town Hall, 9950 Park Avenue, Firestone, CO 80504.	*https://msc.fema.gov/portal/advanceSearch.*	May 20, 2024	080241
Weld	Town of Frederick (23-08-0123P).	The Honorable Tracie Crites, Mayor, Town of Frederick, P.O. Box 435, Frederick, CO 80530.	Town Hall, 323 5th Street, Frederick, CO 80530.	*https://msc.fema.gov/portal/advanceSearch.*	May 20, 2024	080244
Weld	Unincorporated areas of Weld County (23-08-0123P).	Mike Freeman, Chair, Weld County Board of Commissioners, P.O. Box 758, Greeley, CO 80631.	Weld County Commissioner's Office, 1150 O Street, Greeley, CO 80631.	*https://msc.fema.gov/portal/advanceSearch.*	May 20, 2024	080266
Florida:						
Manatee	Unincorporated areas of Manatee County (23-04-5657P).	Charlie Bishop, Manatee County Administrator, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Administration Building, 1112 Manatee Avenue West, Bradenton, FL 34205.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 10, 2024	120153
Monroe	Village of Islamorada (24-04-1016P).	The Honorable Joseph "Buddy" Pinder III Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 5, 2024	120424
Orange	City of Orlando (23-04-5329P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	City Hall, 400 South Orange Avenue, Orlando, FL 32801.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 24, 2024	120186
Orange	Unincorporated areas of Orange County (23-04-5298P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Public Works Department, Stormwater Management Division, 4200 South John Young Parkway, Orlando, FL 32839.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 8, 2024	120179
Orange	Unincorporated areas of Orange County (23-04-5329P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Public Works Department, Stormwater Management Division, 4200 South John Young Parkway, Orlando, FL 32839.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 24, 2024	120179
Osceola	Unincorporated areas of Osceola County (23-04-0522P).	Donald Fisher, Osceola County Manager, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Public Works Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 7, 2024	120189
Palm Beach	Unincorporated areas of Palm Beach County (23-04-4841P).	Verdenia C. Baker, Palm Beach County Administrator, 301 North Olive Avenue, West Palm Beach, FL 33401.	Palm Beach County Building Division, 2300 North Jog Road, Vista Center, 1st Floor, 1E–17, West Palm Beach, FL 33411.	*https://msc.fema.gov/portal/advanceSearch.*	May 13, 2024	120192
Seminole	City of Sanford (23-04-6286P).	The Honorable Art Woodruff, Mayor, City of Sanford, 300 North Park Avenue, Sanford, FL 32771.	City Hall, 300 North Park Avenue, Sanford, FL 32771.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 27, 2024	120294
Georgia: Fulton	City of Hapeville (23-04-3666P).	The Honorable Alan Hallman, Mayor, City of Hapeville, 3468 North Fulton Avenue, Hapeville, GA 30354.	City Hall, 3474 North Fulton Avenue, Hapeville, GA 30354.	*https://msc.fema.gov/portal/advanceSearch.*	May 3, 2024	130502
Maine:						
Cumberland	Town of Harpswell (24-01-0141P).	Kevin E. Johnson, Chair, Town of Harpswell Board of Selectmen, P.O. Box 39, Harpswell, ME 04079.	Code Department, 263 Mountain Road, Harpswell, ME 04079.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 21, 2024	230169
Cumberland	City of Portland (24-01-0140P).	The Honorable Mark Dion, Mayor, City of Portland, 389 Congress Street, Portland, ME 04101.	Permitting and Inspections Department, 389 Congress Street, Portland, ME 04101.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 21, 2024	230051
Montana: Granite	Unincorporated areas of Granite County (23-08-0605P).	Blanche McLure, Chair, Granite County Board of Commissioners, P.O. Box 925, Philipsburg, MT 59858.	Granite County Planning Department, 220 North Sansome Street, Philipsburg, MT 59858.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 7, 2024	300141

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
North Carolina:						
Durham	Unincorporated areas of Durham County (23–04–1744P).	Nida Allam, Chair, Durham County Board of Commissioners, 200 East Main Street, Durham, NC 27701.	Durham County Government Office, 101 City Hall Plaza, Durham, NC 27701.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 4, 2024	370085
Forsyth	City of Winston-Salem (22–04–5169P)	The Honorable Allen Joines, Mayor, City of Winston-Salem, 100 East First Street, Winston-Salem, NC 27101.	Planning and Development Department, 100 East 1st Street, Winston-Salem, NC 27101.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 22, 2024	375360
Madison	Unincorporated areas of Madison County (23–04–3517X).	The Honorable Matthew Wechtel, Chair, Madison County Board of Commissioners, P.O. Box 573, Marshall, NC 28753.	Madison County Development Services Department, 5707 U.S. Highway 25/70, Marshall, NC 28753.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 18, 2024	370152
Stanly	City of Albemarle (23–04–5871P).	The Honorable G.R. Michael, Mayor, City of Albemarle, 144 North 2nd Street, Albemarle, NC 28001.	Engineering Department, 144 North 2nd Street, 2nd Floor, Albemarle, NC 28001.	*https://msc.fema.gov/portal/advanceSearch.*	May 29, 2024	370223
Wake	Town of Wake Forest (23–04–3741P).	The Honorable Vivian A. Jones, Mayor, Town of Wake Forest, 301 South Brooks Street, Wake Forest, NC 27587.	Planning Department, 301 South Brooks Street, Wake Forest, NC 27587.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 5, 2024	370244
Wake	Unincorporated areas of Wake County (23–04–3741P).	Shinica Thomas, Chair, Wake County, Board of Commissioners, P.O. Box 550, Raleigh, NC 27602.	Wake County, Planning Department, 337 South Salisbury Street, Raleigh, NC 27601.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 5, 2024	370368
Watauga	Unincorporated areas of Watauga County (22–04–4623P).	Larry Turnbow, Chair, Watauga County Board of Commissioners, 814 West King Street, Suite 205, Boone, NC 28607.	Watauga County Planning and Inspections Department, 126 Poplar Grove Connector, Suite 201, Boone, NC 28607.	*https://msc.fema.gov/portal/advanceSearch.*	May 23, 2024	370251
Rhode Island: Washington.	Town of Westerly (24–01–0093P).	Shawn Lacey, Manager, Town of Westerly, 45 Broad Street, 2nd Floor, Westerly, RI 02891.	Building Department, 68 White Rock Road, Westerly, RI 02891.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 5, 2024	445410
Tennessee: Davidson.	Metropolitan Government of Nashville-Davidson County (23–04–4923P).	The Honorable Freddie O'Connell, Mayor, Metropolitan Government of Nashville-Davidson County, 1 Public Square, Suite 100, Nashville, TN 37201.	Metro Water Services Department, 1600 2nd Avenue North, Nashville, TN 37208.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 3, 2024	470040
Texas:						
Bexar	City of San Antonio (22–06–2403P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	May 6, 2024	480045
Bexar	City of Selma (23–06–0582P).	The Honorable Tom Daly, Mayor, City of Selma, 9375 Corporate Drive, Selma, TX 78154.	Public Works Department, 9375 Corporate Drive, Selma, TX 78154.	*https://msc.fema.gov/portal/advanceSearch.*	May 6, 2024	480046
Bexar	City of Universal City (23–06–0582P).	The Honorable John Williams, Mayor, City of Universal City, 2150 Universal City Boulevard, Universal City, TX 78148.	Development Services Department, 2150 Universal City Boulevard, Universal City, TX 78148.	*https://msc.fema.gov/portal/advanceSearch.*	May 6, 2024	480049
Dallas	City of Irving (23–06–1892P).	The Honorable Rick Stopfer, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	Capital Improvement Program, 825 West Irving Boulevard, Irving, TX 75060.	*https://msc.fema.gov/portal/advanceSearch.*	May 28, 2024	480180
Ellis	City of Ennis (23–06–1837P).	The Honorable Angeline Juenemann, Mayor, City of Ennis, 107 North Sherman Street, Ennis, TX 75119.	City Hall, 107 North Sherman Street, Ennis, TX 75119.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 3, 2024	480207
Galveston	City of League City (23–06–0963P).	John Baumgartner, City of League City Manager, 300 West Walker Street, League City, TX 77573.	City Hall, 300 West Walker Street, League City, TX 77573.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 28, 2024	485488

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Galveston	Unincorporated areas of Galveston County (23–06–0963P).	The Honorable Mark Henry, Galveston County Judge, 722 Moody Avenue, Galveston, TX 77550.	Galveston County Courthouse, 722 Moody Avenue, Galveston, TX 77550.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 28, 2024	485470
Grayson	City of Howe (23–06–2585P).	The Honorable Karla McDonald, Mayor, City of Howe, 116 East Haning Street, Howe, TX 75459.	City Hall, 116 East Haning Street, Howe, TX 75459.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 26, 2024	480833
Tarrant	City of Fort Worth (23–06–1892P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault and Map Repository, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	May 28, 2024	480596
Webb	City of Laredo (23–06–2007P).	The Honorable Victor D. Treviño, Mayor, City of Laredo, 1110 Houston Street, Laredo, TX 78040.	Building Development Services Department, 1413 Houston Street, Laredo, TX 78040.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 20, 2024	480651
Williamson	City of Cedar Park (23–06–1459P).	The Honorable Jim Penniman-Morin, Mayor, City of Cedar Park, 450 Cypress Creek Road, Building 4, Cedar Park, TX 78613.	City Hall, 450 Cypress Creek Road, Building 1, Cedar Park, TX 78613.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 6, 2024	481282
Williamson	Unincorporated areas of Williamson County (23–06–1459P).	The Honorable Bill Gravell, Jr., Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Williamson County Engineering Department, 3151 Southeast Inner Loop, Georgetown, TX 78626.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 6, 2024	481079
Virginia: Buchanan	Unincorporated areas of Buchanan County (23–03–1041P).	Robert Craig Horn, Buchanan County Administrator, P.O. Box 950, Grundy, VA 24614.	Buchanan County Government Center, 4447 Slate Creek Road, Grundy, VA 24614.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 21, 2024	510024

[FR Doc. 2024–07658 Filed 4–11–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW]

Agency Information Collection Activities; New Collection: API (Application Programming Interface) Production Access Request

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted for 30 days until May 13, 2024.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2023–0017. All submissions received must include the OMB Control Number 1615–NEW in the body of the letter, the agency name and Docket ID USCIS–2023–0017. Comments must be submitted in English, or an English translation must be provided.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments:

The information collection notice was previously published in the **Federal Register** on December 1, 2023, at 88 FR 83956, allowing for a 60-day public comment period. USCIS did receive one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2023–0017 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). Comments must be submitted in English, or an English translation must be provided. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider

limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* API (Application Programming Interface) Production Access Request.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1595; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. USCIS has newly established a program to enable third party software development companies to access sandbox and production environments via Application Programming Interface (API) to our software systems. Software development companies would use Form G–1595 to request production access to USCIS APIs. USCIS will use the information provided on the form to verify that software development companies' products are in compliance with the Americans with Disabilities Act and covered by a suitable privacy policy as described in the form. Organizations must complete and submit this form before scheduling an application demonstration to present their features that use the API to which they are requesting production access.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–1595 is 20 and the estimated hour burden per response is 0.91 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 18 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,000.

Dated: April 8, 2024.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024–07811 Filed 4–11–24; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Citizenship Integration Grant Program (CIGP) Program Evaluation

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until June 11, 2024.

ADDRESSES: All submissions received must include the OMB Control Number 1615–NEW in the body of the letter, the agency name and Docket ID USCIS–2024–0003. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2024–0003.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2024–0003 in the search box. Comments must be submitted in English, or an English translation must be provided. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Citizenship Integration Grant Program (CIGP) Program Evaluation.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1608; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households and Not-for-profit institutions. The purpose of this information collection is to survey participants and grant recipient staff in the implementation and outcome evaluation of the Citizenship Integration Grant Program (CIGP).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–1608, Implementation Evaluation Participant Web Survey is 580 and the estimated hour burden per response is .33 hours; G–1608, Implementation Evaluation Grant Recipient Staff Web Survey is 110 and the estimated hour burden per response is .33 hours; G–1608, Implementation Evaluation Participant Virtual Interview is 48 and the estimated hour burden per response is .50 hours; G–1608, Implementation Evaluation Grant Recipient Staff Virtual Interview is 28 and the estimated hour burden per response is .50 hours; G–1608, Outcome Evaluation Participant Web Survey is 580 and the estimated hour burden per response is .33 hours; G–1608, Outcome Evaluation Grant Recipient Staff Web Survey is 110 and the estimated hour burden per response is .33 hours; G–1608, Outcome Evaluation Participant Virtual Interview is 48 and the estimated hour burden per response is .50 hours; and G–1608, Outcome Evaluation Grant Recipient Staff Virtual Interview is 22 and the estimated hour burden per response is .50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 559 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There is no estimated total annual cost burden associated with this collection of information.

Dated: April 8, 2024.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024–07800 Filed 4–11–24; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW]

Agency Information Collection Activities; New Collection: Biometric Appointment Rescheduling Tool

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until June 11, 2024.

ADDRESSES: All submissions received must include the OMB Control Number 1615–NEW in the body of the letter, the agency name and Docket ID USCIS–2023–0020. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2023–0020.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2023–0020 in the search box. Comments must be submitted in English, or an English translation must be provided. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Biometric Appointment Rescheduling Tool.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1606; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households. The Biometric Appointment Rescheduling Tool (G–1606) permits applicants to reschedule their existing biometrics appointment online without using the USCIS Contact Center. As part of its administration of immigration benefits, USCIS has the general authority to require and collect biometrics, which include fingerprints, photographs, and digital signatures, from any person seeking any immigration or naturalization benefit or request.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–1606 is 74,000 and the estimated hour burden per response is .25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 18,500 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There is no public burden cost associated with this collection.

Dated: April 8, 2024.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024–07747 Filed 4–11–24; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7092–N–26]

Privacy Act of 1974; System of Records

AGENCY: Office of Housing Counseling, HUD.

ACTION: Notice of a rescindment of a system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Housing and Urban Development (HUD), the Office of Housing Counseling, is issuing a public notice of its intent to rescind the Housing Counseling System (HCS) because the system no longer collects any personally identifiable information (PII).

DATES: Comments will be accepted on or before May 13, 2024. This proposed action will be effective immediately upon publication.

ADDRESSES: You may submit comments, identified by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; The Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: LaDonne White, Chief Privacy Officer, 451 Seventh Street SW, Room 10139, Washington, DC 20410; telephone number (202) 708–3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: The Housing Counseling system (HCS) is a system Housing uses to manage HUDs Housing Counseling program. HCS is the sole web-based application to input, review, report and analyze data on HUD's Housing Counseling program. HCS is a real-time automated data management system to manage the housing counseling program by maintaining the HUD-Approved housing counseling agency list, providing their profile information to program users, processing their grant applications, sharing data with other SF Housing programs, and collecting agencies HUD–9902 reports. Based on a recent review, it was determined that the HCS system no longer collects Personal Identifiable Information (PII). The existing PII will remain in a database that is only accessible through a database extraction tool that recalls the data located in the database. This is a tool only used by the contractor assigned to manage the database. It was determined that previously collected PII data is not Mission Critical Data and therefore is no longer required. Records are no longer maintained by the Office of Housing Counseling and have run the record retention period. The records were wiped from the system. The electronic records were destroyed in accordance with schedule 20 of the National Archives and Records Administration General Records Schedule.

SYSTEM NAME AND NUMBER:

Housing Counseling System/Counseling Activity Reporting System, HUD/HS–23.

HISTORY:

The previously published notice in the **Federal Register** [Docket Number FR–5130–N–32], on October 21, 2008 at 73 FR 62522.

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2024–07771 Filed 4–11–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7086–N–03]

60-Day Notice of Proposed Information Collection: Request for Withdrawals From Replacements Reserves/Residual Receipts Funds, OMB Control No.: 2502–0555

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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 60 days of public comment.

DATES: *Comments Due Date:* June 11, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–3577 (this is not a toll-free number) or email: *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Request for Withdrawals from Replacements Reserves or Residual Receipts Funds.

OMB Approval Number: 2502–0555.

OMB Expiration Date: April 30, 2024.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–9250 Funds Authorization.

Description of the need for the information and proposed use: Project owners are required to submit this information and supporting documentation when requesting a withdrawal for funds from the Reserves for Replacement or Residual Receipt escrow accounts. HUD or the lender/servicer reviews this information to ensure that funds are withdrawn and used in accordance with regulatory and administrative policy.

Respondents: Not-for-profit and restricted distribution property owners.

Estimated Number of Respondents: 30,791.

Estimated Number of Responses: 8,314.

Frequency of Response: varies.

Average Hours per Response: ½ hour.

Total Estimated Burden: 20,784.

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.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Jeffrey D. Little,

General Deputy Assistant Secretary, Office of Housing.

[FR Doc. 2024–07772 Filed 4–11–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[245D0102DM, DS600000, DLSN00000.000000, DX6CS25; OMB Control Number 1090–0011]

Agency Information Collection Activities; DOI Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of the Secretary are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before June 11, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent to the Departmental Information Collection Clearance Officer (ICCO), 1849 C Street NW, Washington, DC 20240; or by email to *PRA@ios.doi.gov.* Please reference Office of Management and Budget (OMB) Control Number 1090–0011 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jeffrey Parrillo, Departmental ICCO, 1849 C Street NW, Washington, DC 20240; by telephone 202–208–7072; or by email to *PRA@ios.doi.gov.* 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: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information

collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback, we mean information that provides useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Requests under this generic clearance will be submitted to OMB via Form DI–4011, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.''

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The types of collections that this generic clearance covers include, but are not limited to:

- Customer comment cards/ complaint forms;
- Focus Groups of customers, potential customers, delivery partners, or other stakeholders;
- One-time or panel discussion groups;
- Moderated, un-moderated, in-person, and/or remote-usability studies;
- Qualitative customer satisfaction surveys (*e.g.,* post-transaction surveys; opt-out web surveys);
- Customer satisfaction qualitative surveys (*e.g.,* those designed to detect early warning signs of dissatisfaction with agency service delivery); and
- Advance testing of non-controversial information collections, including Federal forms, as part of focus groups, in-person observations of users' perceptions of the forms and questions (cognitive testing), web-based experiments, and randomized controlled experiments to refine questions (in accordance with OMB Memorandum ''Testing and Simplifying Federal Forms'', August 9, 2012).

A proposed collection for approval under this generic clearance will only be submitted to OMB if it meets the following conditions:

- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions;
- Information gathered will be qualitative; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study;
- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- With the exception of information needed to provide renumeration for participants of focus groups and cognitive laboratory studies, personally identifiable information (PII) is collected only to the extent necessary and is not retained; and
- Bureaus/offices will utilize the pre-approved Suite of Questions when developing questionnaires for submission to OMB under the DOI ''Fast Track'' generic clearance. Questionnaires should be limited to no more than 15 questions (with a maximum of 2 open-ended questions) and should take no longer than 10–15 minutes to complete.

Proposed Revisions

We propose to revise the Suite of Questions to incorporate the following updates:

(1) Add questions related to:

a. Tribal specific areas of Department of the Interior work.

b. Communication use and preferences.

c. Planning and logistics, including expenses, activities, motivations and future plans.

d. Science and resources.

e. Program evaluation, including quality and feedback on research activities and products.

f. Conservation and restoration training, safety, and respondent/organization roles.

g. Hunting experience and satisfaction.

h. Organization details and roles.

i. Opinions regarding participation in a survey.

j. Use of mobile application technology.

k. Preference for technology platforms used for virtual meetings.

(2) Modify existing questions to:

a. Be applicable to a wider range of the Department of the Interior Bureaus and Offices.

b. Streamline response options to reflect best practices used in other Federal land management collections.

c. Correct grammar, punctuation, and minor wording changes to improve clarity.

(3) Remove questions which are duplicative of other questions contained in the Suite of Questions.

(4) Clarify and streamline the use of the Likert scale questions to measure opinions, attitudes, or behaviors more accurately.

A copy of the draft suite of questions is available to the public for viewing by submitting an email request to the Departmental Information Collection Clearance Officer as provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Title of Collection: DOI Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1090–0011.

Form Number: DI–4011.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals/households; businesses; and, State, local, and Tribal governments.

Total Estimated Number of Annual Respondents: 95,000.

Total Estimated Number of Annual Responses: 95,000.

Estimated Average Completion Time per Response: 10 minutes.

Total Estimated Number of Annual Burden Hours: 15,833.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–07828 Filed 4–11–24; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Office of the Solicitor

[DOI–2021–0003; 24XD4523WS, DWSN00000.000000, DL90000000, DP.90008]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI, Department) is issuing a public notice of its intent to modify the Privacy Act system of records, INTERIOR/DOI–71, Electronic FOIA Tracking System and FOIA Case Files. In this notice, DOI is proposing to consolidate the system of records with INTERIOR/OS–69, Freedom of Information Act Appeals Files, system of records; update the system name to INTERIOR/DOI–71, Freedom of Information Act (FOIA) Files; and provide updates to all sections of the notice in accordance with the Privacy Act and Office of Management and Budget (OMB) policy.

DATES: This modified system will be effective upon publication. New or modified routine uses will be effective May 13, 2024. Submit comments on or before May 13, 2024.

ADDRESSES: You may send comments identified by docket number [DOI–2021–0003] by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2021–0003] in the subject line of the message.
- *U.S. Mail or Hand-Delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2021–0003]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, *DOI_Privacy@ios.doi.gov* or (202) 208–1605.

SUPPLEMENTARY INFORMATION:

I. Background

The DOI maintains the Department-wide system of records, INTERIOR/DOI–71, Electronic FOIA Tracking System and FOIA Case Files, to enable the Department to administer the FOIA Program more efficiently. This system of records contains information on individuals for the purposes of managing and processing FOIA requests, some of which may be processed in tandem with the Privacy Act of 1974, as amended, and supports the oversight and management of appeals filed by individuals under the FOIA and Privacy Act.

This notice also covers DOI FOIA Program records and case files managed by DOI bureaus and offices that may include administrative records, communications, and other documents related to administration of the FOIA Program. Each DOI bureau and office is responsible for managing its own records related to its FOIA program. DOI is publishing this revised system of records notice (SORN) to consolidate two systems of records that support the administration of the DOI FOIA Program and cover the full lifecycle of a FOIA request to include the appeals process: INTERIOR/DOI–71, Electronic FOIA Tracking System and FOIA Case Files, 81 FR 33544 (May 26, 2016), modification published at 86 FR 50156 (September 7, 2021); and INTERIOR/OS–69, Freedom of Information Act Appeals Files, 64 FR 16986 (April 7, 1999), modification published at 86 FR 50156 (September 7, 2021). DOI is also proposing to update the system name to INTERIOR/DOI–71, Freedom of Information Act (FOIA) Files, and is updating all sections of the notice to reflect changes for the modified consolidated system in accordance with the Privacy Act of 1974 and OMB Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.*

The routine uses contained in the INTERIOR/OS–69 SORN are also reflected in the previously published INTERIOR/DOI–71 SORN. In this notice, DOI is changing the routine uses from a numeric to alphabetic list and is

proposing one new routine use and modifying existing routines uses to be consistent with DOI standard routine uses as reflected below. DOI will publish a rescindment notice to retire the INTERIOR/OS–69 SORN after public comments on this consolidated notice are received and the new and modified routine uses become effective.

Routine use A is being modified to further clarify how disclosures are made to the Department of Justice (DOJ) or other Federal agencies when necessary, in relation to litigation or judicial hearings. Routine use B is being updated to clarify how disclosures are made to a congressional office to respond to or resolve an individual's request made to that office. Proposed new routine use C facilitates the sharing of information with the Executive Office of the President to resolve issues concerning individuals' records. Routine use H is being updated to expand the sharing of information with territorial organizations in response to court orders or for discovery purposes related to litigation. Routine use I is being updated to include grantees and service providers to allow DOI to share information to perform services to carry out the purpose of the system, ensure integrity of records, and perform system maintenance. Routine use J is being slightly modified to reflect the breach routine use language required by OMB Memorandum M–17–12, *Preparing for and Responding to a Breach of Personally Identifiable Information.*

Pursuant to 5 U.S.C. 552a(b)(12), DOI may disclose information from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) to aid in the collection of outstanding debts owed to the Federal Government.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The INTERIOR/DOI–71, Freedom of Information Act (FOIA) Files, SORN is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Participation

You should be aware your entire comment, including your personally identifiable information such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/DOI–71, Freedom of Information Act (FOIA) Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in this system are located in the Departmental FOIA Office; Bureaus and Offices that oversee the FOIA Program (see the Department's FOIA website at *https://www.doi.gov/foia/contacts* for a list of the Department's FOIA contacts); FOIA and Privacy Act Appeals, Office of the Solicitor; Office of Inspector General (OIG) Office of General Counsel; and DOI service providers and contractor facilities.

SYSTEM MANAGER(S):

(1) The Director of the Departmental FOIA Office, Office of the Solicitor, U.S. Department of the Interior, 1849 C Street NW, MS–7328 MIB, Washington, DC 20240, has overall responsibility for the policies and procedures used to operate the system. Records are maintained under the control of the Departmental offices, bureaus, and offices. OIG independently manages its own FOIA Program, as discussed further below.

(2) DOI Bureau and Office FOIA Officers and staff in headquarters and in field offices have responsibility for the FOIA files and data maintained for their respective organizations. To obtain a current list of the FOIA Officers and Coordinators and their addresses, see *https://www.doi.gov/foia/contacts.*

(3) The FOIA and Privacy Act Appeals Officer, Office of the Solicitor, U.S. Department of the Interior, 1849 C Street NW, MS–6556 MIB, Washington, DC 20240, has responsibility for maintaining FOIA and Privacy Act appeal files and data for administrative appeals that do not appeal a decision of the OIG.

(4) The OIG FOIA Officer, Office of General Counsel, U.S. Department of the Interior, 1849 C Street NW, MS–4428 MIB, Washington, DC 20240, has responsibility for maintaining OIG FOIA records and FOIA and Privacy Act appeal files for administrative appeals that appeal a decision of the OIG.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, The Freedom of Information Act, as amended; 5 U.S.C. 552a, The Privacy Act of 1974, as amended; DOI FOIA Regulations, 43 CFR part 2; DOI Privacy Act regulations, 43 CFR part 2, subpart K.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to facilitate the Department's management and processing of Freedom of Information Act (FOIA) requests and appeals, some of which may be processed in tandem with the Privacy Act of 1974, as amended. This system: (1) enables the Department to administer FOIA request processing more efficiently; (2) supports action on FOIA requests, appeals, and litigation; (3) enables documents to be released in a more consistent manner; (4) assists in eliminating the duplication of effort; (5) gathers information for management and reporting purposes; and (6) improves customer service.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or their representatives who have submitted FOIA or combined FOIA and Privacy Act requests for records or information, have submitted administrative appeals, and/or have FOIA mediation or litigation pending with DOI or another Federal agency; individuals whose FOIA requests or records have been consulted on or referred to the Department by other agencies; individuals who are the subject of such requests, appeals, mediation, and/or litigation; individuals who are referenced or whose information may be included in responsive records; and/or the DOI personnel assigned to handle such

requests, appeals, mediation, and litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of records created or compiled in response to FOIA requests, or combined FOIA and Privacy Act requests, for records or information, administrative appeals, mediation, and related litigation and includes: original requests and administrative appeals; responses to such requests and appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; records related to processing of FOIA requests and appeals, recommendations on appeals, and final decisions; and, in some instances, copies of requested records and records under appeal. Records about individuals may include name, mailing address, email address, telephone number, case file number, fee determinations, any information contained in the agency records requested by individuals, and identifying information about individual requesters or other information provided by requesters.

RECORD SOURCE CATEGORIES:

Information gathered in this system is submitted by individuals or entities filing FOIA requests and administrative appeals, agencies engaging in consultations or referrals, and agency employees processing these requests and appeals. Information may also be obtained from INTERIOR/DOI–57, Privacy Act Files, system, INTERIOR/SOL–1, Litigation, Appeal and Case Files, and other agency records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) DOI or any component of DOI;

(2) Any other Federal agency appearing before the Office of Hearings and Appeals;

(3) Any DOI employee or former employee acting in his or her official capacity;

(4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, territorial, local, Tribal, or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, State, territorial, local, Tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant, or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To State, territorial and local governments and Tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, shared service provider, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (including its information systems, programs, and operations), the Federal Government, or national security; and

(3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(1) responding to a suspected or confirmed breach; or

(2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To a debt collection agency for the purpose of collecting outstanding debts owed to the Department for fees associated with processing FOIA/Privacy Act requests.

P. To other Federal, State, and local agencies having a subject matter interest in a request or an appeal or a decision thereon.

Q. To another Federal agency to assist that agency in responding to an inquiry by the individual to whom that record pertains.

R. To the National Archives and Records Administration, Office of Government Information Services

(OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the FOIA, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records are contained in file cabinets and/or in secured rooms under the control of authorized DOI personnel. Electronic records are contained in computers, compact discs, magnetic tapes, external removable drives, email, diskettes, digital video disks, and electronic databases.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information can be retrieved by specific data elements in the system including: the tracking number; name of the requester; the requester's organizational affiliation; subject; and other data elements. Paper records are normally retrieved by the tracking number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained under Departmental Records Schedule (DRS) 1.1 Administrative Records (DAA–0048–2013–0001) that covers FOIA and Privacy Act request files, correspondence, reports, and other program administration and financial management records, which has been approved by NARA. The disposition for these records is temporary and retention periods vary according to the specific record and the needs of the agency. FOIA request files and other short-term administration records are destroyed three years after cut-off, which is generally after the date of final reply or the end of the third fiscal year in which files are created. Long-term administration records that require additional retention are destroyed seven years after cut-off, which is generally at the end of the fiscal year in which files are closed if no unique cut-off is specified. The unique cutoff for FOIA appeal files and litigation records is when the case is closed or resolved. The unique cutoff for access and disclosure request files is after final agency action or 3 years after final adjudication by the courts, whichever is later. Paper records are disposed of by shredding or pulping, and records maintained on electronic media are degaussed, deleted, or erased in accordance with Departmental policy and NARA guidelines.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records in the system is limited to authorized personnel whose official duties require such access. Paper records are maintained in file cabinets and/or in secured rooms under the control of authorized DOI personnel. Computer servers in which electronic records are stored are located in secure DOI, service provider or contractor facilities with physical, technical and administrative levels of security to prevent unauthorized access to the networks and information assets. Electronic records are maintained in accordance with the OMB and Departmental guidelines reflecting the implementation of the Federal Information Security Modernization Act of 2014 (Pub. L. 113–283, 44 U.S.C. 3554). Electronic data is protected through user identification, passwords, database permissions and software controls. Such security measures establish different access levels for different types of users. System administrators and authorized users are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior.

RECORD ACCESS PROCEDURES:

An individual requesting access to their records should send a written inquiry to the applicable System Manager, as identified above in the System Manager section. DOI forms and instructions for submitting a Privacy Act request may be obtained from the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records sought and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. The request must include the specific bureau or office that maintains the record to facilitate location of the applicable records. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS'' on both the envelope and letter. A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of their records should send a written inquiry to the applicable System Manager, as identified above in the System Manager section. DOI instructions for submitting a request for amendment of records are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must clearly identify the records for which amendment is being sought, the reasons for requesting the amendment, and the proposed amendment to the record. The request must include the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. The request must include the specific bureau or office that maintains the record to facilitate location of the applicable records. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR AMENDMENT'' on both the envelope and letter. A request for amendment must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records about them should send a written inquiry to the applicable System Manager, as identified above in the System Manager section. DOI instructions for submitting a request for notification are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. The request must include the specific bureau or office that maintains the record to facilitate location of the applicable records. Requests submitted by mail must be clearly marked ''PRIVACY ACT INQUIRY'' on both the envelope and letter. A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

To the extent that copies of exempt records from other systems of records are entered into this system, DOI claims the same exemptions for those records that are claimed for the original primary systems of records from which they originated.

HISTORY:

INTERIOR/DOI–71, Electronic FOIA Tracking System and FOIA Case Files, 81 FR 33544 (May 26, 2016), modification published at 86 FR 50156 (September 7, 2021).

Teri Barnett,

Departmental Privacy Officer, U.S. Department of the Interior.

[FR Doc. 2024–07766 Filed 4–11–24; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act and Oil Pollution Act

On April 8, 2024, the Department of Justice filed a complaint under the Clean Water Act and the Oil Pollution Act and lodged a proposed consent decree with the United States District Court for the Southern District of Texas in the lawsuit entitled *United States of America and State of Texas* v. *Flint Hills Resources Ingleside, LLC,* Civil Action No. 2:24–cv–00079.

The complaint alleges that the defendant, Flint Hills Resources, Ingleside, LLC, is civilly liable for violation of section 311 of the Clean Water Act, 33 U.S.C. 1321, and for natural resource damages under section 1002 of the Oil Pollution Act, 33 U.S.C. 2702. The State of Texas is a co-plaintiff for the natural resource damages claims. The complaint addresses the discharge of about 14,000 gallons of crude oil that spilled into Corpus Christi Bay from a ruptured pipe on a dock at the defendant's crude oil storage terminal in Ingleside, Texas, on the night of December 24, 2022. The complaint further alleges that the oil impacted water quality, beach, and marsh areas and harmed a variety of fish and wildlife, including birds and sea turtles.

To resolve the claims, the company will pay a total of $989,212.80. Under the proposed consent decree, the company will pay the United States $400,000 in civil penalties for the Clean Water Act oil discharge violation. This claim is brought by the United States on behalf of the United States Coast Guard. The penalties paid for this claim will be deposited in the federal Oil Spill Liability Trust Fund managed by the National Pollution Funds Center. The Oil Spill Liability Trust Fund is used to pay for federal response activities and to compensate for damages when there is a discharge or substantial threat of discharge of oil or hazardous substances to waters of the United States or adjoining shorelines.

The company will also pay the United States and the State of Texas, on behalf of the federal and State natural resource trustees, $589,212.80 as natural resource damages under the Oil Pollution Act. The federal trustees are the Department of the Interior, through the Fish and Wildlife Service, and the Department of Commerce's National Oceanic and Atmospheric Administration. The State trustees are the Texas General Land Office, the Texas Commission on Environmental Quality, and the Texas Parks and Wildlife Department. Pursuant to the Oil Pollution Act, each trustee acts on behalf of the public to seek damages for the injury to, destruction of, or loss of natural resources resulting from the discharge of oil into the environment. Under the consent decree, the defendant's payment provides for $427,000 of the total to be used by the trustees to design, implement, and oversee natural resource restoration projects to compensate for the injuries resulting from the oil discharge. The rest of the funds will be used to repay the trustees for each agency's work to assess the injuries to natural resources. The United States and the State are coordinating injury assessment and restoration efforts.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and State of Texas* v. *Flint Hills Resources Ingleside, LLC,* D.J. Ref. No. 90–5–1–1–12902. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted by either 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 in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the consent decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–07688 Filed 4–11–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board; Notice of Closed Meeting

This notice announces a forthcoming closed meeting of the National Institute of Corrections (NIC) Advisory Board pursuant to the Federal Advisory Committee Act (FACA).

Name of the Committee: NIC Advisory Board.

General Function of the Committee: To aid the National Institute of Corrections in developing long-range plans, advise on program development, and recommend guidance to assist NIC's efforts in the areas of training, technical assistance, information services, and policy/program development assistance to Federal, State, and local corrections agencies.

Date and Time: Monday, April 22, 2024, from 1 p.m.–6 p.m. ET (approximate times).

Location: Virtual.

Contact Person: Leslie LeMaster, Designated Federal Official (DFO) to the NIC Advisory Board, The National Institute of Corrections, 320 First Street NW, Room 901–3, Washington, DC 20534. To contact Ms. LeMaster, please call (202) 305–5773 or *llemaster@bop.gov.*

Agenda: On April 22, 2024, the Advisory Board will convene a closed meeting to permit discussion of information that (1) relates solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)), and (2) is of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The Advisory Board will discuss the outcomes of continuing efforts to make recommendations to the Attorney General for the NIC Director vacancy.

Procedure: On April 22, 2024, the Advisory Board will convene a closed meeting to permit discussion of information that (1) relates solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)), and (2) is of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C.

552b(c)(6)). The Advisory Board will discuss the outcomes of continuing efforts to make recommendations to the Attorney General for the NIC Director vacancy.

Closed Committee Deliberations: On April 22, 2024, from 1 p.m.–6 p.m. ET (approximate times) the meeting will be closed to permit discussion of information that (1) relates solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)), and (2) is of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The Advisory Board will discuss the outcomes of continuing efforts to make recommendations to the Attorney General for the NIC Director vacancy.

General Information: The virtual meeting will be closed to the public to permit discussion of information that (1) relates solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)), and (2) is of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The Advisory Board will discuss the outcomes of continuing efforts to make recommendations to the Attorney General for the NIC Director vacancy.

Leslie LeMaster,

Designated Federal Official, National Institute of Corrections.

[FR Doc. 2024–07520 Filed 4–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0064]

Forging Machines Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Forging Machines Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by June 11, 2024.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov.* Documents in the docket are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2011–0064) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that forging machines used by them are in safe operating condition, and that employees are able to clearly and properly identify manually operated valves and switches.

Inspection of Forging Machines, Guards, and Point-of-Operation Protection Devices (Paragraphs (a)(2)(i) and (a)(2)(ii))

Paragraph (a)(2)(i) requires employers to establish periodic and regular maintenance safety checks, and to develop and maintain a certification record of each inspection. The certification record must include the date of inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the forging machine inspected. Under paragraph (a)(2)(ii), employers are to schedule regular and frequent inspections of guards and point-of-operation protection devices and prepare a certification record of each inspection that contains the date of the inspection, and the serial number (or other identifier) of the equipment inspected. These inspection certification records provide assurance to employers, employees, and OSHA compliance officers that forging machines, guards, and point-of-operation protection devices have been inspected, and will operate properly and safely, to prevent impact injury and death to employees during forging operations. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

Identification of Manually Controlled Valves and Switches (Paragraphs (c), (h)(3), (i)(1) and (i)(2))

These paragraphs require proper and clear identification of manually operated valves and switches on presses, up setter, bolt heading equipment, and rivet-making machines, respectively. Marking valves and

switches provide information to employees to ensure that they operate the forging machines correctly and safely. The agency determined that it is usual and customary for manufacturers to mark (for example, ''On'' and ''Off,'' and ''Open'' and ''Close,'' etc.) all manually controlled valves and switches to meet the requirements of the American National Standards Institute's (ANSI) standards. Therefore, OSHA is taking no burden hours or cost for these paperwork requirements.

Disclosure of Records

OSHA determined that employers disclosing information to OSHA during an inspection is outside the scope of the PRA because OSHA would only review records in the context of an open investigation of a particular employer to determine compliance with the Standard. See 5 CFR 1320.4(a)(2).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Forging Machines Standard. The agency is requesting that the burden hours of 384,107 remains the same.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Forging Machines Standard.

OMB Control Number: 1218–0228.

Affected Public: Business or other for-profits.

Number of Respondents: 27,700.

Number of Responses: 1,440,400.

Frequency of Responses: On occasion.

Average Time per Response: 16 minutes.

Estimated Total Burden Hours: 384,107.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA–2011–0064). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *https://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *https://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on April 8, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–07742 Filed 4–11–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0021]

Cranes and Derricks Standard in Construction; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Cranes and Derricks in Construction Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by June 11, 2024.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov.* Documents in the docket are listed in the *https://www.regulations.gov* index, however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2013–0021) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments see the ''Public participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney,

Directorate of Standards and Guidance, OSHA, U.S. Department of Labor. Telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The Cranes and Derricks standard's information collection requirements impose a duty on employers to produce and maintain records that implement controls and take other measures to protect workers from hazards related to cranes and derricks used in construction. Accordingly, construction businesses with workers who operate or work in the vicinity of cranes and derricks must have, as applicable, the following documents on file and available at the job site: Equipment ratings, employee training records, written authorizations from qualified individuals, and program qualification audits. During an inspection, OSHA will have access to the records to determine compliance under conditions specified by the standard. An employer's failure to generate and disclose the information required in this standard will affect significantly the agency's effort to control and reduce injuries and fatalities related to the use of cranes and derricks in construction.

II. Special Issues for Comment

OSHA has particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used,
- The quality, utility, and clarity of the information collected, and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Cranes and Derricks in Construction standard. The agency is requesting an adjustment increase from 429,478 hours to 429,483 hours, a difference of five hours. The increase is due to the rounding of totals in the spreadsheet equations. Also, the agency is requesting an adjustment increase in capital costs from $2,547,063 to $2,811,282, an increase of $264,219.

OSHA will summarize the comments submitted in response to the notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Cranes and Derricks Standard in Construction.

OMB Control Number: 1218–0261.

Affected Public: Business or other for-profits.

Number of Respondents: 213,400.

Number of Responses: 3,013,542.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 429,483.

Estimated Cost (Operation and Maintenance): $2,811,282.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal, (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648 or (3) by hard copy. All comments, attachments and other material must identify the agency name and the OSHA docket number for the ICR (OSHA–2013–0021). You may supplement electronic submission by uploading document files electronically.

Comments and submission are posted without change at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *https://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *https://regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on April 8, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–07743 Filed 4–11–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Medical Clearance Process for Deployment to the Polar Regions

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork

Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: 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: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title of Collection: Medical Clearance Process for Deployment to the Polar Regions.

OMB Number: 3145–0177.

Expiration Date of Approval: October 31, 2023.

Type of Request: Revision to and extension of approval of an information collection.

Proposed Project: Presidential Memorandum No. 6646 (February 5, 1982) (available from the National Science Foundation, Office of Polar Programs, Office 7100, 2415 Eisenhower Avenue, Alexandria, VA 22314) sets forth the National Science Foundation's overall management responsibilities for the entire United States national program in Antarctica. Section 107(a) of Public law 98–373 [July 31, 1984; amended as Public Law 101–609-November 16, 1990] [available from the National Science Foundation, Office of Polar Programs, Office 7100, 2415 Eisenhower Avenue, Alexandria, VA 22314] designates the National Science Foundation as the lead agency responsible for implementing Arctic research policy, and the Director of the National Science Foundation shall ensure that the requirements of section 108 are fulfilled.

NSF Form 1700, Medical Clearance Process for Deployment to the Polar Regions furnishes information to the NSF regarding the physical, mental, and dental health status for all individuals (except DoD-uniformed service personnel) who anticipate deploying to Antarctica under the auspices of the United States Antarctic Program or to certain regions of the Arctic sponsored by the NSF/GEO/Office of Polar Programs. The information is used to determine whether an individual is physically and mentally suited to endure the extreme hardships imposed by the Arctic and Antarctic continents, while also performing specific duties as specified by their employers.

Forms 1428–A is for any individual who is determined to be not physically qualified for Polar deployment to request an administrative waiver of the medical screening criteria. This information includes signing a Request for Waiver that is notarized or otherwise legally acceptable in accordance with penalty of perjury statutes, and obtaining and Employer Statement of Support (NSF Form 1429–A). Individuals on a case-by-case basis also may be required to submit additional medical documentation and a letter from the individual's physician(s) regarding the individual's medical suitability for Polar deployment.

Respondents: All non-DoD uniformed personnel planning to deploy to U.S. stations in the Antarctic or to specified regions of the Arctic that are sponsored by the National Science Foundation's Office of Polar Programs.

The number of annual respondents: 3,700.

Estimated Total Annual Burden on Respondents: 37,000 hours.

Frequency of Responses: This form is submitted upon an individual's first deployment to Antarctica (below 60° South) or to specified regions of the Arctic and annually thereafter for the duration of the individual's deployments.

Dated: April 9, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer,National Science Foundation.

[FR Doc. 2024–07808 Filed 4–11–24; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–429, OMB Control No. 3235–0480]

Submission for OMB Review; Comment Request; Extension: Rule 9b–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 9b–1 (17 CFR 240.9b–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 9b–1 (17 CFR 240.9b–1) sets forth the categories of information required to be disclosed in an options disclosure document (''ODD'') and requires the options markets to file an ODD with the Commission 60 days prior to the date it is distributed to investors. In addition, Rule 9b–1 provides that the ODD must be amended if the information in the document becomes materially inaccurate or incomplete and that amendments must be filed with the Commission 30 days prior to the distribution to customers. Finally, Rule 9b–1 requires a broker-dealer to furnish to each customer an ODD and any amendments prior to accepting an order to purchase or sell an option on behalf of that customer or when approving a customer's account for options trading.

There are 17 options markets [1] that must comply with Rule 9b–1. These respondents work together to prepare a single ODD covering options traded on each market, as well as amendments to the ODD. These respondents file approximately 3 amendments per year. The staff calculates that the preparation and filing of amendments should take no more than eight hours per options market. Thus, the total time burden for options markets per year is approximately 408 hours (17 options markets × 8 hours per amendment × 3 amendments per year). The estimated cost for an in-house attorney is $483 per hour,[2] resulting in a total internal cost of compliance for these respondents of approximately $197,064 per year (408 hours at $483 per hour).

In addition, approximately 955 broker-dealers [3] must comply with Rule 9b–1. Each of these respondents will process an average of 3 new customers for options each week and, therefore, will have to furnish approximately 156 ODDs per year. The postal mailing or electronic delivery of the ODD takes respondents no more than 30 seconds to complete for an annual compliance burden for each of these respondents of approximately 78 minutes or 1.3 hours. Thus, the total time burden per year for broker-dealers is approximately 1,242 hours (955 broker-dealers × 1.3 hours). The estimated cost for a general clerk of a broker-dealer is $81 per hour,[4] resulting in a total internal cost of compliance for these respondents of approximately $100,602 per year (1,242 hours at $81 per hour).

The total time burden for all respondents under this rule (both options markets and broker-dealers) is approximately 1,650 hours per year (408 + 1,242), and the total internal cost of compliance is approximately $297,666 per year ($197,064 + $100,602).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by May 13, 2024 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: April 9, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07807 Filed 4–11–24; 8:45 am]

BILLING CODE 8011–01–P

[1] The seventeen options markets are as follows: BOX Exchange LLC, Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., MEMX, LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, the Nasdaq Options Market (NOM), NYSE Arca, Inc., and NYSE American LLC.

[2] SIFMA did its last annual survey in 2013 and will not resume the survey process. Accordingly, the $483 figure is based on the 2013 figure ($380) adjusted by the inflation rate calculated using the Bureau of Labor Statistics' CPI Inflation Calculator. The $380 per hour figure for an Attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[3] The estimate of 955 broker-dealers required to comply with Rule 9b–1 is derived from Item 12 of the Form BD (OMB Control No. 3235–0012). This estimate may be high as it includes broker-dealers that engage in only a proprietary business, and as a result are not required to deliver an ODD, as well as those broker-dealers subject to Rule 9b–1.

[4] The $81 figure is based on the 2013 figure ($57) adjusted for inflation. *See supra* note 2. As noted above, SIFMA did its last annual survey in 2013 and will not resume the survey process. Accordingly, the $81 figure is based on the 2013 figure ($57) adjusted for inflation. The $57 per hour figure for a General Clerk is from SIFMA's *Office Salaries in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The staff believes that the ODD would be mailed or electronically delivered to customers by a general clerk of the broker-dealer or some other equivalent position.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99922; File No. SR–LCH SA–2023–007]

Self-Regulatory Organizations; LCH SA; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to Liquidity Risk Modelling Framework

April 8, 2024.

I. Introduction

On December 22, 2023, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–LCH SA–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 amend its Liquidity Risk Modelling Framework (the ''Framework''). The Proposed Rule Change was published for public comment in the **Federal Register** on January 11, 2024.[3] The Commission has received no comments regarding the Proposed Rule Change.

On February 21, 2024, pursuant to Section 19(b)(2) of the Exchange Act,[4] 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, until April 10, 2024.[5] The Commission is instituting proceedings, pursuant to section 19(b)(2)(B) of the Exchange Act,[6] to determine whether to approve or disapprove the proposed rule change.

II. Summary of the Proposed Rule Change

LCH SA is a clearing agency that offers clearing of, among other things, credit-default swaps (''CDS'').[7] LCH SA is registered with the Commission for clearing CDS that are security-based swaps and with the Commodity Futures Trading Commission for clearing CDS that are swaps. As part of its clearing business, LCH SA maintains cash and other liquid financial resources to meet its financial obligations. The Framework and other procedures describe how LCH SA maintains these resources and manages its liquidity risk, meaning the risk that LCH SA will not have enough liquid financial resources to meet its financial obligations.[8] The Framework specifically describes how LCH SA's Collateral and Liquidity Risk Management department ensures that LCH SA has enough cash available to meet any financial obligations, both

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 99277 (Jan. 5, 2024), 89 FR 1952 (Jan. 11, 2024) (File No. SR–LCH SA–2023–007) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] Exchange Act Release No. 99569 (Feb. 21, 2024), 89 FR 14538 (Feb. 27, 2024) (File No. SR–LCH SA–2023–007).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] Capitalized terms used but not defined herein have the meanings specified in the LCH SA Rule Book or Framework as applicable.

[8] LCH SA, a subsidiary of LCH Group and an indirect subsidiary of the London Stock Exchange Group plc (''LSEG''), manages its liquidity risk pursuant to, among other policies and procedures, the Group Liquidity Risk Policy and the Group Liquidity Plan applicable to each entity within LCH Group. In addition to its CDSClear service, LCH SA provides clearing services in connection with cash equities and derivatives listed for trading on Euronext (EquityClear), commodity derivatives listed for trading on Euronext (CommodityClear), and tri-party Repo transactions (RepoClear).

expected and unexpected, that may arise over the liquidation period for each of LCH SA's clearing services.

The Framework describes LCH SA's liquidity in terms of sources and needs. The Framework lists various sources of liquidity for LCH SA, such as cash and non-cash collateral provided by Clearing Members to meet their margin and default fund requirements. With respect to needs for liquidity, the Framework places these into three broad categories: (i) those arising from LCH SA's business-as-usual operations; (ii) those arising from Clearing Members' defaults; and (iii) those arising from the default of LCH SA's interoperating central counterparty (''CCP'').

The purpose of the Proposed Rule Change is to make a variety of updates to the Framework. In general, these changes will: (a) revise the manner in which settlement obligation liquidity requirements are calculated; (b) revise the way LCH SA determines the potential value of liquidity obtained from pledging securities to the Banque de France; (c) extend the length of time for which LCH SA must maintain liquidity resources sufficient to meet its liquidity requirements; (d) include the liquidity needs generated by the expiration of physically settled stock futures in determining overall liquidity needs; and (e) require LCH SA, in calculating its required liquidity resources, to consider that Clearing Members may switch from depositing non-cash collateral in a Full Title Transfer Account to depositing non-cash collateral instead in a Single Pledged Account.

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Change should be approved or disapproved.[9] Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, which would provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to section 19(b)(2)(B) of the Exchange Act,[10] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with section 17A of the Exchange Act [11] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Exchange Act,[12] which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; 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;
- Rule 17Ad–22(e)(7) under the Exchange Act,[13] which requires, in part, 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; and
- Rules 17Ad–22(e)(7)(vi)(B) and (C) under the Exchange Act,[14] which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to determine the amount and regularly testing the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement under Rule 17Ad–22(e)(7)(i) by, at a minimum: (i) conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate for determining its identified liquidity needs and resources in light of current and evolving market conditions and (ii) conducting a comprehensive analysis of the scenarios, models, and underlying parameters and assumptions used in evaluating its liquidity needs and resources more frequently than monthly when the products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by its participants increases significantly, or in other appropriate circumstances described in such policies and procedures 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.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with section 17A(b)(3)(F) [15] and Rules 17Ad–22(e)(7), and (e)(7)(vi)(B) and (C) [16] of the Exchange Act, or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4(g) under the Exchange Act,[17] any request for an opportunity to make an oral presentation.[18]

The Commission asks that commenters address the sufficiency of LCH SA's statements in support of the Proposed Rule Change, which are set forth in the Notice, in addition to any other comments they may wish to submit about the Proposed Rule Change.

Comments may be submitted by any of the following methods:

[9] 15 U.S.C. 78s(b)(2)(B).

[10] *Id.*

[11] 15 U.S.C. 78q–1.

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(7).

[14] Id.

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(7).

[17] 17 CFR 240.19b–4(g).

[18] Section 19(b)(2) of the Exchange Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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–LCH SA–2023–007 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–LCH SA–2023–007. 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 such filing also will be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at *https://www.lch.com/resources/rulebooks/proposed-rule-changes.*

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–LCH SA–2023–007 and should be submitted on or before May 3, 2024. Rebuttal comments should be submitted by May 17, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07749 Filed 4–11–24; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99921; File No. SR–NYSEAMER–2024–10]

Self-Regulatory Organizations; NYSE American LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 915 To Permit the Listing and Trading of Options on the Bitwise Bitcoin ETF, the Grayscale Bitcoin Trust, and Any Trust That Holds Bitcoin

April 8, 2024.

On February 9, 2024, NYSE American LLC filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 915 to permit the listing and trading of Opptions on the Bitwise Bitcoin ETF, the Grayscale Bitcoin Trust, and any trust that holds Bitcoin. The proposed rule change was published for comment in the **Federal Register** on February 29, 2024.[3] The Commission has received two comments on the proposed rule change.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 14, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates May 29, 2024 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEAMER–2024–10).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07748 Filed 4–11–24; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99593 (February 23, 2024), 89 FR 14911.

[4] Comments are available at *https://www.sec.gov/comments/sr-nyseamer-2024-10/srnyseamer202410.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20155 and #20156; Wrangell Cooperative Association Disaster Number AK–20001]

Presidential Declaration of a Major Disaster for the Wrangell Cooperative Association

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Wrangell Cooperative Association (FEMA–4763–DR), dated 03/15/2024.

Incident: Severe Storm, Landslides, and Mudslides.

Incident Period: 11/20/2023.

DATES: Issued on 04/08/2024.

Physical Loan Application Deadline Date: 05/14/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 12/16/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration for the Wrangell Cooperative Association, members of the tribal community, including all residents of the City and Borough of Wrangell, may submit applications for disaster loans online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas (Physical Damage and Economic Injury Loans): Wrangell Cooperative Association, City and Borough of Wrangell.

Contiguous Areas (Economic Injury Loans Only):

Alaska: Ketchikan Gateway Borough, Petersburg Borough, and the Southeast Island REAA.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 201559 and for economic injury is 201560.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–07767 Filed 4–11–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20196 and #20197; RHODE ISLAND Disaster Number RI–20002]

Presidential Declaration of a Major Disaster for the State of Rhode Island; Correction

AGENCY: Small Business Administration.

ACTION: Correction.

SUMMARY: This is a correction to the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–4765–DR), dated 03/20/2024.

Incident: Severe Storm and Flooding.

Incident Period: 12/17/2023 through 12/19/2023.

DATES: Issued on 04/04/2024.

Physical Loan Application Deadline Date: 05/20/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Rhode Island, dated 03/20/2024, published at 89 FR 21654, is hereby corrected to include Newport County, Rhode Island as a contiguous county as a result of the President's major disaster declaration on 03/20/2024. Applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Kent, Providence, Washington.

Contiguous Counties (Economic Injury Loans Only):

Rhode Island: Bristol, Newport

Connecticut: Windham, New London

Massachusetts: Norfolk, Worcester, Bristol

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewher	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 201966 and for economic injury is 201970.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–07769 Filed 4–11–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20262 and #20263; ALASKA Disaster Number AK–20002]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alaska

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA–4767–DR), dated 04/06/2024.

Incident: Severe Storm, Flooding, and Landslides.

Incident Period: 11/20/2023.

DATES: Issued on 04/06/2024.

Physical Loan Application Deadline Date: 06/05/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 01/06/2025.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/06/2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas: City and Borough of Wrangell, Prince of Wales-Hyder Census Area, Southeast Island REAA.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 202629 and for economic injury is 202630.
(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–07776 Filed 4–11–24; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the University of Illinois at Urbana-Champaign (WB24–15—4/9/24) for permission to use data from the Board's 1984–2022 Unmasked Carload Waybill Samples. A copy of this request may be obtained from the Board's website under docket no. WB24–15.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2024–07820 Filed 4–11–24; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering (GF) Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: March 1–31, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.gov*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects described below, pursuant to 18 CFR part 806, subpart E, for the time period specified above:

1. Pennsylvania Department of Human Services—Selinsgrove Center, GF Certificate No. GF–202403271, Penn Township, Snyder County, Pa.; Wells 3 and 7; Issue Date: March 8, 2024.

2. Spring Glen Fresh Foods, Inc.—Ephrata Plant, GF Certificate No. GF–202403272, Ephrata Township, Lancaster County, Pa.; consumptive use; Issue Date: March 8, 2024.

3. The Club at Shepherd Hills, LLC, GF Certificate No GF–202403273, Village of Waverly, Tioga County, N.Y.; consumptive use; Issue Date: March 8, 2024.

4. Down River Golf and Country Club, Inc. dba Down River Golf Course, GF Certificate No. GF–202403274, Everett Borough, Bedford County, Pa.; consumptive use; Issue Date: March 11, 2024.

5. Tallman Family Farms, L.L.C., GF Certificate No. GF–202403275, Porter Township, Schuylkill County, and Washington Township, Dauphin County, Pa.; Wiconisco Creek #2, Bohr Pond, and Wiconisco Creek GET ZIM; Issue Date: March 11, 2024.

6. U.S. Silica Company—Mapleton Plant, GF Certificate No. GF–202403276, Brady Township, Huntingdon County, Pa.; Juniata River, Quarry Sump, and consumptive use; Re-Issue Date: March 18, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: April 9, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024–07830 Filed 4–11–24; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: March 1–31, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.gov.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (f) for the time period specified above.

Water Source Approval—Issued Under 18 CFR 806.22(f):

1. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: Hickok-114; ABR–201903003.R1; Canton Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 11, 2024.

2. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: KLINE (01 125) R; ABR–201903002.R1; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 11, 2024.

3. RENEWAL—SWN Production Company, LLC; Pad ID: PEASE; ABR–201202016.R2; Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 11, 2024.

4. RENEWAL—Coterra Energy Inc.; Pad ID: TeddickM P1; ABR–201203016.R2; Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 17, 2024.

5. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: ALDERFER (03 109) H; ABR–201203007.R2; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 17, 2024.

6. RENEWAL—Seneca Resources Company, LLC; Pad ID: Gamble Pad O; ABR–201903009.R1; Hepburn Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 17, 2024.

7. RENEWAL—SWN Production Company, LLC; Pad ID: ASNIP–ABODE; ABR–201202005.R2; Orwell & Herrick Townships, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 17, 2024.

8. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Floydie; ABR–201203019.R2; Tuscarora Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 21, 2024.

9. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Maggie; ABR–201203020.R2; Tuscarora Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 21, 2024.

10. RENEWAL—Coterra Energy Inc.; Pad ID: AbbottM P1; ABR–201903004.R1; Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 21, 2024.

11. RENEWAL—SWN Production Company, LLC; Pad ID: EASTMAN; ABR–201203004.R2; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 21, 2024.

12. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: CHOCONUT VALLEY FARMS (07 090); ABR–201403007.R2; Choconut Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 25, 2024.

13. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: Parker 727; ABR–201203022.R2; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 25, 2024.

14. RENEWAL—SWN Production Company, LLC; Pad ID: JOHN GOOD WEST LU9 PAD; ABR–201403008.R2; Jackson Township, Lycoming County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 25, 2024.

15. RENEWAL—BKV Operating, LLC; Pad ID: Trecoske South Pad; ABR–201201024.R2; Silver Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 26, 2024.

16. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Ober Drilling Pad #1; ABR–201203026.R2; Asylum Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 26, 2024.

17. RENEWAL—Coterra Energy Inc.; Pad ID: BennerJ P1; ABR–201903005.R1; Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 26, 2024.

18. RENEWAL—JKLM Energy, LLC; Pad ID: Headwaters 141; ABR–201903008.R1; Ulysses Township, Potter County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: March 26, 2024.

19. RENEWAL—Seneca Resources Company, LLC; Pad ID: Clermont Pad D; ABR–201403009.R2; Jones Township, Elk County; Sergeant Township, McKean County; and Shippen Township, Cameron County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 26, 2024.

20. RENEWAL—SWN Production Company, LLC; Pad ID: WY–08 LEBER PAD; ABR–201903007.R1; North Branch Township, Wyoming County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 26, 2024.

21. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: L. KINGSLEY NORTH UNIT PAD; ABR–201703008.R1; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 30, 2024.

22. RENEWAL—Range Resources—Appalachia, LLC; Pad ID: Porter, Stephen; ABR–201203028.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 30, 2024.

23. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Circle Z BRA; ABR–201203031.R2; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 31, 2024.

24. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Hattie BRA; ABR–201203030.R2; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 31, 2024.

25. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Rainbow BRA; ABR–201203033.R2; Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 31, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: April 9, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024–07832 Filed 4–11–24; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–1282]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: Certificates of Waivers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 12, 2023. The FAA proposes collecting information related to requests for certificate of waivers made to operate Unmanned Aircraft Systems (UAS) in deviation from the normal operating rules. The list of rules subject to waiver requests is found in the Code of Federal Regulations. The FAA will use the collected information to make determinations whether to authorize or deny the requested operation of UAS. The proposed information collection is necessary to issue such authorizations or denials consistent with the FAA's mandate to ensure safe and efficient use of national airspace.

DATES: Written comments should be submitted by May 13, 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: Rahat Ali by email at: *Rahat.Ali@faa.gov;* phone: 202–267–8780.

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.

OMB Control Number: 2120–XXXX.

Title: Certificates of Waivers under 14 CFR 91.903.

Form Numbers: Not applicable.

Type of Review: Approval of new Information Collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 12, 2023. 88 FR 38121. The

FAA received one comment from Commercial Drone Alliance (''CDA'') for the collection of information associated with Certificates of Waivers under 14 CFR 91.903. Comments received from CDA emphasized the importance of enabling large-scale operations of Unmanned Aircraft Systems (UAS) in a safe and secure manner. CDA also suggested FAA streamline the waiver process and approval of other aviation operations permission, and for FAA to consider expanding the list of rules that can be waived to support safe UAS operations. However, comments received from CDA were out of scope of the 60-Day federal notice published, which was specific to the collection and burden associated with processing of Waivers or Authorization for 14 CFR 91 UAS operations.

The title 14, part 91 of the Code of Federal Regulations prescribes the rules governing the operation of aircraft within the United States. Included in this is the operation of unmanned aircraft systems (UAS), commonly known as drones, by both civil and public aircraft operators. A subset of this regulations (14 CFR 91.903) allows for operators of aircraft to apply for a certificate of waiver authorizing the operator to deviate from the rules listed in § 91.905 if the proposed operation can be conducted safely.

To process certificate of waiver requests, the FAA requires the name of the person or organization sponsoring the request, mailing address, information related to any pending or to prior waiver requests that were denied or rescinded, the regulation sought to deviate from, time and location of the proposed operation, the make and model of the aircraft, and the pilot's name, address, and certificate number and rating. This information is necessary for the FAA to meet its statutory mandate of maintaining a safe and efficient national airspace. (See 49 U.S.C. 40103, 44701, and 44807.) The FAA will use the requested information to determine if the proposed UAS operation can be conducted safely.

Respondents: UAS operators seeking to a certificate of waiver under 14 CFR 91.903. Between 2023–2026, the FAA estimates that it will receive a total of 5,105 certificate of waiver requests with 4,925 coming from public users and 180 coming from civil users. The FAA also estimates that it will receive a total 2,572 requests to initially access the web portal.

Frequency: The requested information will need to be provided each time a respondent requests a certificate of waiver under part 91 and the first time that a respondent requests to access the web portal.

Estimated Average Burden per Response: The FAA estimates the respondents will take an average of 15 minutes to complete the Access Request Form and 120 minutes to request a certificate of waiver.

Estimated Total Annual Burden: 3,284 hours for those completing certificate of waiver requests. 124 hours for those completing the Access Request Form.

Issued in Washington, DC

Frank Lias,

Manager, Rules and Regulations.

[FR Doc. 2024–07793 Filed 4–11–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0024]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; First Responder Incident Advanced Reporting Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on the request for approval of a new information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) summarized below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. First Responder Incident Advanced Reporting Program (FRIAR) in which first responders (*e.g.,* law enforcement, fire department, and emergency medical services) may submit information about fatalities, injuries, or crashes that may have been caused due to a motor vehicle or equipment defect. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on June 12, 2023. No comments were received.

DATES: Comments must be submitted on or before May 13, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Tanya Topka, Office of Defects Investigation (NEF–100), (202) 366–9590, National Highway Traffic Safety Administration, W48–336, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

Title: First Responder Incident Advanced Reporting Program.

OMB Control Number: 2127–XXXX.

Form Number: NA.

Type of Request: New.

Type of Review Requested: Regular.

Length of Approval Requested: Three years.

Summary of the Collection of Information:

Description of the Need for the Information and Proposed Use of the Information:

60-Day Notice:

A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on June 12, 2023. (No comments were received). If NHTSA received comments, describe the comments, and include a response to the comments].

Affected Public: Law Enforcement.

Estimated Number of Respondents: 10.

Frequency: occasionally.

Number of Responses: 10.

Estimated Total Annual Burden Hours: 2.5.

Estimated Total Annual Burden Cost: $97.83.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the

information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Issued on April 9, 2024.

Tanya Topka,

Director.

[FR Doc. 2024–07824 Filed 4–11–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–OST–2024–0046]

Advisory Committee on Transportation Equity (ACTE); Notice of Public Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: DOT OST announces a meeting of ACTE, which will take place via Zoom Webinar.

DATES: The meeting will be held Friday, May 3, 2024, from 2:30 to 4:30 p.m. Eastern Time. Requests for accommodations because of a disability must be received by Friday, April 26. Requests to submit questions must be received no later than Friday, April 26. The registration form will close on Thursday, May 2.

ADDRESSES: The meeting will be held via Zoom Webinar. Those members of the public who would like to participate virtually should go to *https://www.transportation.gov/mission/civil-rights/advisory-committee-transportation-equity-meetings-materials* to access the meeting, a detailed agenda for the entire meeting, meeting minutes, and additional information on ACTE and its activities.

FOR FURTHER INFORMATION CONTACT: Christopher Watkins, Designated Federal Officer, Departmental Office of Civil Rights, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–5990, *ACTE@dot.gov.* Any ACTE-related request or submissions should be sent via email to the point of contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Purpose of the Committee

ACTE was established under the authority of the U.S. Department of Transportation (DOT), in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App 2, to provide independent advice and recommendations to the Secretary of Transportation about comprehensive, interdisciplinary issues related to civil rights and transportation equity in the planning, design, research, policy, and advocacy contexts from a variety of transportation equity practitioners and community leaders. Specifically, the Committee will provide advice and recommendations to inform the Department's efforts to:

Implement the Agency's Equity Action Plan and Strategic Plan, helping to institutionalize equity into Agency programs, policies, regulations, and activities;

Strengthen and establish partnerships with overburdened and underserved communities who have been historically underrepresented in the Department's outreach and engagement, including those in rural and urban areas;

Empower communities to have a meaningful voice in local and regional transportation decisions; and

Ensure the compliance of Federal funding recipients with civil rights laws and nondiscrimination programs, policies, regulations, and activities.

Meeting Agenda

The agenda for the meeting will consist of:

Opening remarks
ACTE Committee Check-In
Review of Department Updates
Review ACTE Rolling Recommendations Letter to the Secretary
ACTE Recommendations Report Review and Full Committee Discussion
Public Comment
Committee Acknowledgements and Celebration
Next Steps and Closing Remarks

Meeting Participation

Advance registration is required. Please register at *https://usdot.zoomgov.com/webinar/register/WN_lUy--sGQRf-1AHA3F66mPA* by the deadline referenced in the **DATES** section. The meeting will be open to the public for its entirety. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section. Questions from the public will be answered during the public comment period only at the discretion of the ACTE chair, vice chair, and designated Federal officer. Members of the public may submit written comments and questions to the point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section on the topics to be considered during the meeting by the deadline referenced in the **DATES** section.

Dated: April 8, 2024.

Irene Marion,

Director, Departmental Office of Civil Rights.

[FR Doc. 2024–07774 Filed 4–11–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2024–0047]

Request for Information on Goals, Criteria, Thresholds, and Measurable Data Sources for Designating the National Multimodal Freight Network

AGENCY: Office of the Secretary of Transportation (OST), Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Maritime Administration (MARAD), Federal Motor Carrier Safety Administration (FMCSA), Great Lakes St. Lawrence Seaway Development Corporation (GLS), and Pipelines and Hazardous Materials Safety Administration (PHMSA).

ACTION: 60-Day day notice and request for comments.

SUMMARY: The U.S. Department of Transportation (DOT or Department) DOT is seeking information from the public, and in particular multimodal freight system users, transportation providers, metropolitan planning organizations, local governments, ports, airports, railroads, freight forwarders, brokers, other supply chain logisticians, scholars, and States on the best approach to identify critical freight facilities and corridors that will make up a National Multimodal Freight Network (NMFN) that is vital to achieving the national multimodal

freight policy goals of the United States. DOT is issuing this Request for Information (RFI) to solicit input on how to prioritize the statutory goals of, and the statutory factors for designating, the NMFN, as well as measurable thresholds, criteria, and data sources for designating the NMFN. Informed by comments received in response to this RFI, DOT will draft a proposed network map to be published for public comment in the Late Spring of 2024 and provide an opportunity for States to provide input to submit additions to the network. After the final, subsequent comment period, DOT will review and approve additional designations for the NMFN by States and designate the final NMFN by December of 2024.

DATES: Comments must be received on or before June 11, 2024 to receive consideration by DOT with respect to the draft designation of the NMFN.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.
- *Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Paul Baumer, 202–366–1092 or email *freight@dot.gov*.

Background

Section 70103 of title 49, United States Code, which was established in section 8001 of the Fixing America's Surface Transportation (FAST) Act, Public Law 114–94 (Dec. 4, 2015) and amended by section 21103 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117–58 (Nov. 15, 2021), directs the Assistant Secretary for Multimodal Freight to establish a NMFN that will be used to: (1) assist States in strategically directing resources toward improved system performance for the efficient movement of freight on the NMFN; (2) inform freight transportation planning; (3) assist in the prioritization of Federal investment; and (4) assess and support Federal investments to achieve the national multimodal freight policy goals described in 49 U.S.C. 70101(b), and the national highway freight program goals described in 23 U.S.C. 167. DOT is directed to designate the NMFN after soliciting input from stakeholders through a public process and providing notice and comment on a draft system, with the goal of using measurable data as part of assessment of the significance of freight movement, to improve network and intermodal connectivity. DOT is requesting input from a broad cross section of stakeholders, but Section 70103 also provides a process for States to propose specific additions to the NMFN, referred to as ''State Input''. States must consider nominations from freight stakeholders within their State, and ensure proposed additions are consistent with their State transportation improvement program or state freight plan. DOT anticipates requesting those additions this summer, at the same time as DOT requests input on the Draft Network.

The FAST Act directed DOT to establish an Interim NMFN based on criteria laid out in the statute. DOT published the Interim Network on June 16, 2016, and the public was invited to submit comments to the docket [1] through September 6, 2016. In the **Federal Register** notice, DOT posed several questions for the public to consider, and States and other stakeholders were provided the opportunity to submit additional designations for consideration for inclusion into the Final NMFN, which was then to be designated by the Under Secretary of Transportation for Policy. DOT subsequently reopened and extended the comment period on the Interim NMFN on October 25, 2017.[2] DOT received 126 comments during the duration of the two public comment periods, ending in February 2018.

The freight transportation system has undergone significant changes in the time since the Department last solicited comments and additional designations for the Interim NMFN. With more data and information available, and the removal of any reference to the Interim NMFN by section 21103 of the IIJA, DOT has decided to reopen the NMFN designation process with this Request for Information.

The Department is requesting comments on several questions that are posed below. DOT will use this input to inform a draft NMFN, which DOT anticipates publishing in Late Spring 2024. Following publication of the draft network, DOT will establish a process to receive additional designations from the States via the ''State Input'' process outlined in statute49 U.S.C. 70103(b)(4). DOT expects to publish the final NMFN by the end of the calendar year. In order to meet that timeline, States should anticipate a 90-day window to provide their additional designations and associated State Input certifications.

The National Multimodal Freight Network vs. the National Highway Freight Network (NHFN)

Statutorily, the NMFN and the National Highway Freight Network (NHFN) serve similar goals. However, as currently authorized, the designation of the National Multimodal Freight Network does not have an impact on the National Highway Freight Network or the use of National Highway Freight Program (NHFP) formula funding. The process for designating the NMFN is being undertaken separately from the designation and re-designation of the NHFN, however, DOT is considering approaches that will maintain consistency between both networks

The Fast Act, as codified at 23 U.S.C 167(c), directed the FHWA Administrator to establish the NHFN to strategically direct Federal resources and policies toward improved performance of the NHFN. The NHFN includes the Primary Highway Freight System PHFS), which identifies the most critical highway portions of the U.S freight transportation system as determined by measurable and objective data. Other portions of the Interstate are included in the NHFN as well. States may designate Critical Rural Freight Corridors (CRFCs) and States, in coordination with MPOs, can also designate Critical Urban Freight Corridors (CUFCs). The FHWA Administrator is required to re-designate the PHFS every 5 years. DOT released the re-designated PHFS on December 2, 2022, and the next PHFS re-designation is due in 2027. More details on NHFN are available at *https://ops.fhwa.dot.gov/freight/infrastructure/nfn/index.htm.*

National Multimodal Freight Network Designation

Section 70103(b)(2) of Title 49, United States Code, directs DOT to consider twelve distinct factors in designating the route miles and facilities on the NMFN:

1. Origins and destinations of freight movement within, to, and from the United States;

2. Volume, value, tonnage, and the strategic importance of freight;

[1] 81 FR 36381.

[2] 82 FR 49478.

3. Access to border crossings, airports, seaports, and pipelines;

4. Economic factors, including balance of trade;

5. Access to major areas for manufacturing, agriculture, or natural resources;

6. Access to energy exploration, development, installation, and production areas;

7. Intermodal links and intersections that promote connectivity;

8. Freight choke points and other impediments contributing to significant measurable congestion, delay in freight movement, or inefficient modal connections;

9. Impacts on all freight transportation modes and modes that share significant freight infrastructure;

10. Facilities and transportation corridors identified by a multi-State coalition, a State, a State freight advisory committee, or an MPO, using national or local data, as having critical freight importance to the region;

11. Major distribution centers, inland intermodal facilities, and first- and last-mile facilities; [3] and

12. The significance of goods movement, including consideration of global and domestic supply chains.

In considering the above factors, DOT is also directed to use, to the extent practicable, measurable data.[4]

DOT seeks comments on three primary areas for designating the NMFN. The first area seeks feedback from stakeholders on the NMFN goals. The second area asks stakeholders to prioritize the 12 factors listed above. The third area seeks comment on the potential thresholds, criteria, and data sources that correspond to one or more of the twelve factors, including a discussion of why the thresholds, criteria and data sources should be considered for designating the Final NMFN.

National Multimodal Freight Network Goals

1. Which of the following purposes is most important to ensuring the NMFN provides a foundation for the U.S. to compete in the global economy and why?

a. Prioritizing federal formula or discretionary grant investment.

b. Assisting States and local governments with strategically directing investments towards overall improved freight system performance.

c. Informing freight infrastructure planning and land use planning by state and local governments and private sector owners and operators.

d. Informing a national, integrated, and multimodal supply chain strategy.

2. How do you plan to use the National Multimodal Freight Network once it is designated?

Statutory Factors for Designation

3. How should DOT prioritize the twelve factors in designating route miles and facilities on the NMFN? Which factors are most important to ensuring the network provides a foundation for the U.S. to compete in the global economy? Which factors are most important to ensuring the NMFN serves regional and state goals?

Measurable Thresholds, Criteria, and Data

4. Among the various statutory factors, volume, value, and tonnage are among some of the most quantifiable and readily comparable across modes and routes/corridors within modes. What thresholds should DOT consider for volume, value, and tonnage for designating the NMFN? For reference, DOT has provided examples below.

a. *Highway network:* Prior to the current PHFS, FHWA's proposed a 2015 Highway Primary Freight Network [5] designation in 2015 that included a threshold of 8,500 Average Daily Truck Traffic (ADTT) [6] or greater for Interstates and other roads as a baseline threshold for identifying significant roadways in urban areas with a population of 200,000 or more. For non-Interstate routes, thresholds included a daily average of at least 3,000 trucks and having proximate land use or connectivity demonstrating indicators of national significance. Border crossings carrying an annual average of at least 75,000 trucks is another example consideration.

The Interim NMFN designated by DOT in 2016 incorporated the full NHFN, which includes the PHFS, the remaining Interstate miles, and Critical Urban and Critical Rural Freight Corridors designated by the States. The Department invites comments regarding whether the final NMFN should incorporate the full NHFN, or whether the highway portion of the NMFN should include additional or fewer routes relative to the NHFN and why.

b. *Rail network:* FHWA's 2008 *Freight Story* identified rail lines that carry 50 million tons in bulk cargo per year as significant for freight.[7] Other example considerations include rail routes that fall within the top two thirds volume and/or value thresholds based on Carload Waybill data. The top 50 bulk origination/destination markets and the top 25 intermodal origination/destination markets may be another consideration.

c. *Maritime Network:* The Congress required the Interim NMFN [8] to include ports that handle at least 2,000,000 short tons of domestic and foreign trade annually, as well as other ports designated as commercial strategic seaports, based on data from the USACE Waterway Commerce Statistics. The value of goods handled by a port facility could also be used as a factor as well. Waterways (including inland river and coastal ocean routes) carrying more than 1.5 million tons of cargo are an example threshold consideration as well.

d. *Aviation Network:* The Interim NMFN was designated based on the landed overall weight collected from FAA's Air Carrier Activity Information System (ACAIS), but an alternative approach could use landed origin and destination cargo weight data based on the BTS T–100 database. ACAIS data captures operations only by all-cargo aircraft whereas BTS T–100 data includes cargo transported both by all-cargo aircraft and as belly cargo in other aircraft operations. A potential threshold could be airports with at least 0.5% of cargo weight at all airports in the National Plan of Integrated Airport Systems (NPIAS), based on BTS–100 data.

5. Which of the 12 factors are most important for identifying network components that are critical to our economy but that may not stand out on a volume or value basis?

6. DOT has identified potential data sources for each of the 12 factors, below. Are there other data sources or approaches DOT should consider in applying these factors to the NMFN designation? Are there any concerns with using a particular data source listed below for the associated factor?

[3] For the purposes of this RFI, DOT proposes that the definition for 'major distribution centers, inland intermodal facilities, and first- and last-mile facilities include both those specific points, such as manufacturers, distribution points, rail intermodal, and port facilities, that handle high volumes of freight, and specific transportation assets, such as roadways, rail lines, or inland waterways, that provide the primary means of transport in the case of first mile, or to the final delivery point in the case of last mile.

[4] See 49 U.S.C. 70103(c)(3).

[5] *https://www.govinfo.gov/content/pkg/FR-2015-10-23/pdf/2015-27036.pdf.*

[6] At approximately 16 tons per truck, 8,500 trucks per day equates to approximately 50 million tons per year.

[7] *https://ops.fhwa.dot.gov/Freight/freight_analysis/freight_story/fs2008.pdf.*

[8] *https://www.transportation.gov/administrations/office-policy/interim-national-multimodal-freight-network.*

Section 70103(b)(2) factor	Potential data sources
Factor 1: Origins and destinations of freight movement within, to, and from the United States.	• Freight Analysis Framework. • TransBorder Freight Data. • Commodity Flow Survey. • U.S. Census Bureau U.S—Foreign Trade Data. • U.S. Customs and Border Protection. • National Automatic Identification System (NAIS) Data. • Energy Information Agency (EIA) Data. • AMS Data North American Rail Network (NARN).
Factor 2: volume, value, tonnage, and the strategic importance of freight.	• Highway Performance Monitoring System (HPMS). • Freight Analysis Framework. • Carload Waybill data & FRA GIS Waybill Toolkit. • USACE Waterborne Commerce. • Air Carrier Activity Information System (ACAIS). • BTS–T–100. • St. Lawrence Seaway Annual Traffic Reports. • U.S. Census Bureau U.S—Foreign Trade Data. • U.S. Customs and Border Protection. • EIA Data. • AMS Data.
Factor 3: access to border crossings, airports, seaports, and pipelines	• National Transportation Atlas Database (NTAD). • GIS mileage radius to border crossings, airports, seaports.
Factor 4: economic factors, including balance of trade	• TradeStats. • Federal Reserve Board's Industrial Production Index Program. • Census Bureau Real Wholesale Trade Survey estimates. • BEA data on real retail trade sales.
Factor 5: access to major areas for manufacturing, agriculture, or natural resources.	• Bureau of Economic Analysis: Real Manufacturing GDP by state. • Annual Survey of Manufacturer State-Level Value of Shipments at 4-Digit NAICS Level. • Quarterly Census of Employment and Wages data at the state level. • USDA Open Ag Data on Trucking.
Factor 6: access to energy exploration, development, installation, and production areas.	• EIA energy infrastructure map. • DOT hydrogen hubs map. • Maps of ZEV charging/fueling infrastructure installed or planned.
Factor 7: intermodal links and intersections that promote connectivity ...	• National Transportation Atlas Database (NTAD). • GIS mileage radius to intermodal facilities. • HPMS.
Factor 8: freight choke points and other impediments contributing to significant measurable congestion, delay in freight movement, or inefficient modal connections.	• Federal Highway Administration (FHWA) Freight Mobility Trends: Truck Hours of Delay. • National Performance Management Research Data Set. • GHG emissions reported from ports.
Factor 9: impacts on all freight transportation modes and modes that share significant freight infrastructure.	• Commodity Flow Survey. • Freight Analysis Framework.
Factor 10: facilities and transportation corridors identified by a multi-State coalition, a State, a State freight advisory committee, or a metropolitan planning organization, using national or local data, as having critical freight importance to the region.	• Direct input from States. • Direct input from multi-State corridor coalitions. • Direct input from MPOs. • Direct input from local agencies and other stakeholders.
Factor 11: major distribution centers, inland intermodal facilities, and first- and last-mile facilities.	• Quarterly census of employment and wages data at the MSA level. • NTAD. • Publicly available ZEV charging/fueling maps.
Factor 12: the significance of goods movement, including consideration of global and domestic supply chains.	• Commodity Flow Survey. • Freight Analysis Framework.

Multimodal Freight Data Resources and Weblinks: *https://ops.fhwa.dot.gov/freight/fpcb/dataLibrary.aspx*.

7. In addition to the statutory factors listed, how should DOT take into account the factors below in designating the NMFN?

a. Safety (including truck parking).

b. Climate and Sustainability (including freight related efforts to decarbonize, mitigate greenhouse gas emissions, reduce criteria and other air pollutants, and improve resilience).

c. Equity (including mitigating impacts on disadvantaged communities, addressing Environmental Justice).

d. National Defense (including strategic networks such as STRAHNET [9] and STRACNET,[10] and DOD/Strategic Ports).

e. Consistency with other federally designated networks including the EV freight network and the Zero-emission vehicle freight strategy.

f. Transformation (including emerging technologies and innovation).

8. What other considerations should the DOT take into account in designating the NMFN?

Schedule

This RFI is the first step in a multi-step process to designate the Final NMFN. Informed by the public comments received on this notice, the DOT expects to publish a Draft National Multimodal Freight Network later this spring. At that time, the Department will seek comment on the Draft network from all stakeholders, and will also seek additional designations from the States as described in the State Input process in 49 U.S.C. 70103(b)(4). States should

[9] *https://www.fhwa.dot.gov/policy/2004cpr/chap18.cfm.*

[10] *https://www.sddc.army.mil/sites/TEA/Functions/SpecialAssistant/Pages/RailroadsNationalDefense.aspx.*

prepare to consider nominations for additional designations from metropolitan planning organizations, state freight advisory committees, and owners and operators of port, rail, pipeline, and airport facilities, and ensure that those designations are consistent with the State transportation improvement program or freight plan. Additional guidance on the State Input process will be published with the Draft network. The Department plans to publish the Final NMFN, with State additions, by the end of the 2024.

Public Comment

The DOT invites comments by all those interested in the NMFN. Comments on the criteria for the final NMFN may be submitted and viewed at Docket Number DOT–OST–2024–0047. Comments must be received on or before June 11, 2024 to receive full consideration by DOT with respect to the final designation of the NMFN. After June 11, 2024, comments will continue to be available for viewing by the public.

Issue Date: April 8, 2024.

Allison L. Dane Camden,

Deputy Assistant Secretary for Multimodal Freight.

[FR Doc. 2024–07810 Filed 4–11–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, May 9, 2024.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Thursday, May 9, 2024, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information, please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include TAP 2024 committee project focus areas.

Dated: April 8, 2024.

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–07756 Filed 4–11–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, May 7, 2024.

FOR FURTHER INFORMATION CONTACT: Ann Tabat at 1–888–912–1227 or (602) 636–9143.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Tuesday, May 7, 2024, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Ann Tabat. For more information, please contact Ann Tabat at 1–888–912–1227 or (602) 636–9143, or write TAP Office, 4041 N Central Ave., Phoenix, AZ 85012 or contact us at the website: *http://www.improveirs.org.* The agenda will include TAP 2024 committee project focus areas.

Dated: April 8, 2024.

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–07751 Filed 4–11–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, May 7, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Tuesday, May 7, 2024, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information, please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include TAP 2024 committee project focus areas.

Dated: April 8, 2024.

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–07752 Filed 4–11–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, May 9, 2024.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements (TAC) Project Committee will be held Thursday, May 9, 2024, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda will include TAP 2024 committee project focus areas.

Dated: April 8, 2024.

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–07754 Filed 4–11–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Friday, May 10, 2024.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Friday, May 10, 2024, at 9:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include TAP 2024 committee project focus areas.

Dated: April 8, 2024.

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–07753 Filed 4–11–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Itemized Statement Component of Advisee List

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning itemized statement component of advisee list.

DATES: Written comments should be received on or before June 11, 2024 to be assured of consideration

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB control number 1545–1686 or Itemized Statement Component of Advisee List.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Itemized Statement Component of Advisee List.

OMB Number: 1545–1686.

Form Number: Form 13976.

Abstract: Internal Revenue Code (IRC) Section 6112, (as amended by the American Jobs Creation Act of 2004, Pub. L. 108–357), requires that each material advisor with respect to any reportable transaction shall maintain (in such manner as the Secretary may by regulations prescribe) a list identifying each person with respect to whom the advisor acted as a material advisor. Form 13976, Itemized Statement Component of Advisee List, may be used by Material Advisors for the purpose of preparing and maintaining list with respect to reportable transaction under section 6112, but the form is not required to be used under 301.6112–1, but is offered as an option for maintaining the transaction participants list.

Current Actions: There is no change to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 100.

Estimated Total Annual Burden Hours: 50,000 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their

contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 1, 2024.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2024–07764 Filed 4–11–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, May 7, 2024.

FOR FURTHER INFORMATION CONTACT: Jose Cintron-Santiago at 1–888–912–1227 or 787–522–8607.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Tuesday, May 7, 2024, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Jose Cintron-Santiago. For more information, please contact Jose Cintron-Santiago at 1–888–912–1227 or 787–522–8607, or write TAP Office, 48 Carr 165 Suite 2000, Guaynabo, PR 00968–8000 or contact us at the website: *http://www.improveirs.org.* The agenda will include TAP 2024 committee project focus areas.

Dated: April 8, 2024.

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–07755 Filed 4–11–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0108]

Agency Information Collection Activity Under OMB Review: Report of Income From Property or Business

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to ''OMB Control No. 2900–0108''.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0108'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 1521, 38 U.S.C. 1541, and 38 U.S.C. 1315.

Title: Report of Income from Property or Business.

OMB Control Number: 2900–0108.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21P–4185 is primarily used to gather information that is necessary to determine a claimant's countable income received from rental property and/or operation of a business. Some expenses associated with rental property and business operations are deductible from the gross income received. Complete information about expenses and income is necessary to determine the net amount of income that is countable. The information is used to determine eligibility for VA benefits, and, if eligibility exists, the proper rate of payment. This is a revision of a currently approved collection as the respondent burden has decreased.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 8522 on February 7, 2024, page 8522.

Affected Public: Individuals or Households.

Estimated Annual Burden: 640 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,280.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–07826 Filed 4–11–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 2800, 2860, et al.
Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800, 2860, 2880, and 2920

[BLM_HQ_FRN_MO4500175819]

RIN 1004–AE60

Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (DOI or Department), through the Bureau of Land Management (BLM), is issuing this final rule to streamline the BLM's communications uses program, update its cost recovery fee schedules, and add provisions for operations, maintenance, and fire prevention plans for powerline rights-of-way (ROWs) consistent with section 512 of the Federal Land Policy and Management Act of 1976, as amended (FLPMA).

DATES: The final rule is effective on May 13, 2024.

FOR FURTHER INFORMATION CONTACT: Stephen Fusilier, Branch Chief, Rights-of-Way, telephone: 202–309–3209, email: *sfuslie@blm.gov,* or by mail 1849 C St. NW, Washington, DC 20240, for information regarding the substance of this final rule.

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. For a summary of the final rule, please see the final rule summary document in docket BLM–2022–0002 on *www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This final rule addresses three distinct areas: communications uses; cost recovery; and operations, maintenance, and fire prevention plans for powerline ROWs. The final rule revises certain regulatory provisions related to communications use ROWs authorized under FLPMA. The BLM administers approximately 1,500 communications sites on BLM lands. By making it easier for industry to collocate in and on existing communications facilities or build out new communications infrastructure on public lands, the BLM can play a strong role in increasing connectivity throughout the United States. The communication uses portion of the final rule:

- Requires the BLM to grant or deny communications uses ROW, easement, or lease applications within 270 days;
- Provides for electronic filing of communications uses ROW applications; and
- Requires Standard Form-299 (SF–299) as the common form for communications uses grant applications.

The final rule changes the cost recovery fee schedule for ROWs authorized under Title V of FLPMA or the Mineral Leasing Act of 1920, as amended (MLA), as well as for land use authorizations under Title III of FLPMA. Though FLPMA and the MLA authorize cost recovery for costs associated with processing, monitoring, and terminating ROWs, the current cost recovery fees for minor ROWs requiring less than 50 hours of work do not cover the BLM's actual costs. The cost recovery portion of the final rule:

- Increases the cost recovery fees for minor ROWs; and
- Expands the definition of minor ROWs to those requiring less than 64 hours of work.

The final rule also adds provisions consistent with section 512 of FLPMA, including section 512(b)(1), which directs the BLM ''[t]o enhance the reliability of the electric grid and reduce the threat of wildfire damage to, and wildfire caused by vegetation-related conditions within, electric transmission and distribution ROWs . . . including hazard trees.'' The portion of the final rule implementing section 512 of FLPMA:

- Includes provisions governing operations, maintenance, and fire prevention plans and agreements for vegetation and facility management on public lands within powerline ROWs;
- Adds a definition of hazard tree consistent with the United States Forest Service's definition; and
- Includes emergency access provisions.

II. Background

The subject matter of this rule is the BLM's ROW program under 43 CFR parts 2800 and 2880, land use authorizations under part 2920, and communications uses under newly established part 2860.

For the reader to better understand the following discussion, a ''grant,'' as defined in 43 CFR 2801.5, is any authorization or instrument (*e.g.,* easement, lease, license, or permit) the BLM issues under Title V of FLPMA. A ''right-of-way'' refers to the public lands that the BLM authorizes a holder to use or occupy under a particular grant.

This final rule covers three distinct topics. The first topic is communications uses. The second topic, cost recovery for the ROW program, addresses the reimbursement of costs, as authorized by FLPMA (43 U.S.C. 1701 *et seq.*) and the MLA (30 U.S.C. 185 *et seq.*), for the Federal Government's expenses in undertaking ROW work. The third topic is implementation of Section 512 of FLPMA (43 U.S.C. 1772) and addresses the risk of fires from powerline ROWs on public lands.

A. Communications Uses

In the 21st century, broadband is just as vital to the public as roads and bridges, electric lines, and sewer systems. At the community level, an advanced telecommunications network is critical for supporting growth, allowing small businesses to flourish, creating jobs, strengthening the first-responder network in remote areas, and making it possible to remain competitive in the information-age economy. At the individual level, access to broadband—and the expertise to use it—opens the door to employment opportunities, educational resources, health care information, government services, and social networks.

Although there have been great strides in expanding broadband services in the United States over the past several years, rural and Tribal areas lag behind in broadband deployment. Successive Presidential administrations and Congress have made it a priority to bring affordable, reliable, high-speed broadband to every American, including the more than 35 percent of rural Americans who lack access to broadband at minimally acceptable speeds. E.O. 13821, issued on January 8, 2018, promotes better access to broadband internet service in rural America. It states that ''Americans need access to reliable, affordable broadband internet service to succeed in today's information-driven, global economy'' and establishes a policy ''to use all viable tools to accelerate the deployment and adoption of affordable, reliable, modern high-speed broadband connectivity in rural America, including rural homes, farms, small businesses, manufacturing, and production sites,

tribal communities, transportation systems, and healthcare and education facilities.''

On January 8, 2018, in association with the release of E.O. 13821, a Presidential Memorandum (Memorandum) entitled ''Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed by the Department of the Interior'' stated an executive branch policy to make Federal assets more available for rural broadband deployment, with due consideration for national security concerns. The Memorandum directed the Secretary of the Interior to ''develop a plan to support rural broadband development and adoption by increasing access to tower facilities and other infrastructure assets managed by the Department of the Interior'' and ''identify[ ] the assets that can be used to support rural broadband deployment and adoption.''

As the land management agency with the responsibility to manage the largest inventory of public land in the Federal Government, the BLM is promulgating this rule to amend regulatory provisions for the processing and monitoring of ROWs for communications uses. Communications companies, cooperatives, other private entities, and government agencies ultimately make decisions on locations to construct and/or upgrade broadband infrastructure, from communications towers to linear ROWs for fixed terrestrial broadband access. However, the Department administers a significant amount of land as well as existing permitted infrastructure that can be leveraged for increased connectivity in rural America. Currently, there are approximately 1,500 communications sites on BLM lands. By making it easier to collocate in and on existing communications facilities or build out new communications infrastructure on public lands, this rule will help to increase connectivity throughout the United States. Communications uses, including fiber optic and telephone, may be collocated within the 6,000 miles of energy corridors administered by the BLM and the U.S. Forest Service (USFS).

Newly established Part 2860 of this rule consolidates and revises the existing regulations pertaining to communications uses to streamline processes and establish new customer service standards. The rule also proposes several technical changes to clarify the communications regulations.

This rule incorporates the new timing requirements established by the MOBILE NOW Act into the BLM's regulations. As amended by the MOBILE NOW Act, 47 U.S.C. 1455(b)(3)(A) states: ''Not later than 270 days after the date on which an executive agency receives a duly filed application for an easement, right-of-way, or lease under this subsection, the executive agency shall—(i) grant or deny, on behalf of the Federal Government, the application; and (ii) notify the applicant of the grant or denial.'' E.O. 13821 states, ''Federal property managing agencies shall use the GSA [General Services Administration] Common Form Application for wireless service antenna structure siting developed by the [GSA] Administrator for requests to locate broadband facilities on Federal property.'' The MOBILE NOW Act also requires the use of a common form for all applications for communications facilities. The BLM provides Standard Form (SF)-299 for applicants seeking authorization for such purposes on public lands. The GSA, through collaboration with other agencies, decided the SF–299 would be the common form for Federal authorization of communications uses. This rule requires use of the SF–299 for all communications uses grants, thereby making the regulations consistent with the MOBILE NOW Act. By updating these regulations, the BLM will improve response times and address the current lack of certainty in the communications uses grant process that impacts industry construction schedules and may increase construction costs.

B. Cost Recovery

Typically, unless exempt, an applicant must reimburse the BLM for its reasonable costs incurred in processing and monitoring a FLPMA ROW activity. Both FLPMA and the MLA authorize the Federal Government to collect fees, called cost recovery, for the reimbursement of costs that it expends in processing a ROW application, taking administrative actions, or monitoring the construction, operation, and termination of a facility authorized by a grant. The Federal Government collects cost recovery before the BLM begins tasks related to a ROW application or other ROW-related activity.

In 2005, the BLM completed regulations, found in 43 CFR parts 2800 and 2880, that established a cost recovery processing and monitoring fee schedule for ROW applications and grants and an annual process whereby the BLM updates the schedule to account for changes in the Implicit Price Deflator Gross Domestic Product (IPD–GDP). The IPD–GDP measures annual changes in the prices of goods and services produced in the United States. The existing regulations also require the BLM to reevaluate its cost recovery fees for each cost recovery category, and the categories themselves, within 5 years after their effective date and at 10-year intervals thereafter (43 CFR 2804.15 and 2884.15). The BLM completed its initial cost recovery reevaluation in December 2010 and has continued to evaluate data received through the end of FY 2020. These data show that the former cost recovery fee collections do not adequately cover the costs incurred by the BLM for processing and monitoring ROW applications and grants under both FLPMA and the MLA.

The final rule revises the existing cost recovery fee categories to better reflect updates in technology, the procedures for processing applications and monitoring grants, and statutes and regulations relating to the ROW program.

This rule also increases the cost recovery fees to better reflect the current costs of processing and monitoring minor category ROWs and updates the scope of the minor categories. Under the former rule, ROWs that took 50 hours or less for a BLM realty specialist to process were considered minor. Under the final rule, that processing time is increased to 64 hours. This will allow more applications to qualify for a minor category, thus eliminating the labor to establish, monitor, and maintain appropriate accounting of major category cost recovery accounts on those applications. The BLM believes this change will increase operational efficiency.

This rule also makes several technical changes to 43 CFR parts 2800 and 2880 that clarify and expedite other ROW tasks. It updates cost recovery processes for FLPMA ROW grants, MLA grants and temporary use permits (TUPs), and leases, permits, and easements issued under Title III of FLPMA. Finally, the existing ROW cost recovery fee structure is also applicable to leases, permits, and easements issued under Section 302(b) of FLPMA (43 U.S.C. 1732(b)) and 43 CFR part 2920. This rule revises the regulations for these authorizations, found in section 2920.8(b), to provide consistency with the revisions made to the cost recovery provisions in part 2800.

C. Section 512 of FLPMA

The BLM's mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. The BLM administers approximately 245 million surface acres. According to the National Interagency Fire Center (NIFC), approximately 109 million acres across

the United States (including both Federal and non-Federal lands) burned in wildfires between 2006 and 2020. Wildfire is a known risk to and from powerlines and may be caused by a variety of factors, including vegetation contacting live powerlines or structural failures of powerline infrastructure.

On March 23, 2018, Congress amended FLPMA by adding Section 512, entitled, ''Vegetation Manag[e]ment, Facility Inspection, and Operation and Maintenance Relating to Electrical Transmission and Distribution Facility Rights of Way'' (43 U.S.C. 1772). FLPMA Section 512 establishes requirements for the BLM and the USFS to develop and implement regulations to govern review and approval of operations, maintenance, and fire prevention plans and agreements for vegetation and facility management on public lands within powerline ROWs and on abutting Federal lands. To implement Section 512 of FLPMA on land managed by the USFS, the USFS published a final rule on July 10, 2020 (85 FR 41387), an amendment to the final rule on August 11, 2020 (85 FR 48475), draft policy on December 10, 2020 (85 FR 79463), and a final directive on February 10, 2022 (Forest Service Manual (FSM) 2700—Special Uses Management 2740—Vegetation Management Pilot Projects).

This final rule includes provisions to implement Section 512 on BLM-managed land, including provisions related to emergency conditions. This rule is consistent with the direction in Section 512(b)(1) of FLPMA that the BLM ''enhance the reliability of the electric grid and reduce the threat of wildfire damage to, and wildfire caused by vegetation-related conditions within, electric transmission and distribution ROWs and abutting Federal land, including hazard trees.'' To enhance electric reliability, promote public safety, and avoid fire hazards, this rule adds definitions for the terms ''hazard tree'' and ''operating plan or agreement.'' It also includes provisions pertaining to ROW administration to address fire risks on public lands, such as ensuring that operating plans and agreements provide for long-term, cost-effective, efficient, and timely inspection, operation, maintenance, and vegetation management of a ROW and on abutting Federal lands, including management of hazard trees. The final rule defines ''hazard tree'' consistent with the USFS's definition.

D. Legal Authority

Section 310 of FLPMA (43 U.S.C. 1740) authorizes the Secretary to promulgate regulations to implement the statute. FLPMA also provides comprehensive authority for the administration and protection of the public lands and their resources and directs that the public lands be managed ''under principles of multiple use and sustained yield,'' unless otherwise provided by law (43 U.S.C. 1732(a)). A similar authority for promulgating regulations to implement the MLA's pipeline ROW provisions is found at 30 U.S.C. 185(f).

Both FLPMA (43 U.S.C. 1734(b) and 1764(g)) and the MLA (30 U.S.C. 185(l)) authorize the BLM and other Federal agencies to require ROW applicants or holders to reimburse an agency for costs incurred processing a ROW application and inspecting and monitoring an authorized ROW.

The 2018 Consolidated Appropriations Act amended FLPMA by adding a new Section 512 (43 U.S.C. 1772), which directs the Secretary to promulgate regulations to implement the new section. The 2018 Act also included a provision titled the ''Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act'' or ''MOBILE NOW Act,'' which amended section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455). The MOBILE NOW Act imposes limits on the time to process ROW applications and requires the use of a common form for all applications to install, construct, modify, or maintain communications facilities (including broadband infrastructure) on federally owned lands.

E. Public Notice and Comments

The 60-day public comment period for the proposed rule, published November 7, 2022, at 87 FR 67306, ended on January 6, 2023. The comment period was re-opened and ended on January 23, 2023. During the comment period and government-to-government consultation with Tribes and Alaska Native Corporations, the BLM received 28 submissions, 18 of which were unique. Comments included submittals from the following entities: 1 Tribe, 1 Alaska Native Corporation, 7 companies and industry organizations, 3 governmental organizations, and 16 individual (including anonymous) submitters. In total, those submissions included 136 unique comments. Approximately half of the comment submissions were neutral in tone or expressed overarching support for the proposed rule, with the remaining comments expressing opposition to it. However, duplicate letters submitted as part of a form campaign accounted for approximately 60 percent of the submittals expressing general opposition.

All relevant comments are posted at the Federal eRulemaking portal: *http://www.regulations.gov.* To access the comments at that website, enter 1004–AE60 in the Search box. A few commenters provided comments that were outside the scope of the proposed rule, and the BLM is not addressing them in this final rule.

Comments regarding particular provisions of the final rule are addressed in the Section-by-Section Discussion below. Several comments regarding the rulemaking process are addressed in the Procedural Matters discussion below.

One commenter encouraged us to weigh comments more heavily from local communities. The BLM considers all comments and does not give more weight based on the identity of the commenter.

Two commenters requested the BLM work collaboratively with the USFS and industry to develop guidance and training programs that ensure consistent application and implementation of the rule. The BLM agrees that both agencies should continue to work together and with input from industry in these areas.

III. Section-by-Section Discussion

Part 2800—Rights-of-Way Under the Federal Land Policy and Management Act

Part 2800 of title 43 of the Code of Federal Regulations describes requirements for ROWs issued under FLPMA. This rule revises the cost recovery fee schedule and its categories. The communications uses provisions found in this part have been either moved to new part 2860 or removed. Other minor modifications correct or clarify existing regulations.

Subpart 2801—General Information

Section 2801.2 What is the objective of the BLM's right-of-way program?

The rule adds the words ''wherever practical'' to the objective described in § 2801.2(c). This revision aligns the objective of promoting ROWs in common with the requirement described in Section 503 (43 U.S.C. 1763) of FLPMA.

Section 2801.5 What acronyms and terms are used in the regulations in this part?

The rule moves several terms associated with communications uses from § 2801.5 to the definitions section for a new part 2860, which specifically addresses communications uses. The rule also adds new definitions to

§ 2801.5. BLM is revising and republishing paragraph (b) of § 2801.5 (1) to decrease the likelihood of introducing errors, (2) improve efficiency during the publication process, and (3) meet Office of the Federal Register drafting and formatting requirements for publication. Unless explained elsewhere in this preamble as a change between the proposed and final rules, the individual (piecemeal) changes to the affected CFR units are detailed in the proposed rule, published on November 7, 2022, at 87 FR 67306.

The BLM received comments expressing confusion about the term ''ancillary'' as that term is used in various sections of the proposed rule. In response, the BLM added the term to this definition section of the final rule and, consistent with its usage of the term in the proposed rule, defined ''ancillary'' as a secondary use entirely within the scope of a primary authorization that solely supports the operations allowed by that primary authorization and that the holder does not make available to third parties through commercial sales.

As proposed, the term and a definition of ''complete application'' are also added to clarify that an application is only complete when it contains all necessary information found under § 2804.12 and when the BLM notifies the applicant that it is complete. This is an important clarification, because the BLM's customer service standards for processing applications apply only when an application is complete. This is consistent with existing BLM practice, and this rule clarifies this requirement. The final rule includes only minor, nonsubstantive changes to the definition that appeared in the proposed rule.

One commenter recommended that the BLM change the definition of ''complete application'' to provide for notification to the applicant if the application is not complete, as well as to reference section 2804.25(c). However, the BLM will maintain its existing definition of ''complete application'' and associated workflow. The BLM reviews the application casefile upon serialization and sends a deficiency letter to the applicant if initial deficiencies are identified. After interdisciplinary review, the BLM sends a deficiency letter if the interdisciplinary team determines additional pertinent information is missing. The BLM may send a deficiency letter at any point during the process if more information is needed per 43 CFR 2804.25(c). The BLM's current customer service standards and application processing workflow appear to address the commenter's requests so that no substantive revision of the rule is necessary.

The rule adds the term and a definition of ''cost recovery'' to clarify that it is a fee for the processing and monitoring associated with any proposed or authorized ROW. The final rule makes no changes to the definition that appeared in the proposed rule.

The rule adds the term and a definition of ''exempt from rent'' to clarify when an authorization is automatically exempt from rental. This definition is consistent with existing § 2806.14 and new § 2866.14. The final rule makes no changes to the definition that appeared in the proposed rule.

The rule revises the definition of the term ''facility'' by removing the last sentence. This part of the definition applied only to communications uses and was moved into new § 2861.5, which is the definitions section for the new part 2860 that has been added by this rule to consolidate provisions that address communications uses ROWs. The final rule makes no changes to the definition that appeared in the proposed rule.

Several commenters suggested that the BLM change the definition of hazard tree to conform with the USFS's definition so that the definition would: (1) explicitly refer to the different types of vegetation that create hazardous situations, consistent with the USFS's definition; and (2) apply to vegetation likely to come within the minimum vegetation clearance distance, in addition to vegetation likely to come within 10 feet of a powerline facility. Another comment requested modification of the rule to acknowledge that all vegetation with the capability of growing into a standardized clearance area at maximum growth potential will be removed, regardless of whether dead or likely to die. And another requested the BLM clarify how it interprets the hazard tree definition with respect to who can identify these trees and set occupational standards for their staff. Related to the definition of ''hazard tree'' and removal of vegetation from the ROW, the BLM received a comment requesting clarification of what constitutes routine maintenance of the ROW and whether routine maintenance requires prior BLM approval. Another comment stated that grant holders, not the BLM, should have discretion to determine what vegetation poses an imminent danger and should be treated as an emergency not requiring BLM approval prior to removal.

In response to these comments, the final rule revises the definition of ''hazard tree'' that appeared in the proposed rule by adopting the existing USFS definition and adds definitions of other terms used and defined in the USFS definition of ''hazard tree'' including ''minimum vegetation clearance distance (MVCD),'' ''maximum operating sag,'' ''operating plan or agreement,'' and ''powerline facility.'' These definitions apply in the limited context of powerline ROWs subject to § 2805.22 and will help holders of such ROWs understand what is required of them and what authorization their ROW provides. (See § 2805.22(b)(3)).

As commenters pointed out, the USFS's definition of ''hazard tree'' includes trees and non-tree vegetation that is ''[l]ikely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the [MVCD] as determined in accordance with applicable reliability and safety standards, and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement.'' (36 CFR 251.51).

The ''MVCD'' is the calculated distance (stated in feet or meters) that is used to prevent flashover between conductors and vegetation for various altitudes and operating voltages. The MVCD is measured from a conductor's maximum operating sag to vegetation within and adjacent to the linear powerline ROW for purposes of felling or pruning hazard trees. The ROW holder uses this calculation to determine whether vegetation poses a system reliability hazard to the powerline facility. Although the proposed rule dealt with vegetation management generally, the term did not appear, and so was not defined, in the proposed rule. It appears in the final rule as a term used in the final rule's definition of ''hazard tree.''

''Maximum Operating Sag'' is the theoretical position of a conductor when operating at 100 degrees Celsius and must be accounted for when determining MVCD. Although the proposed rule dealt with vegetation management generally, the term did not appear, and so was not defined, in the proposed rule. It appears in the final rule as a term used in the final rule's definition of ''hazard tree.''

In response to the comments about vegetation management, the final rule also adds a definition for the term ''maintenance'' that applies when that term is used to describe actions taken by holders of powerline ROWs. The term appeared, but was not defined, in the proposed rule. As with the final rule's

definition of ''hazard tree,'' the BLM is patterning the definition of ''maintenance'' after the USFS definition of that term in the same context of powerline ROWs. ''Maintenance,'' as it is defined in this final rule, encompasses and distinguishes between routine, non-routine, and emergency maintenance.

The rule replaces the term ''monitoring'' with ''monitoring activities'' and revises the definition of that term. ''Monitoring activities'' means those activities the Federal Government performs to ensure compliance with terms and conditions of a ROW grant. The definition also revises the explanation of the monitoring categories for consistency with the revisions made to § 2804.14(a). The final rule makes no changes to the definition that appeared in the proposed rule.

The rule adds the term and a definition of ''operations and maintenance,'' which includes activities conducted by a ROW holder to manage facilities and vegetation within and adjacent to the ROW boundary.

The final rule uses the term ''operating plan or agreement'' in place of ''operations, maintenance, and fire prevention plan,'' which was used in the proposed rule. ''Operating plan or agreement'' is a term used by USFS in its definition of ''hazard tree.'' Since the BLM adopted the USFS definition of ''hazard tree'' in this final rule, the BLM determined it would be clearer to use the USFS's term ''operating plan or agreement'' rather than ''operations, maintenance, and fire prevention plan'' as the definitions of the two terms were substantively the same. An ''operating plan or agreement'' is a plan (or agreement) submitted to the BLM by the holder of a ROW that describes how the holder plans to operate, maintain, and inspect the applicable ROW and facilities in a cost-effective, efficient, and timely manner to enhance electric reliability, promote public safety, and avoid fire hazards, including vegetation in or adjacent to the ROW.

The rule adds the term and a definition of ''powerline facility.'' Although the proposed rule dealt with facilities properly described as ''powerline facilities,'' the term did not appear and so was not defined in the proposed rule. It appears in the final rule as a term used in the final rule's definition of ''hazard tree.'' A ''powerline facility'' is one or more electric distribution or transmission lines authorized by a ROW grant and all appurtenances to those lines supporting conductors of one or more electric circuits of any voltage for the transmission of electric energy, overhead ground wires, and communications equipment that is owned by the ROW holder; that solely supports operation and maintenance of the electric distribution or transmission lines; and that is not leased to other parties for communications uses that serve other purposes.

The rule adds the term and a definition of ''processing activities.'' Processing activities are defined as work that the Federal Government undertakes to evaluate an application for a ROW grant. The principal outcome of ROW processing is a determination of whether to approve the application by issuing a grant and identifying appropriate terms and conditions for each grant. The definition also includes preparation of an environmental document, compliance with other legal requirements, and ROW administrative actions, such as assignments, amendments, and renewals, as different processing activities. This is not a change from existing BLM practice but clarifies to the public that the BLM collects cost recovery fees for these ROW-related activities. This definition explains what activities are generally associated with applications found under each cost recovery category. The final rule makes no changes to the definition that appeared in the proposed rule.

In response to comments expressing confusion about the term ''subleasing,'' the BLM added the term to this section of the final rule, defining it as the ROW holder allowing another party or parties to use facilities for the purposes specified in the ROW authorization, for which use the ROW holder may charge fees.

In response to multiple comments, the BLM revised the definition of ''substantial deviation'' to strike the best balance of the various considerations that the commenters raised. Two commenters wanted the definition of ''substantial deviation'' expanded further. One commenter suggested the BLM change the definition of ''substantial deviation'' to exclude additions of overhead optical ground wire and additions of new structures, as well as replacement of existing structures or conductors. Another commenter asked that the BLM change the definition of ''substantial deviation'' to clarify that any changes being made in support of an existing authorized use within the boundary of an existing authorized ROW are not to be considered a substantial deviation and require no additional authorization.

In response to these comments, the final rule revises the definition of ''substantial deviation'' to clarify that general maintenance activities, including safety-related activities, within an existing ROW are not considered a substantial deviation. Additionally, the definition clarifies that activities to prevent or suppress wildfires on lands within or adjacent to the ROW are not considered a substantial deviation. The final rule explicitly identifies ''vegetation management'' as an example of such activities.

Another commenter suggested the BLM change the definition of ''substantial deviation'' to include criteria the BLM will use to determine whether activities that occur when a ROW holder adds overhead or underground lines, pipelines, structures, or other facilities not expressly included in the current grant represent a substantial deviation. Though the BLM did not revise the rule to include specific criteria that will be used to determine whether an activity is a substantial deviation, the BLM plans to issue implementation guidance to help the BLM office processing or monitoring the ROW make this determination.

The rule revises the definition of ''transportation and utility corridor'' to clarify the process for establishing transportation and utility corridors. Furthermore, the amended definition clarifies the need for compatible uses. The final rule makes no changes to the definition that appeared in the proposed rule.

The BLM received multiple, contradictory comments about ''vegetation management'' and in response has added the term and a definition to the rule. The rule defines ''vegetation management'' in terms of both ''emergency vegetation management'' and ''nonemergency vegetation management.'' ''Emergency vegetation management'' is unplanned felling and pruning of vegetation on public lands within the linear right-of-way for a powerline facility and unplanned felling and pruning of hazard trees on abutting public lands that have contacted or present an imminent danger of contacting the powerline facility to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard. ''Nonemergency vegetation management'' is planned actions as described in an operating plan or agreement periodically taken to fell or prune vegetation on public lands within the linear right-of-way for a powerline facility and on abutting public lands to fell or prune hazard trees to ensure normal powerline facility operations and to prevent wildfire in accordance

with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

Several commenters suggested changes to § 2805.14(d), the provision that gives holders the right to perform certain vegetation management, with some commenters proposing that the BLM broaden the provision while others proposed that the BLM make it narrower. One commenter suggested that the BLM amend § 2805.14(d) so that ROW holders could trim, prune, and remove vegetation and conduct other activities consistent with maintenance and operation of the ROW and protection of public health and safety. Another commenter supported the provision as proposed so long as the vegetation management activities were defined in the project's operating plan or agreement. A third commentor requested revision of § 2805.14(d) to clarify that vegetation management to maintain the ROW includes the right to cut or trim off-ROW vegetation when the utility determines it is necessary as part of its vegetation management program. Similarly, another commenter requested the BLM modify the rule to acknowledge that all vegetation with the capability of growing into a standardized clearance area at maximum growth potential will be removed, regardless of whether it is dead or likely to die. A final commenter requested that the BLM clarify how the BLM interprets the hazard tree definition with respect to who can identify hazard trees and set occupational standards for its staff.

In response to the comments, the BLM determined it will retain the language in § 2805.14(d) but, as discussed above, revised the definition of hazard tree to be consistent with the USFS's definition, which addresses some of the comments regarding when vegetation management is allowed on and adjacent to the ROW.

The rule adds the term and a definition of ''waived from rent'' to clarify the differences between being ''waived from rent'' and ''exempt from rent.'' While a holder may be exempted from rent by statute or regulation, the BLM may also waive a part, or all, of a holder's rent (see §§ 2806.15 and 2866.15). The final rule makes no changes to the definition that appeared in the proposed rule.

The rule revises the definition of ''zone'' by removing the number ''eight'' from the description of the number of zones. The current linear rent schedule for ROWs has 15 zones, so the former definition is no longer accurate. Removing the number of zones does not affect the definition. The final rule makes no substantive changes to the definition that appeared in the proposed rule.

Subpart 2802—Lands Available for FLPMA Grants

Section 2802.10 What lands are available for grants?

This rule revises § 2802.10(c) by removing the specific requirement to notify the BLM office nearest the lands you seek to use. The rule instructs you to contact the BLM to determine the appropriate office with which you should coordinate. The appropriate office is the BLM office with jurisdiction over the lands you seek to use, which may not be the same as the BLM office nearest those lands.

One commenter suggested that the BLM modify § 2802.10(c) to provide for the identification of a single administrative office to be the lead for coordination in processing a ROW application when multiple offices may be involved, as well as to provide guidance on how to determine the appropriate BLM office or contact.

The BLM elected not to make the recommended change because the BLM has procedures to identify a lead office, or in the case where a project crosses several states, to identify a lead state to coordinate the processing of a ROW application. See BLM ROW Manual 2804 for further guidance on this process.

Subpart 2803—Qualifications for Holding FLPMA Grants

Section 2803.11 Can another person act on my behalf?

Section 2803.11 adds new provisions to govern the process a holder must follow to notify the BLM when another person or entity is authorized to act on the holder's behalf. This standardizes what documents the BLM requires prior to allowing another person or entity to act on behalf of the holder.

Paragraph (a) requires the holder to follow several steps before designating another individual or entity to act on their behalf. These requirements are necessary for the BLM to understand the legal relationship between the holder and the third party acting on their behalf.

Paragraph (a)(1) explains which BLM office must be notified. The office with jurisdiction over a grant retains the official case file and therefore needs the official documentation. This paragraph also requires the holder to provide a copy of a relevant power of attorney if one exists. This is often the instrument used to authorize another party to act on the holder's behalf. This requirement should not create any additional burden because the requested information is simply a copy of documents already possessed by the holder.

Paragraph (a)(2) requires the holder to provide and maintain current contact information for their intended agent. This requirement is important if the BLM needs to contact the agent. Without updated and current contact information, processing times can be delayed. This requirement is anticipated to streamline interactions between the BLM and holders or their agents.

Paragraph (b) informs the ROW holder how the BLM will administer the grant. The BLM is simplifying the formal communication process by establishing expectations of responsibility for any actions taken by an authorized agent. As a result of this change, the BLM anticipates a reduction in processing times for requests related to a ROW application.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2803.12 What happens to my grant if I die?

Because an application is not an inheritable interest, the BLM changed the title of this section from ''What happens to my application or grant if I die?'' to ''What happens to my grant if I die?'' Paragraph (a) was also revised to remove the reference to applications.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Subpart 2804—Applying for FLPMA Grants

Section 2804.12 What must I do when submitting my application?

In § 2804.12, the BLM has changed § 2804.12(a) by adding a sentence following the first sentence to read: ''The application must include the applicant's original signature or meet the BLM standards for electronic commerce.'' This addition clarifies that when an application for a ROW is filed electronically, a manual signature may not be required. One commenter expressed support for the proposed rule's allowance that an application for a ROW that is filed electronically may not require a physical signature. The BLM has established the electronic filing process for communication uses ROWs by providing an online SF–299 for this type of ROW application. The BLM may expand the online filing process to other types of ROWs in the future.

Revisions to § 2804.12(a)(4) require an applicant to submit the project map for

the project as Geographic Information Systems (GIS) shapefiles, or in an equivalent format, when requested to do so by the BLM. When a BLM office is conducting an analysis under the National Environmental Policy Act (NEPA) or the National Historic Preservation Act (NHPA), it is not uncommon for the various resource specialists to request that the applicant provide project data electronically in a GIS format to ensure that the correct area for the proposed project is analyzed. It is likely the individual or entity responsible for the application already has the proposed project data in a GIS format, and therefore, the BLM is not adding a significant burden upon the applicant. This new requirement is expected to reduce application processing times by allowing the BLM to integrate project locations into existing resource datasets and analyze the potential resource impacts more quickly. See the preamble discussion of § 2864.12(a)(3) for comments related to the rule's GIS requirements.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2804.14 What are the fee categories for cost recovery?

The rule revises the title of this section to read: ''What are the fee categories for cost recovery?'' The cost recovery categories in this section apply to both processing and monitoring activities, whereas the former title of § 2804.14 refers only to processing fees for grant applications. The BLM amended § 2804.14(a) to clarify that cost recovery fees include both processing and monitoring activities and to maintain consistency with the changes in § 2804.16 which, as amended, provides for the waiver of, rather than exemption from, processing and monitoring fees.

A commenter asked that the BLM explain how monitoring costs for the duration of the grant can be determined at the time of the grant application, given the long-term nature of authorizations. Often, monitoring is a one-time event to ensure that terms and conditions contained in a ROW grant are met during construction. However, for more complex authorizations, monitoring must occur throughout both construction and maintenance of the ROW. The expense for continuous monitoring during construction and afterward is considered when making category determinations. At times, periodic billing will be required to cover additional monitoring costs. This is especially true for Category 5 and 6 ROW project monitoring. Therefore, the BLM may collect additional payments from the land use authorization holder for anticipated monitoring expenses. The final rule amends the existing regulations to acknowledge that some ROWs that fall into the minor categories may nevertheless require monitoring for lengthy construction or maintenance periods. The BLM suggests long-term monitoring provisions be included in operating plans or agreements.

The BLM received multiple comments on the cost recovery portion of the proposed rule, largely focused on the increased cost recovery fee schedule for processing Category 1–4 ROW applications. One commenter stated that the BLM should eliminate revisions to the Category 1 processing fee that include processing fees for work estimated to take 1 hour or less. This commenter contested the BLM's justification that the time spent on ROW work activities generally is not less than 1 hour and expressed concern that this revision would create a financial burden to industry through the additional processing fees.

Processing one ROW application generally requires more than 1 hour. To process a ROW application, one or more BLM staff specialists need to examine the ROW site including traveling to and from the site. They need to prepare one or more reports (*e.g.,* cultural site evaluation, environmental evaluation), identify appropriate terms and conditions to be applied, prepare a grant for the applicant to sign, and collect rents and cost recovery payments. Master Agreements are a way for applicants to address concerns related to Category 1 applications that may take less than 1 hour to process.

Three commenters expressed concern about the amount the cost recovery fee is increasing and/or the validity of the calculations used to determine the new cost recovery fee schedule. The first commenter stated that cost recovery fees should not be revised to reflect an average hourly wage of $67.83. The commenter expressed concern that the economic analysis used to determine the average wage does not provide sufficient information to assess the validity of this wage. Similarly, this commenter stated that the rule did not properly consider required reasonableness factors in calculating $67.83 as the base average hourly wage for its cost recovery fees. More specifically, the commenter stated that the economic analysis was incorrect in its determination that all non-major projects: (1) are local in nature with small public benefits; (2) provide little opportunity to meet public service needs; and (3) would have an insignificant number of ROW applications where paying full actual costs could generate undue hardship. The second commenter stated that the average hourly wage of $67.83 upon which the cost recovery fees of sections 2804.14(b), 2805.16(a), 2884.12(b), and 2885.24(a) are based is not reasonably supported by the rule. The commenter stated the BLM had not provided adequate information for the public to consider its proposed new average hourly wage of $67.83, and the BLM had not considered adequately the consequences of its proposed rule. The third commenter expressed a general concern that cost recovery fees were increasing too much.

The BLM recognizes that the cost recovery calculations are complex but will not revise the hourly wage. FLPMA Section 304(b) identifies the factors which the BLM takes into account when determining whether fees are reasonable. Please see the 1986 BLM proposed rule (51 FR 26836–26844) for the first cost recovery determinations applying these factors. The economic analysis has been updated to provide more detail in response to the comments. Further discussion of how the hourly rate was calculated and how the amount of the increase satisfies the reasonableness factors is provided in the below paragraphs. Master Agreements, also discussed below, are a way for applicants to address cost concerns.

Three commenters expressed interest in the overhead cost calculations used in calculating the new cost recovery fee schedule. One commenter asked why only 3 years were used in calculating ''overhead costs.'' Another commenter asked how the specific percentages for the 3 years used were calculated. A third commenter questioned how the asserted ''overhead costs'' were calculated, whether only ''vehicle usage, building utility cost, and property maintenance'' went into the calculation, or if other items were included.

The indirect cost rate or ''overhead costs'' include expenses such as building maintenance, utilities, general administrative costs (time keeping, vehicle expenses, local travel costs), and similar items. The indirect rate is calculated by taking the total of the BLM's expenditures for a fiscal year (FY), subtracting salary costs, and dividing the remainder by the total expense figure. The annual indirect rate for any 1 year is derived from the average of the 5 previous fiscal years' costs. The indirect cost rates for FY 2018, 2019, and 2020 were 21.8 percent, 21.6 percent, and 21.5 percent, respectively. Tables showing the calculation can be found in the

economic analysis for this rulemaking. ''Economic and Threshold Analysis for Revisions to 43 CFR 2800,'' U.S. Bureau of Land Management, October 2023, available at *www.regulations.gov.*

The BLM received several comments asking how cost recovery amounts were determined for Category 1–4 ROW applications. The cost recovery amounts for Category 1–4 applications were determined in a multi-step process. First, the BLM reviewed data in the DOI's Financial and Business Management System for FYs 2018, 2019, and 2020. The purpose of this review was to determine the BLM's costs associated with conducting ROW processing and monitoring activities. From this information, the BLM determined an approximate average wage ($/hour) being used to conduct cost recovery-eligible work and applied that wage to the number of hours representing the midpoint for each minor category. The BLM reviewed data that included these three functional areas (or sub-activities): ''1430'' (lands and realty work); ''1492'' (communication site work); and ''5102'' (ROW-cost recovery work). The program elements included: ''ER'' (ROW processing); ''FP'' (ROW work other than processing); and ''NH'' (ROW compliance).

The BLM used the following formulas to determine the approximate average wage for the cost recovery work:

Average Wage = total pay + indirect costs/number of hours worked

Total Pay = pay amount + pay additive + leave surcharge + leave surcharge additive

Indirect Costs = total pay ✻ indirect rate

''Pay amount'' is the portion of employee gross pay charged to each program. ''Pay additive'' is the government share of taxes (*e.g.,* OASDI and Medicare) and any employee benefits (such as health insurance premiums, retirement contributions, etc.). ''Leave surcharge'' is a percentage of the employee gross pay assessed to each program to fund employee leave taken. ''Leave surcharge additive'' is a percentage of the government share of taxes and any benefits assessed to each program to fund employee leave taken. The ''indirect rate,'' as discussed above, is a percentage applied to the total pay to account for overhead costs, such as for vehicle use, building utility costs, and property maintenance.

The average wages that the BLM calculated using the cost data were relatively stable across the 3-year period with a slight increase in FY 2020: $66.47, $66.69, and $70.50 in FY 2018, FY 2019, and FY 2020, respectively. When the data are combined over the 3-year period, the calculated average wage is $67.83.

This wage is the value that the BLM used to determine the revised fee schedule. Specifically, the BLM multiplied $67.83 by the number of hours representing the midpoint for each minor category to get the revised base year fee for each category. During previous rulemakings on this subject, the BLM received comments that most users supported use of a midpoint, as opposed to another statistical method or evaluation of the data. With this rule, the BLM maintains the use of the midpoints for calculating the fees for the minor categories. The result of this formulation is revised fees of $271, $1,085, $2,171, and $3,527 for minor categories 1, 2, 3, and 4, respectively. These are the fees to be applied in the base year and adjusted annually for changes in the GDP–IPD, per current practice.

For more specific information on the calculation of the cost recovery amounts, please see ''Economic and Threshold Analysis for Revisions to 43 CFR 2800,'' U.S. Bureau of Land Management, October 2023, available at *www.regulations.gov*.

With the increase in cost recovery fees, one commenter requested additional clarification as to how the BLM intends to use the increased revenue from Category 1–4 cost recovery. The BLM will use the increased revenue from the cost recovery fee increase to offset the costs the BLM incurs processing and monitoring minor category ROWs. Currently, the cost recovery funds received from applicants or ROW holders do not cover the Federal Government's expenses in processing and monitoring ROWs, which is the principal reason for adjusting the cost recovery fee schedule.

Two commenters stated that cost recovery fees should be solely covered by applicants and not impact taxpayers. The BLM agrees with these commenters. That is one of the reasons why the final rule includes the fee schedule increase. The BLM has elected not to revise the final rule to further explain the BLM's use of the revenue from the cost recovery fees. The statutory authority and the definition of ''cost recovery'' at § 2801.5 and text of the rule at § 2804.14 explain that cost recovery fees are for both processing and monitoring expenses.

A commenter also encouraged the BLM to provide detail regarding the cost recovery fees as well as other recovered costs to ensure that double cost recovery does not occur. The BLM charges cost recovery fees for processing and monitoring ROWs, and the BLM receives rents for the use of public lands for ROW purposes. Cost recovery is charged only once, while the ROW rental is charged every year. In suggesting that double cost recovery could occur, the commenter likely is confusing the one-time cost recovery with annual rent.

Two commenters requested that the BLM apply cost recovery fees to cover road inspection by BLM staff. For roads that are part of a ROW project subject to cost recovery, such fees are already used to pay for these inspections. Although the BLM is not changing this final rule to directly accommodate this comment, the BLM believes that it is a worthwhile suggestion, and the BLM will strive to ensure that cost recovery receipts are used for the proposed purpose.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2804.15 When does the BLM reevaluate the cost recovery fees?

This rule revises the title of this section to change ''processing and monitoring'' to ''cost recovery.'' This change is necessary for consistency with the changes made to § 2804.14.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2804.16 When will the BLM waive cost recovery fees?

The rule amends § 2804.16 by revising the title to read ''When will the BLM waive cost recovery fees?'' rather than ''Who is exempt from paying processing and monitoring fees?'' Paragraph (a) of this section contains the undesignated introductory text of existing § 2804.16. This language was revised to refer to cost recovery fees, instead of processing and monitoring fees, and change the existing provision for an absolute exemption from fees to a potential waiver of fees that the BLM has discretion to apply or not apply.

Paragraph (a)(1) of this section contains the text of existing § 2804.16(a) and states that ROW cost recovery fees may be waived if an applicant is a State or local government and the application is for governmental purposes that benefit the general public. Under this paragraph, the waiver does not apply if charges levied on customers are similar to those of a profit-making entity. This is different from the former exception which applied only when such charges were the ''principal source of revenue.''

The waiver for governmental entities is intended to provide financial relief to governmental entities seeking to provide a benefit to the public. However, some of these entities charge rent to use their facility beyond the operating costs. This change makes the waiver unavailable to applicants who would otherwise receive an authorization at no charge and then collect fees from other users.

Paragraph (a)(2) of this section contains the text, without revision, from existing paragraph (b).

Paragraph (a)(3) allows the BLM to waive cost recovery fees for Federal agencies for applications belonging to cost recovery Categories 1 through 4. The former regulations required Federal agencies to pay cost recovery fees on all ROW applications. Under an earlier version of the regulations, Federal agencies were exempt from all cost recovery. This rule strikes a middle path by allowing the BLM to waive fees for Federal agencies in some but not all circumstances. Transferring funds between agencies is costly and administratively slow. Costs associated with processing the transfer often exceed the fees being transferred. Therefore, it is not cost effective for the BLM to collect cost recovery fees from other Federal agencies for Categories 1 through 4. However, if a Federal agency's application would take the BLM more than 64 hours to process, the BLM would collect cost recovery fees under Category 5 or 6.

This rule adds a new paragraph (b) to this section stating that the BLM will not waive your fees if you are in trespass. This paragraph makes existing BLM policy explicit in the regulations.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2804.17 What is a Master Agreement (Cost Recovery Category 5) and what information must I provide to the BLM when I request one?

This rule modifies § 2804.17(a) to change the cross-reference from § 2805.16 (currently the table for monitoring fees) to § 2804.14, which contains the combined cost recovery table for all ROW activities.

One commenter suggested the BLM clarify whether Master Agreements are initiated by the BLM or the applicant. A Master Agreement may be initiated by either party, but in the end, it is a mutual undertaking. The same commenter encouraged the BLM to: (1) allow master cost recovery agreements that lay out the terms and conditions for cost recovery but do not require funding commitments; (2) allow agreements to be developed at a region-wide level; and (3) clarify that only one Master Agreement is necessary in situations where the defined geographic area for a transmission line would be in more than one BLM administrative unit.

In response to the commenter's suggestions, the BLM revised paragraph (a) to clarify that monitoring may be done under Master Agreements but elected not to revise the final rule further. See the discussion of section 2804.18 for further responses to these comments.

Section 2804.18 What provisions do Master Agreements contain and what are their limitations?

Section 2804.18 describes how Master Agreements function.

Paragraph 2804.18(a)(2) provides that a Master Agreement describes work to be done by the applicant and the BLM to complete ROW permitting and monitoring activities. A commenter suggested the BLM clarify whether Master Agreements are initiated by the BLM or the applicant. The BLM elects not to revise the rule in response to this comment, because the rule appropriately provides for cooperative development of Master Agreements and initiation by either the BLM or the applicant.

The revisions to paragraph 2804.18(a)(2) allow Master Agreements to be used for any type of ROW activity, not just ROW processing. The rule revises language in paragraph (a)(5) to align the language with other updates in the rule. The BLM believes the expanded use of Master Agreements will streamline processing and monitoring activities. Master Agreements are designed to consolidate some of the processing and monitoring steps associated with ROWs, including combining budgeting processes into one project work breakdown structure. Also, many Master Agreements fund or partially fund staffing of Realty Specialists and other key members of interdisciplinary teams, which can help expedite processing when funds are not otherwise available (§ 2804.22).

Section 2804.18(c) is amended to refer to ''cost recovery fees,'' instead of ''processing and monitoring fees.'' These changes are consistent with the expanded definition of a Master Agreement.

The final rule includes a new paragraph (a)(9) and redesignates the existing paragraph (a)(9) as paragraph (a)(10). This revision is made in response to several comments that suggested Master Agreements should be written so that they also include previously granted ROWs. This addition will clarify that Master Agreements may cover previously authorized ROWs.

The BLM also received a comment requesting the BLM allow master cost recovery agreements that lay out the terms and conditions for cost recovery but do not require funding commitments. The commenter's intent is not clear from this comment. However, the BLM notes that the primary purpose of a master cost recovery agreement is to agree upon the required cost recovery funding commitments.

The BLM also received a comment suggesting that the agency allow region-wide Master Agreements and Master Agreements that cover more than one BLM administrative unit. The current regulations allow Master Agreements to cover more than one administrative unit, and the BLM is piloting regional-level master ROW's that include master operating plans or agreements as well as master cost recovery plans. The BLM anticipates providing further guidance on regional-level master ROWs in the future.

Section 2804.19 How will the BLM manage my Category 6 project?

Section 2804.19 is amended by revising the title from ''How will BLM process my Processing Category 6 application?'' to read ''How will the BLM manage my Category 6 project?'' This section is revised to explain that cost recovery for Category 6 projects will include monitoring the grant in addition to processing the application. This rule also makes editorial changes for clarity and consistency with the other rule changes.

Paragraph 2804.19(a) eliminates the requirement for a work and financial plan for some Category 6 applications at the discretion of the authorized officer and provides only that the BLM ''may require'' such plans. Preparing a work and financial plan takes an average of 6 months to complete. The preparation of a work and financial plan may not be necessary if both the applicant and the BLM authorized officer can agree, in writing, on the cost to process the action. This change will reduce the time associated with establishing a cost recovery account and improve the Category 6 cost recovery process, particularly for those actions requiring close to 64 hours.

In this section, the rule adds a new paragraph (b)(4) and redesignates existing paragraphs (b)(4) and (b)(5) as paragraphs (b)(5) and (b)(6), respectively. New paragraph (b)(4) states that the BLM may collect a deposit before beginning work on a Category 6 project. Previously, when an application

fell under Category 6, it took an average of 6 months to complete the details of the agreement, which includes a work and financial plan. The communications industry has indicated that when they are charged a Category 6 cost recovery fee, the deposit is usually between $11,000 and $15,000. The advanced collection of a deposit will shorten the time for processing an application by allowing the BLM to begin processing the application during the 6 months it usually takes to complete a cost recovery agreement. If the BLM determines the deposit is not adequate, the applicant can prepare a work and financial plan to provide additional funds under a cost recovery agreement.

One commenter expressed support for the proposed rule's provisions for collecting a deposit prior to initiating work to process Category 6 applications and giving discretion to the authorized officer to eliminate the requirement for a work and financial plan. The commenter further recommended the BLM consider removal of work and financial plan requirements entirely for Category 6 applications.

As in the proposed rule, the final rule modifies this section to make work and financial plans discretionary. In many instances such plans will no longer be required; however, some more complex ROW authorization situations may still require plans, which will benefit both the applicant and the BLM. Otherwise, the final rule makes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2804.20 How does the BLM determine reasonable costs for Category 6 right-of-way activities?

Section 2804.20 is amended by revising the title from ''How does BLM determine reasonable costs for Processing Category 6 or Monitoring Category 6 applications?'' to read, ''How does the BLM determine reasonable costs for Category 6 right-of-way activities?''

The rule revises the last sentence in the introductory text of this section, which stated, ''While the BLM considers your written analysis, the BLM will not process your Category 6 application.'' Under this final rule, if the BLM requests additional information, the BLM will continue to work on your application while you are responding to our request if a deposit has been received by the BLM as provided in § 2804.19(b)(4). The BLM finds that this approach will lead to more efficient ROW processing and monitoring.

Paragraph (a) of this section describes how the BLM applies the factors that inform whether costs are reasonable as articulated in Section 304(b) of FLPMA to determine the actual costs owed to the BLM. The rule removes the reference to the BLM State Director, and instead the provision refers only to the BLM. This does not change how the BLM applies the ''reasonableness'' cost factors, and the decision is still appealable under § 2801.10. This change improves the cost recovery process by enabling the BLM to make the determination regarding reasonable costs for a Category 6 cost recovery at the appropriate management level based on the BLM's internal delegations of authority on a case-by-case basis. The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2804.21 What other factors will the BLM consider in determining cost recovery fees?

The rule amends this section by revising the title and paragraphs (a), (a)(2), and (a)(7) by removing references to ''processing and monitoring'' and replacing those references with more general references to all ROW activities to which cost recovery applies. This change is consistent with the changes described in § 2804.14.

Paragraph (b) of this section describes how the BLM reviews your analysis of the factors for your project to determine the fees owed to the BLM. The rule removes the reference to the BLM State Director and instead refers only to the BLM.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2804.25 How will the BLM process my application?

The proposed rule would have amended paragraph (a)(1) of this section to add ''unless your fees are exempt.'' The final rule adds ''unless you are exempt from paying fees,'' which is a slight and nonsubstantive change relative to the proposed rule. This clarifying edit is necessary because the BLM is not required to identify your cost recovery fee if you are exempt from fees.

The rule redesignates paragraph (c)(2) of this section as paragraph (c)(3) and adds a new paragraph (c)(2). Paragraph (c)(2) of this section requires an operating plan or agreement for all powerline ROWs. Section 512 of FLPMA calls on the BLM to provide ''owners and operators of electric transmission or distribution facilities located on public lands . . . with the option to develop and submit a plan'' (43 U.S.C. 1772(c)(1)). Under existing § 2804.25(c), the BLM may require applicants to submit a plan of development (POD) for a ROW, as necessary. The operating plan or agreement may be included in the POD. The BLM generally requires PODs for large projects but believes the risk of wildfire associated with powerline ROWs merits an explicit requirement. One commenter suggested the BLM revise the proposed rule language in § 2804.25(c)(2) to allow applicants to provide a draft operating plan or agreement with their application to initiate application processing and allow applicants to finalize the plan collaboratively with BLM prior to grant issuance. The final rule incorporates this suggestion. See § 2805.21(a)(2).

Paragraph (c)(2) requires all powerline ROW holders to submit an operating plan or agreement unless the ROW holder has an approved plan that meets the requirements of § 2805.21 or unless the ROW holder can show good cause as to why it cannot meet this requirement. Under this rule, the BLM relies on its general authority to condition ROW grants (43 U.S.C. 1761(b)(1)) upon an applicants' submission of an operating plan or agreement for all new powerline ROWs. Applications to amend and renew ROWs must follow the same procedures as applications for new ROWs and, therefore, would also be subject to a requirement for an operating plan or agreement. However, if an applicant already has an approved plan that meets the requirements of § 2805.21(c) (''What is an operating plan or agreement for electric transmission and distribution rights-of-way?''), the applicant will not be required to submit a separate plan.

The rule revises paragraph (d) of this section by changing ''completed application'' to ''complete application.'' This revision is consistent with the addition of that term as a defined term in § 2801.5. The rule also revises the table in paragraph (d) of this section by adding the word ''Master'' in front of the word ''Agreement.''

One commenter expressed support for the proposed rule's requirement that the BLM notify the applicant in writing if processing a Category 1–4 application is expected to take longer than 60 days. This is an existing BLM requirement that has now been codified in regulation by the final rule. See § 2804.25(d). The BLM intends to complete as many ROW applications as possible during the 60-day period.

Section 2804.26 Under what circumstances may the BLM deny my application?

The rule adds a new paragraph (a)(9) which provides that the BLM can deny a ROW application when an applicant does not comply with a deficiency notice (see § 2804.25(c) of this subpart) within the time specified in the notice or with a BLM request for additional information needed to process the application.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2804.27 What fees must I pay if the BLM denies my application or if I withdraw my application or I relinquish my grant?

This rule amends § 2804.27 by revising the title to read ''What fees must I pay if the BLM denies my application or if I withdraw my application or I relinquish my grant?'' This title acknowledges that you may have to pay fees following a relinquishment of a grant.

The rule makes minor revisions to paragraphs (a) and (b) to make the language more consistent with language elsewhere in the existing regulations and this rule. Paragraph (c) explains how cost recovery fees are applied under Category 5 or 6 if a holder relinquishes their grant. The holder will be liable for all costs the United States has incurred in connection with the grant, including relinquishment of the grant. Any outstanding fees will be due to the BLM within 30 days after the holder receives the bill. The holder will be refunded the amount of fees paid that the BLM does not use to process the holder's grant. This new paragraph is consistent with existing BLM practice, but it is necessary to clarify and make explicit in regulation the process for relinquishing a grant and explain to holders what is required of them.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Subpart 2805—Terms and Conditions of Grants

Section 2805.11 What does a grant contain?

The rule adds a new paragraph (b) to § 2805.11 to provide that grants will include access (ingress and egress) rights to a ROW. The rule redesignates existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively. Many ROWs need access to and from the ROW from outside the boundaries of the ROW for operations and maintenance. The rule adds an explicit requirement for the authorized officer to include rights of ingress and egress in the grant. Prior to 2005, the regulations had included similar provisions for ingress and egress.

The BLM has re-introduced these provisions to address the need for grants to include explicit provisions for continued access throughout the term of the grant. While most projects include authorization for temporary access for initial construction, if those temporary access rights expire, then access for future operations and maintenance requires an additional authorization. The requirement to include these rights of ingress and egress in the grant will ensure that the holder can engage in timely and efficient operation and maintenance of the grant.

The BLM may charge rent appropriate to the nature of these access routes outside the ROW boundary. For instance, where ROW access is facilitated by existing routes that are open to public use, rent likely would not be appropriate. By contrast, the BLM may charge rent for newly constructed roads or overland travel to authorized ROWs on public lands. See the preamble discussion of the revisions to § 2806.15(b)(3) for more information.

Three commenters expressed support for the proposed rule's requirement that grants include both ingress and egress access to ROWs, but these commenters asked for additional language to: (1) clarify that the provision regarding ingress and egress will not result in double cost recovery where access rights are already covered by the authorization; (2) allow for a broad range of access rights, including overland travel; and (3) recognize secondary rights of ingress and egress and limit ingress and egress to routes that cross BLM parcels.

Another commenter recommended the BLM modify the proposed rule language to allow alternate routes and emergency overland travel when primary routes are impassible or closed to avoid resource damage.

With respect to the first three commenters' suggestions, the final rule does not make any changes to the regulatory text. Under that the final rule: (1) for minor category cost recovery calculations, the BLM will ensure that there is not double counting of costs if there is already existing access to a ROW; (2) alternative access rights may be provided; however, unlimited overland travel must be approved by the BLM local office because of potential damage to resource values; and (3) the BLM will recognize valid secondary rights; however, the BLM can only authorize access over public lands, as the BLM has no authority to authorize access over private lands for ROW purposes. It will be the responsibility of the potential ROW holder to secure any necessary access across private land. The last commenter's recommendation to allow alternate routes and emergency overland travel when primary routes are impassible or closed to avoid resource damage may also be covered by terms and conditions developed for a ROW grant. However, there may be limitations on determining alternate routes due to potential damages to resource values if some alternative routes were to be allowed.

Another commenter requested that the BLM revise the proposed rule language to streamline the notice for access road maintenance outside of the ROW. The BLM elected not to revise the rule in response to this comment as authorization of access outside the ROW is subject to NEPA and NHPA, so it must be reviewed on a case-by-case basis to determine if the proposed access outside the ROW would impact other resource values. One option to address the commenter's concern would be for the BLM and the applicant to develop terms and conditions in the ROW to identify maintenance requirements and procedures outside the ROW.

A commenter also requested the BLM assist utilities with coordinating road maintenance plans in an equitable manner for roads with multiple users, including the BLM. The BLM elected not to revise the final rule to address the commenter's request to coordinate road maintenance agreements between multiple users. The BLM requires ROW holders to enter into road maintenance agreements with other ROW holders using the same roads. The road maintenance agreements are contracts between private entities that determine among themselves the best way to allocate costs and responsibilities for shared-road maintenance. The BLM is not involved in the contract negotiations between the private parties but does provide information to ROW applicants regarding other road users with whom the applicant will need to work to establish the required road maintenance agreement.

Having considered these and other comments, the final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2805.12 With what terms and conditions must I comply?

Former paragraph (a)(4) of this section required holders to do everything reasonable to prevent and suppress wildfires on or within the immediate

vicinity of the ROW. The language has been changed from ''immediate vicinity of the ROW'' to ''adjacent to the ROW'' to be consistent with the rule's revision of the definition of ''substantial deviation.''

Paragraph 2805.12(a)(8)(vi) requires holders to ensure that they construct, operate, maintain, and terminate facilities in accordance with the authorization, including the approved POD. This rule expands that provision to extend to any operating plan or agreement developed under the new section 512 of FLPMA and these regulations.

Paragraphs 2805.12(c)(5) and (d)(3) are revised to provide that conditions associated with damaged and abandoned facilities that threaten human health or safety are not subject to the existing requirement that the BLM wait 3 months before requiring the holder to act. The BLM has experienced situations where grant holders create human health and safety hazards by abandoning facilities and equipment within their authorized ROW. If a holder's use is posing a health or safety hazard to the public, per the rule, the BLM is empowered to address it immediately.

One commenter recommended the BLM revise § 2805.12(a)(4) to clarify that utilities retain discretion to determine what fire prevention actions they will carry out in, or adjacent to, the ROW. Another commenter stated that the BLM should eliminate language in the proposed rule that would tie fire suppression actions to ROW grants.

A utility's fire prevention actions will be provided in the operating plan or agreement, as approved by the BLM. This final rule does not eliminate language that ties fire suppression actions to the ROW because they are important terms and conditions with which a utility must comply to protect other public land resource values and human health and safety.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2805.14 What rights does a grant provide?

The rule revises the title from ''What rights does a grant convey?'' to ''What rights does a grant provide?'' to eliminate any implication that a grant gives ownership rights.

The final rule revises § 2805.14(b) for clarity. Paragraph (b) already requires BLM authorization before a grant holder may ''allow other parties'' to use a facility. As revised, the regulation will refer to this practice explicitly as ''subleasing.'' The revision will also align with the language in this section with that in new § 2865.14(b) providing consistency between the regulations governing communications uses and those governing all other uses. This change was not included in the proposed rule.

The rule revises § 2805.14(d) by removing the word ''minor'' from the description of permissible trimming, pruning, and removal of vegetation and by adding an allowance to undertake those activities to ''protect public health and safety.'' The term ''minor'' has caused confusion for the holders and is imprecise. These revisions provide the necessary detail for the ROW holder to determine what vegetation management they can and must do to operate and maintain their ROW or facility, including what does and does not constitute a substantial deviation.

Several commenters suggested changes to § 2805.14(d) to make it broader or to make it narrower. One commenter suggested the BLM amend § 2805.14(d) to allow, in addition, for ''operations and maintenance activities.'' One commenter stated that the BLM should revise the proposed rule language to clarify that vegetation management to maintain the ROW includes the right to cut or trim off-ROW vegetation when the utility determines it is necessary as part of its vegetation management program. One commenter expressed concern that proposed revisions to § 2805.14(d) could result in adverse impacts to other land users and the environment and recommended the BLM modify § 2805.14(d) to add a caveat that permissible action would be undertaken as defined in the projects' operating plans or agreements.

See the preamble discussion of § 2801.5 for additional discussion of comments regarding the appropriate scope of ''vegetation management'' under these regulations. This final rule retains the language in § 2805.14(d) but revises the definition of hazard tree to be consistent with the USFS definition. The USFS definition provides more context for the type of vegetation and defines a hazard tree as: [l]ikely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the minimum vegetation clearance distance as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement (36 CFR 251.51). This definition explains what work can be done outside of the holder's ROW to maintain it. The final rule makes no changes to the version of paragraph (d) that appeared in the proposed rule.

Section 2805.14(e) is revised to allow the holder to use vegetation removed during maintenance of the ROW. The use of existing vegetation will reduce non-native species intrusion and expedite maintenance by the holder. The paragraph is also revised to align with FLPMA's statutory provision that stone, soil, or vegetation may be used only if any necessary authorization to remove or use such materials has been obtained pursuant to applicable laws (43 U.S.C. 1764(f)). The final rule makes no changes to the version of paragraph (e) that appeared in the proposed rule.

Section 2805.15 What rights does the United States retain?

This rule rephrases paragraph (a) of this section to address the nature of the BLM's need for access to the lands and facilities covered by an authorization. Some authorizations may be for the use of a facility, while others would be for use of an area on the public lands. The rule retains the requirement to provide the BLM access to and within the lands or facilities.

Section 2805.15(e) adds language to clarify that after a grant is executed, any modification of its terms and conditions generally requires the BLM to issue a new or amended ROW grant. The BLM conducts analyses, including under NEPA, before issuing a grant, and any changes to the terms or conditions of a grant will require the BLM to undergo a new decision-making process. Any such new decision must comply with applicable laws, including NEPA, and may require the BLM to complete a new environmental analysis, use an existing environmental analysis, or rely on a categorical exclusion.

Under paragraph (f) of this section, the BLM can terminate an authorization for non-compliance. Section 2805.12 describes the terms and conditions that a grant holder must comply with and provides that the BLM can terminate a grant for non-compliance. This paragraph reinforces this potential outcome.

Under paragraph (g) of this section, the BLM can require a holder to submit financial documents related to a holder's authorization. This addition is consistent with the requirements of existing § 2805.12(a)(15).

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2805.16 If I hold a grant, what cost recovery fees must I pay?

The rule amends § 2805.16 by changing the word ''monitoring'' in the title to ''cost recovery'' such that the title reads, ''If I hold a grant, what cost recovery fees must I pay?'' The section is also amended by revising paragraph (a), adding a new paragraph (b), revising current paragraph (b), and redesignating it as paragraph (c).

As previously discussed, the rule removes the monitoring cost recovery fee table formerly located under § 2805.16(a). The rule also adds a sentence referring the reader to § 2804.14(b), where they can find the cost recovery table.

Under new § 2805.16(b), the cost recovery fee schedule for Categories 1 through 4 will be updated on an annual basis based on the previous year's change in the IPD–GDP, and the fees for Category 5 will be updated according to a given project's Master Agreement.

Section 2805.16(c), which contains the provisions of former § 2805.16(b), explains where to obtain a copy of the current year's cost recovery fee schedule. The rule provides updated contact information for the holder to request the schedule from the BLM's Division of Lands, Realty and Cadastral Survey.

One commenter stated that proposed revisions to the Category 1 processing fee that includes monitoring fees for work estimated to take 1 hour or less should be eliminated because the change is contrary to both FLPMA and the MLA and would create a financial burden to industry. This comment is similar to a comment on § 2804.14. Please see the response above in the discussion of § 2804.14.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2805.21 What is an operating plan or agreement for electric transmission and distribution and other rights-of-way?

Section 2805.21 codifies many of the provisions of Section 512 of FLPMA into the BLM's regulations. Section 512(c) of FLPMA describes the requirements for facility inspection, operations and maintenance, and vegetation management plans. Section 2805.21 describes the requirements for operating plans or agreements, which are consistent with the requirements of the plans described in Section 512 of FLPMA.

Under § 2804.25(c)(2) of the rule, and as reflected in paragraph (a)(1), operating plans or agreements are required for all new, renewed, or amended electric transmission and distribution ROWs. In addition, under paragraph (a)(2), such plans may be submitted to the BLM on a voluntary basis by holders of existing electric transmission and distribution ROWs. Operating plans or agreements may be advantageous to both the BLM and the ROW holder by better defining authorized activities, schedules for maintenance, and wildfire risk reduction measures, and by introducing limits on a ROW holder's liability under the specific circumstances described in this section.

Paragraph (b) of this section refers to the Electric Reliability Organization (ERO) standards and provides that those standards may be incorporated into operating plans or agreements developed under this section. The Energy Policy Act of 2005 created the ERO: an independent, self-regulating entity that enforces mandatory electric reliability rules on all users, owners, and operators of the nation's transmission system. The North American Electric Reliability Corporation (NERC) develops and enforces reliability standards for North America and is the ERO. NERC reliability standards define the reliability requirements for planning and operating the North American bulk power system. These standards apply only to holders who are part of a bulk power system, and holders subject to these standards may incorporate them into their operating plan or agreement. The ERO reliability standards developed by NERC are requirements the holder must meet for operating and maintaining the ROW and facility, such as frequency of inspections and minimum distance of vegetation clearances from powerlines. Incorporating these industry-wide standards into the operating plan or agreement will help to provide consistency between NERC standards and the plans submitted to the BLM and USFS.

Two commenters requested that the BLM revise § 2805.21(b) to recognize that: (1) utilities do not manage to the NERC-defined minimum vegetation clearance distance; instead, their goal is to avoid any possibility of encroachment; and (2) vegetation management strategies must respond to all operating conditions. They recommended that, when referring to reliability standards, the rule should indicate that the statutory term ''disruption'' can include things such as arcing potential and that compliance with the reliability standards requires vegetation be cleared to a MVCD plus X feet safety zone (with X being defined by the utility). Similarly, one commenter suggested the BLM revise the proposed rule language to clarify that the utility, not the BLM, is responsible for choosing the vegetation clearance distances and the management strategies it will employ to assure vegetation will not encroach on MVCD or violate reliability standards under any operating conditions.

This final rule retains the proposed language in § 2805.21(b) but revises the definition of a hazard tree to be consistent with the USFS's definition. The USFS definition extends to vegetation that is dead or likely to die or fail and ''come[s] within the MVCD as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement.'' The BLM further incorporated the USFS definition of MVCD which addresses the prevention of flashover. Approved operating plans or agreements will address any safety zones needed by the ROW holder.

Paragraph (c) of this section describes the requirements for operating plans or agreements, consistent with Section 512(c) of FLPMA and with the USFS final rule implementing Section 512. Under paragraph (c)(1) of this section, operating plans or agreements must identify the applicable facilities to be maintained.

Two commenters requested the BLM integrate NERC standards and definitions into BLM operating plans and agreements and powerline authorizations and avoid implementing any standards or requirements that could cause conflict with the NERC standards. One commenter further requested the BLM provide regulatory guidance to assist agency staff in understanding these reliability standards.

The BLM does not believe these changes are necessary. Operating plans or agreements will be developed collaboratively with the ROW applicant, which will allow the applicant to submit provisions that are NERC compliant. Also, the BLM intends to incorporate reliability standards and regulatory guidance into staff training, which is a more appropriate venue for communicating industry standards.

Paragraph (c)(2) of this section requires an operating plan or agreement to account for the holder's own operations and maintenance plans for the applicable facilities. Many ROW holders have existing, internal plans for

their operations and maintenance that they have not previously been required to submit to the BLM for approval, including those who must comply with ERO standards. The holder may be able to submit these existing internal plans to satisfy the BLM's requirements for operating plans or agreements. A holder would not need to submit a new operating plan or agreement if their existing plan or agreement meets the requirements of this section.

Paragraph (c)(3) of this section requires that a plan describe how a holder will operate and maintain a ROW and facility, including for vegetation management. These operations, maintenance, and fire prevention methods may be those required to comply with applicable law, including fire prevention measures, safety requirements, and reliability standards established by the ERO. While the ERO describes the standards that must be met, the holder must describe in the operating plan or agreement how they plan to meet those standards.

Under paragraph (c)(4) of this section, an operating plan or agreement must include schedules for a holder to notify the BLM about non-emergency maintenance, including when they must seek approval from the BLM and when the BLM must respond to that request. Non-emergency maintenance is further discussed in the preamble discussion of § 2805.22.

Four commenters requested the BLM revise § 2805.21(c)(4)(ii) to clarify that routine maintenance activities do not require approval by the BLM if they are part of an approved plan.

The scope of routine maintenance that will require subsequent approval will be determined on a case-by-case basis and will be described in each individual operating plan or agreement. The final rule was not changed in response to these comments as the rule already contains provisions to this effect.

Paragraph (c)(5) of this section requires that an operating plan or agreement describe processes for identifying changes in conditions and modifying the approved operating plan or agreement, if necessary. Either the BLM or holder can determine that the conditions in the ROW, which may include environmental or accessibility conditions, have changed. The operating plan or agreement must describe how the BLM and the ROW holder will communicate and initiate any necessary plan modifications. Communications between BLM and the ROW holder are discussed further in paragraph (e) of this section.

Paragraph (c)(6) of this section requires that the operating plan or agreement provide for removal and disposal of cut trees and branches, including plans for sale of forest products. One commenter requested that the BLM modify § 2805.21(c)(6) to replace the phrase ''removal and disposal'' with the word ''disposition'' to describe what a holder must do with cut trees and branches. The BLM agrees with this comment and the final rule includes the suggested change.

Several commenters stated that the BLM should further modify the proposed rule language to clarify the requirements for operating plans or agreements. In response, the BLM revised § 2805.21(c)(3) to clarify that an operating plan or agreement must include vegetation management, inspection, operation and maintenance, and fire prevention plans. Further revision of this section was not necessary as other provisions provide sufficient clarity.

Under paragraph (d) of this section and consistent with Section 512(c)(4)(A) of FLPMA, the BLM will, to the extent practicable, review and approve an operating plan or agreement within 120 days of receiving the plan or agreement. Two commenters suggested that the BLM modify proposed rule language to clarify: (1) that the 120-day review period for an operating plan or agreement begins when the applicant submits a completed application as defined in the Proposed Rule; (2) that requests for additional information during the review process (including response time from the applicant and the incorporation of additional applicant responses) would not pause the 120-day review timeframe; and (3) how compliance and consultation requirements under applicable environmental laws, including the NEPA, Endangered Species Act, and NHPA, will be handled, either within the 120-day review timeframe or after plan approval but prior to commencement of on-the-ground activities.

For a renewal application, the 120-day period will start upon receipt and acknowledgement of a complete application with a compliant operating plan or agreement. For a new application or amendment to an existing ROW, the 120-day period will start upon granting the ROW. Compliance and consultation requirements under applicable environmental laws, including the NEPA, Endangered Species Act, and NHPA, will be addressed prior to the BLM granting a new or amended ROW. For an existing ROW with no Federal action needed, the 120-day period will start upon the receipt of a compliant operating plan or agreement. Any operating plan or agreement will be approved, to the maximum extent practicable, within the statutory 120-day period with the understanding that factors such as the time it takes an applicant to respond to a request for additional information, the number of proposed operating plans and agreements under review by an authorized officer, and the number of powerline facilities covered under a single operating plan or agreement may affect the practicability of approving a proposed operating plan or agreement within 120 days.

Paragraph (e) of this section provides that, when an operating plan or agreement requires modifications, the BLM will provide advance reasonable notice to a holder that a modification is necessary, following which the holder must submit the proposed modification to the BLM. The BLM will, to the maximum extent practicable, review and approve the proposed operating plan or agreement modification in the same 120-day timeframe that applies to approval of new plans. This timeframe is consistent with the requirements of Section 512 of FLPMA.

Under paragraph (e)(4) of this section, a holder may, while a proposed plan modification is pending approval, continue to operate and maintain the ROW or facility in accordance with the approved operating plan or agreement, as long as the activity does not adversely affect the identified condition that necessitates the plan modification. Although a plan modification may be required, the BLM does not intend for operations and maintenance to be unnecessarily delayed in other areas of the ROW that are not impacted.

Paragraph (f) of this section provides that certain holders may enter into an agreement with the BLM in lieu of an operating plan. An agreement must contain the same general requirements described in this section. Agreements need to include schedules, as described in paragraph (c)(4) of this section and are subject to the same modification requirements of paragraph (e) of this section.

Paragraph (g) of this section describes the criteria that a holder must meet to be eligible to enter into an agreement. A holder may enter into an agreement with the BLM if they are not subject to the ERO reliability standards or if they sold less than 1,000,000 megawatt hours of electric energy for purposes other than resale during each of the 3 calendar years prior to enactment of Section 512 of FLPMA. These eligibility requirements are established by Section 512(d)(1) of FLPMA and generally apply to rural electric cooperatives and other

small entities. Section 512(d)(2)(A) of FLPMA requires the Secretary to ensure that the minimum requirements of these agreements ''reflect the relative financial resources of the applicable owner or operator compared to other owners or operators of an electric transmission or distribution facility.''

One commenter stated that the BLM should cite Title XII, Section 215 of the Energy Policy Act as a related law in this section. The BLM does not believe this change is necessary since § 2801.9(b) refers to the Federal Power Act of 1935, which would include any subsequent amendments to the 1935 Act, such as Title XII of the Energy Policy Act.

Several commenters requested that the BLM establish a standardized notice and approval process for ROW processing as the USFS has. The BLM worked closely with the USFS as the USFS developed its policy surrounding FLPMA Section 512. The BLM intends to provide further clarification to ROW applicants through policy and to develop new templates and review existing templates that can be used to expedite processing of ROWs.

Two commenters also proposed a new NEPA categorical exclusion for vegetation management as follows:

Approval of operating plan or agreements, and activities conducted in accordance with an approved operating plan under a right-of-way grant for an electric transmission and distribution facility.

Conversely, two commenters expressed concern that operating plans or agreements could have extraordinary circumstances or impacts outside the ROW and should not automatically be subject to a categorical exclusion.

The BLM appreciates the suggestion of new categorical exclusions and may pursue this avenue. The BLM must work with the Council on Environmental Quality and possibly others to establish a new categorical exclusion, and doing so is beyond the scope of this rulemaking. The BLM will consider using a categorical exclusion when appropriate. The BLM must review for the presence of extraordinary circumstances on every project that may be categorically excluded.

One commenter indicated that the proposed rule should cover only ''green'' energy projects. The BLM has the responsibility to process all applications and manage all grants consistently. For consistent land management, the BLM will not change the rule to cover only ''green'' projects.

Three commenters requested the BLM modify the proposed rule to include Master Agreement language or templates to establish a master permit and agreement process for operating plans or agreements at the state office level that can be implemented by operators and BLM field offices.

The BLM did not revise the language in the proposed rule in response to these comments as the agency is addressing these requests through a pilot master operations and maintenance and consolidation program in the BLM California State Office. The BLM hopes to duplicate this program in other states. The BLM anticipates developing policies at the national level that would then be adopted at the BLM state level and adjusted as needed for each state.

In all, the final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2805.22 Special Provisions for Vegetation Management for Electric Transmission and Distribution Rights-of-Way

Section 2805.22 provides that ROW holders can conduct vegetation management related activities and distinguishes between emergency and non-emergency conditions. This section implements the requirements of Section 512(c) and (e) of FLPMA.

Paragraph (a) of this section identifies the conditions that are considered Emergency Conditions and what the holder is allowed to do during Emergency Conditions without immediate notification to the BLM. An Emergency Condition exists when one or more hazard trees have contacted, or present an imminent danger of contacting, an electric transmission or distribution line. The rule specifies that this threat can arise from a hazard tree within or adjacent to a transmission line ROW. Under paragraph (a)(1) of this section, holders may prune or remove the hazard tree to avoid the disruption of electric service and to eliminate immediate fire and safety hazards. Paragraph (a)(2) requires the holder to notify the BLM within one calendar day after taking any such action.

One commenter recommended the BLM revise § 2805.22(a) to clarify that the grant holder has discretion as to what vegetation poses an imminent danger of contacting a transmission line or is an immediate fire and safety hazard. This commenter noted that emergencies may involve issues other than just vegetation in imminent threat to contact a line. They also requested that the one-day emergency notification requirement be clarified to mean within 1 business day of the action.

The BLM understands that there are emergencies other than vegetation issues, and this rule does not preclude holders from addressing those emergencies. This rule implements Section 512 of FLPMA, which addresses vegetation management. Therefore, the emergencies anticipated under this rule should only apply to vegetation management. The BLM believes that the grant holder has discretion as to what vegetation must be trimmed or pruned under Section 512 of FLPMA and these implementing regulations. The BLM will maintain a one-day emergency notification requirement, regardless of whether that one day is a business day, because emergencies require immediate resolution.

Paragraph (b) of this section identifies Non-Emergency Conditions for which the holder of a powerline ROW can conduct vegetation management activities. The holder must conduct activities in accordance with the terms and conditions of the ROW grant, §§ 2805.12(a)(4) and 2805.14(d), and any BLM-approved operating plan or agreement.

Paragraph (b)(1) of this section provides when a holder needs to request approval to conduct vegetation management activities. Under paragraph (b)(1)(i), a holder must seek approval from the BLM if the operating plan or agreement specifically requires prior approval. Prior approval for an activity may be required in an operating plan or agreement if the activity could have cultural or environmental impacts.

Prior approval is required under paragraph (b)(1)(ii) of this section if the activity is not described in an approved operating plan or agreement. Paragraph (b)(2) of this section provides that if the BLM does not respond to a request within the timeframe described in an approved operating plan or amendment, and the vegetation management activity is consistent with the holder's approved operating plan or amendment, a holder may proceed with the vegetation treatment activities. This provision will help ensure that holders can undertake necessary vegetation management activities to further support the goals of reducing fire risk.

Holders who do not have a BLM-approved operating plan or agreement will not be affected by paragraphs (b)(1) or (b)(2) of this section. Holders of ROWs in effect as of the effective date of this final rule will not have an operating plan or agreement until they amend or renew their ROW grant, or until they voluntarily submit an operating plan or agreement for approval.

The terms and conditions of some existing grants do not sufficiently describe the vegetation management activities that a holder may take. In the absence of an operating plan or agreement, holders will be required to comply with the terms and conditions of the grant and §§ 2805.12(a)(4) and 2805.14(d). Even when not required, holders will be encouraged to submit operating plans or agreements for existing ROWs to the BLM to improve coordination regarding vegetation management and wildfire risk reduction.

Paragraph (c) of this section mirrors § 2805.12(a)(4) but adds specific examples of reasonable actions that can be taken by the holder, including pruning or removal of vegetation and cooperating with the BLM to investigate fires.

One commenter asked the BLM to update ePlanning pages to disclose maintenance activities or public land closures associated with vegetation management. The BLM believes that ePlanning is not the appropriate venue for tracking vegetation management requests but is exploring alternative options for consolidation and disclosure of vegetation management requests consistent with FLPMA Section 512(h).

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Subpart 2806—Annual Rents and Payments

Section 2806.13 What happens if I do not pay rents and fees or if I pay the rents or fees late?

In § 2806.13(e), the rule eliminates limiting conditions on the BLM's ability to collect uncollected or undercollected rent, which under the existing regulation only extends to cases in which there is a clerical error, an adjustment to rental schedules, or an omission or error in complying with terms and conditions. The BLM can now collect any rents and fees due to the United States.

New § 2806.13(h), explicitly provides that rent is due regardless of whether a courtesy bill has been sent or received. This addition clarifies current BLM practice to the public.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2806.14 Under what circumstances am I exempt from paying rent?

In § 2806.14(a)(4), the provisions governing communications sites are deleted. The exemptions described in § 2866.14(b) encapsulate the language that has been removed from § 2806.14.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2806.15 Under what circumstances may BLM waive or reduce my rent?

The BLM has received feedback from customers about inconsistencies in how BLM approves waivers or reductions in rent. Therefore, § 2806.15(b) clarifies that a BLM State Director is the authorizing official with respect to rental reductions and waivers.

Under former paragraph (b)(3) of this section, the BLM could not reduce or waive rent if a holder has a ROW in connection with the grant at issue for which the United States receives compensation. The final rule rewrites that provision to allow for a reduction or waiver of rent if a holder's grant describes the use of existing routes outside of the ROW that are used to access the ROW. These revisions are consistent with § 2805.11(b), which requires a grant to include and identify new and/or existing routes that would be used for ingress and egress. The BLM will charge rent appropriate to the nature of these access routes. For instance, where ROW access is facilitated by existing routes that are open to public use, rent would likely not be appropriate. By contrast, the BLM will charge appropriate rent for roads to ROWs on public lands newly constructed by a holder. See the preamble discussion of § 2805.11 for more information.

Existing § 2806.15(c) has been redesignated as § 2806.15(b)(5) and revised to maintain consistency with the edits made in § 2806.15(b). With the added reference to the BLM State Director in paragraph (b) of this section, it is appropriate to redesignate existing paragraph (c) as paragraph (b)(5). Waiving or reducing rent under paragraphs (b)(1) through (b)(5), as revised by this rule, will be at the discretion of the BLM State Director. This revision is consistent with existing BLM practice.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2806.20 What is the rent for a linear right-of-way grant?

Paragraph (c) of this section is revised to update the contact address of the BLM and highlight availability of the Per Acre Rent Schedule on the BLM website.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Sections 2806.30 Through 2806.44

The rule removes §§ 2806.30 through 2806.44, including the header ''COMMUNICATION SITE RIGHTS–OF–WAY'' that had preceded § 2806.30. Many of the requirements of these sections are now set out in new part 2860, which consolidates all requirements for communications uses. Any substantive changes to those requirements are discussed in the sections of this preamble focused on new part 2860. The following table shows where the requirements of existing §§ 2806.30 through 2806.44 can be found in this rule.

TABLE 2—FORMER SUBPART 2806 VS. NEW SUBPART 2866

New section 2866 based on or moved from former section 2806			
Former section	Former title	New section	New title
Subpart 2806	Annual rents and payments	Subpart 2866	Annual rents and payments
Moved from § 2806.30.	What are the rents for communication site rights-of-way?	§ 2866.30	What are the rents for Communications Uses?
Moved from § 2806.31.	How will BLM calculate rent for a right-of-way for communication uses in the schedule?	§ 2866.31	How will the BLM calculate rent for Communications Uses in the schedule?
Moved from § 2806.32.	How does BLM determine the population strata served?	§ 2866.32	How does the BLM determine the population strata served for your facility?

TABLE 2—FORMER SUBPART 2806 VS. NEW SUBPART 2866—Continued

New section 2866 based on or moved from former section 2806			
Former section	Former title	New section	New title
Subpart 2806	Annual rents and payments	Subpart 2866	Annual rents and payments
Moved from § 2806.33.	How will BLM calculate the rent for a grant or lease authorizing a single use communication facility?	§ 2866.33	How will the BLM calculate the rent for a single use communication facility grant?
Moved from § 2806.34.	How will BLM calculate the rent for a grant or lease authorizing a multiple-use communication facility?	§ 2866.34	How will the BLM calculate the rent for a multiple-use communication facility grant?
Moved from § 2806.35.	How will BLM calculate rent for private mobile radio service (PMRS), internal microwave, and ''other'' category users.	§ 2866.35	How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and ''other'' category uses?
Moved from § 2806.36.	If I am a tenant or customer in a facility, must I have my own grant or lease and if so, how will this affect my rent?	§ 2866.36	If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?
Moved from § 2806.37.	How will BLM calculate rent for a grant or lease involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?	§ 2866.37	How will the BLM calculate rent for a grant involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?
Moved from § 2806.38.	Can I combine multiple grants or leases for facilities located on one site into a single grant or lease?	§ 2866.38	Can I combine multiple grants for facilities located at one site into a single grant?
Moved from § 2806.39.	How will BLM calculate rent for a lease for a facility manager's use?	§ 2866.39	How will the BLM calculate rent for a grant for a facility manager's use?
Moved from § 2806.40.	How will BLM calculate rent for a grant or lease for ancillary communication uses associated with communication uses on the rent schedule?	§ 2866.40	How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?
Moved from § 2806.41.	How will BLM calculate rent for communication facilities ancillary to a linear grant or other use authorization?	§ 2866.41	How will the BLM calculate rent for communications facilities ancillary to a linear grant or other use authorization?
Moved from § 2806.42.	How will BLM calculate rent for a grant or lease authorizing a communication use within a federally-owned communication facility?	§ 2866.42	How will the BLM calculate rent for Communications Uses within a federally owned communications facility?
Moved from § 2806.43, but the terms would be moved to § 2861.5.	How does BLM calculate rent for passive reflectors and local exchange networks?	§ 2866.43	How does the BLM calculate rent for passive reflectors and local exchange networks?
Moved from § 2806.44.	How will BLM calculate rent for a facility owner's or facility manager's grant or lease which authorizes communication uses?	§ 2866.44	How will the BLM calculate rent for a facility owner's or facility manager's grant which authorizes Communications Uses?

Section 2806.52 Rents and Fees for Solar Energy Development Grants

This section revises paragraphs (a)(6) and (b)(2) to update the contact address of the BLM and highlight availability of the current solar energy acreage rent schedule and the current MW rate schedule for solar energy development on the BLM website.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2806.62 Rents and Fees for Wind Energy Development Grants

The proposed rule proposed revisions to paragraphs (a)(7) and (b)(2) to update the contact address of the BLM and highlight availability of the current wind energy acreage rent schedule and the current MW rate schedule for wind energy development on the BLM website. However, the BLM intends to address this in a separate rulemaking. Therefore, this portion of the proposed rulemaking is not carried forward in this final rule.

Subpart 2807—Grant Administration and Operation

Section 2807.10 When can I start activities under my grant?

One commenter stated that the BLM should modify § 2807.10 in the rule to clarify when a grantee may start activities under a grant. More specifically, they stated that this provision should be revised to clarify that it only applies to activities requiring a Notice to Proceed in approved operating plans. This discussion is outside the scope of the proposed rule and would require a full rulemaking process to address it. Therefore, the BLM will not address this comment in this final rule, and the final rule makes no changes to § 2807.10.

Section 2807.12 If I hold a grant, for what am I liable?

The rule redesignates existing paragraph (g) of this section as paragraph (h) and adds a new paragraph (g). New paragraph (g) codifies the liability provisions at Section 512(g) of FLPMA and provides that the BLM may not impose strict liability in certain circumstances.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2807.17 Under what conditions may the BLM suspend or terminate my grant?

The rule amends § 2807.17(b)(2) by changing the word ''terminate'' to ''relinquish.'' This change aligns with changes made to § 2886.17 and with the nomenclature that the BLM uses when processing ROWs. The rule also adds § 2807.17(b)(3) to allow the BLM to terminate a ROW grant when a court terminates or requires the BLM to terminate the ROW. The rule redesignates paragraph (b)(3) as paragraph (b)(4).

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2807.20 When must I amend my application, seek an amendment of my grant, or obtain a new grant?

The rule amends paragraph (b) of this section by replacing ''processing and monitoring fees'' with ''cost recovery fees'' for consistency with other revisions in this rule.

Section 2807.20(d) explains that pre-FLPMA grants (*i.e.,* those issued before October 21, 1976) cannot be amended, renewed, or reinstated. Section 706 of FLPMA repealed numerous laws to the extent they applied to the issuance of ROWs by the BLM. Once a law has been repealed, the BLM can no longer approve any actions under the repealed law. The rule combines existing language from different parts of paragraph (d), including paragraph (d)(2), as paragraph (d)(1) and revises the text to clarify that, when a holder seeks to amend a pre-FLPMA grant, the BLM will retain the holder's pre-FLPMA ROW for the portion of the holder's ROW not affected by the holder's amendment application unless the holder agrees to accept a wholly new and comprehensive grant of the ROW under FLPMA.

Paragraph (d)(2) of this section requires a new application and grant for expiring authorizations. Paragraph (d)(3) requires a new application and grant if a pre-FLPMA authorization is terminated due to non-compliance. Finally, existing paragraph (d)(1) is redesignated as paragraph (d)(4) and notes that the BLM will issue any new authorization under the authority of FLPMA and explains that the new authorization may have the same terms and conditions and annual rents as the original grant.

One commenter requested the BLM modify § 2807.20 to clarify that when the grant holder is a Federal agency, the decision to terminate the existing grant and issue a new grant must be a mutual decision pursuant to § 2807.17(d). The BLM has not made the proposed change as it believes that § 2807.17(d) is sufficiently clear on this point. Nor does the final rule make any other changes to the version of this section that appeared in the proposed rule.

Section 2807.22 How do I renew my grant?

The rule establishes new customer service standards for the BLM for renewal applications. The rule modifies paragraph (f) of this section to establish a customer service standard of 60 days for the BLM to review an application for a renewal to determine if that application has been timely submitted and is complete and to notify the applicant in writing of the BLM's determination. If the BLM determines that a renewal application was timely submitted and is complete, then its written notice will confirm that, until the BLM issues a decision on the renewal application, the holder's existing grant will remain valid, provided that the holder of the authorization remains in compliance, including with rent and bonding obligations.

The rule adds a new paragraph (h) to this section that establishes when renewal applications will be subject to the BLM's customer service standards. If grant holders do not comply with the existing requirement to submit their application at least 120 days before their grant expires, the BLM will not be held to the customer service standards for processing the application. This paragraph is not a substantive change from existing practice.

One commenter stated that decisions whether to renew grants should consider the multiple use mission of the BLM and whether closure would be beneficial to wildlife and the public. This commenter also requested that the 60-day time limit in § 2807.22(f) be eliminated to allow for adequate time for public input.

The BLM complies with NEPA on each renewal, as well as the Endangered Species Act and the NHPA. The new § 2807.22(f) allows the holder to continue to pay rent and maintain a valid authorization until the BLM has properly processed the ROW renewal, including completing appropriate NEPA analysis and land use plan consistency review. Upon renewal, the BLM would issue a new grant likely with new, updated stipulations. The 60-day time limit is for determination of timeliness and sufficiency of an application, not completing NEPA analysis, surveys or public comment. This final rule does not make any changes to this paragraph as it appeared in the proposed rule.

One commenter noted that allowing ROW holders to continue to operate under an existing grant while the BLM and the ROW holder go through the grant renewal process helped ROW holders. The BLM appreciates the support and acknowledgement of the value of maintaining operations during the renewal process.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Subpart 2808—Trespass

Section 2808.10 What is a trespass?

The BLM revised this paragraph in the final rule to make explicit that ''subleasing'' without BLM authorization is a trespass. The regulations already prohibited this practice, so the addition of the term ''subleasing'' merely clarifies the scope of the trespass provision. This change also makes the language of this section consistent with the communications uses trespass provision at new § 2868.10. This provision did not appear in the proposed rule.

Subpart 2809—Competitive Process for Leasing Lands for Solar and Wind Energy Development Inside Designated Leasing Areas

Section 2809.19 Applications in Designated Leasing Areas or on Lands That Later Become Designated Leasing Areas

This final rule does not carry forward a proposed revision to this section in the proposed rule because the BLM plans to address the distinction between designated and undesignated leasing areas in a separate rulemaking.

43 CFR Part 2860 Communications Uses

The rule establishes part 2860, Communications Uses. This new part explains the requirements for communications uses grants and consolidates all communications use-specific provisions into one location. The requirements of part 2800 will continue to apply to communications uses grants, unless inconsistent with any provision of this new part. Some sections in part 2860 contain provisions that were removed from part 2800. Some sections in part 2860 have a direct parallel to sections in part 2800 but contain additional requirements that apply specifically to communications uses. This preamble describes how the rule differs from existing requirements. Subparts 2861 through 2865 and 2868

are generally based on the provisions of existing subparts 2801 through 2805 and 2808, respectively, but contain additional communications use requirements. Table 3 shows the relationship between subparts 2861 through 2865 and 2868 and subparts 2801 through 2805 and 2808. Most of the requirements pertaining to communications uses in existing subpart 2806 were moved to subpart 2866. Table 4 shows the relationship between subpart 2866 and subpart 2806. This preamble describes new or revised provisions. Provisions not discussed are substantially similar to their existing counterpart.

TABLE 3—SECTIONS OF THE FORMER RULE SUPPLEMENTING THE 2860 REGULATIONS FOR COMMUNICATIONS USES

Former section	Former title	New section	New title
Subpart 2801	General information	Subpart 2861	General information
N/A	N/A.	§ 2861.1	What requirements of part 2800 apply to my grant?
§ 2801.2	What is the objective of BLM's right-of-way program?	§ 2861.2	What is the objective of the BLM's Communications Uses program?
§ 2801.5(b)	What acronyms and terms are used in the regulations in this part?	2861.5(b)	What acronyms and terms are used in the regulations in this part?
§ 2801.8	Severability.	§ 2861.8	Severability.
§ 2801.9(a)(5)	When do I need a grant?	§ 2861.9	When do I need a grant?
Subpart 2802	Lands Available for FLPMA Grants	Subpart 2862	Lands Available for Grants
§ 2802.11	How does the BLM designate right-of-way corridors and designated leasing areas?	§ 2862.11	How does the BLM designate communications sites and establish communications site management plans?
Subpart 2804	Applying for FLPMA Grants	Subpart 2864	Applying for Grants
§ 2804.10	Who may hold a grant?	§ 2864.10	What should I do before I file my application?
§ 2804.12	What must I do when submitting my application?	§ 2864.12	What must I do when submitting my application?
§ 2804.24	Do I always have to submit an application for a grant using Standard Form 299?	§ 2864.24	Do I always have to use Standard Form 299 when submitting my application for a Communications Uses authorization?
§ 2804.25	How will BLM process my application?	§ 2864.25	How will the BLM process my Communications Uses application?
§ 2804.26	Under what circumstances may BLM deny my application?	§ 2864.26	Under what circumstances may the BLM deny my application?
§ 2804.35	How will the BLM prioritize my solar or wind energy application?	§ 2864.35	How will the BLM prioritize my Communications Uses application?
Subpart 2805	Terms and Conditions Of Grants	Subpart 2865	Terms and Conditions Of Grants
§ 2805.14	What rights does a grant provide?	§ 2865.14	What rights does a grant provide?
Subpart 2808	Trespass	Subpart 2868	Communications Uses Trespass
§ 2808.10	What is a trespass?	§ 2868.10	What is a Communications Uses trespass?

One commenter expressed support for consolidating all the BLM communications use rules into a new part 2860 to help streamline application development and processing. Two other commenters also expressed general support for the BLM's efforts to streamline regulations and to remove barriers to wireless infrastructure deployment.

The BLM agrees that moving regulations pertaining to communications uses to its own part will help streamline the regulations.

Some commenters expressed concern that this proposed rule could result in undesirable economic growth and development for some local communities. The BLM agrees there may be some growth in rural areas due to additional broadband deployment. The ROW authorization process includes compliance with NEPA, which would include analysis of the impacts of communication facilities on development and allow for public input.

Commenters argued that use of a categorical exclusion to comply with NEPA would not be appropriate for all decisions to approve communication uses and that streamlining should only be permitted if there are no visual or environmental impacts; the project is not within 5 miles of a residentially zoned neighborhood; tower placement and specifications comply with the United States Fish and Wildlife Service's (USFWS) Recommended Best Practices for Communication Tower Design, Siting, Construction, Operation, Maintenance, and Decommissioning; and the community meets FCC criteria for being underserved and no other options for achieving high speed (broadband) internet connection are available.

The BLM agrees that it should comply with NEPA for proposed actions, which includes using categorical exclusions when they apply, and the BLM uses the USFWS's Recommended Best Practices.

Subpart 2861—General Information

One commenter requested that the BLM modify the proposed rule to clarify that minor modifications that do not substantially change the physical dimensions of a tower or base station do not trigger the need for a new authorization.

The BLM believes that the final rule adequately addresses the commenter's concern. As written, amended authorizations are required when additional areas are needed for the existing facility such as the addition of a generator or expansion of a building or tower. A new authorization is required when an applicant does not co-

locate within or on an existing authorized facility. Minor actions such as the replacement or addition of antennas and in-kind facility maintenance are considered maintenance actions unless the action deviates from what has already been authorized. (See the definition of *substantial deviation* in § 2801.5(b) and related discussion above in this preamble).

One commenter recommended that the BLM modify the proposed rule to include language specifying that installation and use of fiber for Federal communication purposes is authorized and no amendment to the ROW is necessary.

The BLM did not make changes to the rule in response to this comment. All actions taken on Federal lands require an authorization, supported by appropriate NEPA analysis, including communications uses by Federal agencies. The exception is when a use is ancillary to the primary use and held by the same company (*e.g.,* fiber optic for a powerline used solely by that power company holding the ROW). In such cases, an amendment to the existing ROW may be sufficient.

One commenter encouraged the BLM to clarify that appurtenant uses, such as installation of fiber and related operations, upgrades, and maintenance of the fiber system, may be included in the authorization for a transmission line under part 2800 and addressed in the operations and maintenance plan for the transmission system without requiring a separate communications site authorization. The BLM agrees with this comment as fiber optic directly supporting a powerline or other facility, when not resold as a commercial use, is considered ancillary to the powerline. The BLM recommends, but does not require, a separate authorization for fiber optic uses which are ancillary, with the possibility of rent waiver for ancillary uses so long as the use is solely internal to the holder's needs and the service is not resold. The BLM would not require a separate communications site management plan for an ancillary facility but may incorporate it into an existing communications site management plan.

Section 2861.1 What requirements of part 2800 apply to my grant?

Grants issued under this part must comply with the requirements of part 2800, except as otherwise described in this part. The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2861.2 What is the objective of the BLM's Communications Uses program?

The BLM's objective in this section is to authorize and administer communications uses under Title V of the Federal Land Policy and Management Act of 1976 and the regulations in this part to qualified individual, business, or governmental entities. The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2861.5 What acronyms and terms are used in the regulations in this part?

Section 2861.5 defines terms that are specific to communications uses. This section includes terms that had been defined in existing § 2801.5. New definitions are added to provide clarity for the public as to how the BLM administers authorizations for communications uses under part 2860.

The definitions for ''RMA,'' ''Base Rent,'' ''Customer,'' ''Facility Manager,'' ''Facility Owner,'' ''Site,'' and ''Tenant'' have been moved from § 2801.5; the definitions of ''Facility'' and ''Grant'' were copied from § 2801.5, and those terms are now defined in both sections, with the definitions here revised slightly to reflect their specific application in the context of communications uses.

The rule adds the term and a definition of ''Annual inventory certification'' to clarify the nature of the document that a holder must provide on an annual basis (see § 2866.31(c)). The final rule makes no changes to the version of this definition that appeared in the proposed rule.

The term ''collocation'' was defined in § 2861.5 of the proposed rule as ''[A]nother use, other than the holder's use, added to a communications use facility. Collocation may occur inside the building or on a tower.'' The BLM removed the definition of the term from this final rule because the term is not used in the regulatory text. A commenter noted this discrepancy as well as a related error in the paperwork collection requirements in the supplemental information published with the proposed rule. The paperwork collection requirements stated that § 2866.41 will add a regulation requiring holders of ancillary facilities to request collocation, and if the BLM does not respond to a request for collocation within 60 days, the collocation will be deemed approved. Section 2866.41 in the proposed rule did not include a provision requiring holders of ancillary facilities to request collocation nor a provision that such a request would be deemed automatically approved in 60 days if not denied by BLM. The statement in the paperwork collection requirements was in error and has been removed from the preamble of the final rule. As ''collocation'' is not used in the text of the final rule, the definition of the term is unnecessary and has been removed from the final rule.

The final rule adds a definition of ''communications facility,'' which was requested by a commenter. The definition of ''communication facility'' is the same as the definition of ''facility'' in § 2861.5 and § 2801.5(b).

The rule adds the term and a definition of ''communications site'' to establish what is meant when describing a communications site within an authorization document. The lack of a definition has caused confusion because, often, the BLM and industry refer to a ''communications site'' when they really mean a ''communications facility.'' This definition clarifies the difference between the terms. The final rule makes no changes to the version of this definition that appeared in the proposed rule.

The rule adds the term and a definition of ''communications site management plans'' to clarify that these plans guide development and operations at communications sites. These plans are implementation level plans, meaning that they take action consistent with the relevant land use plan (generally a Resource Management Plan (RMP)). Communication site management plans provide direction to the users for the day-to-day operations of the communications site and provide holders and future proponents with the development conditions for a particular site. The final rule makes no changes to the version of this definition that appeared in the proposed rule.

The rule adds the term and a definition of ''communications uses'' to describe the types of uses considered to be a communications use. This definition includes all ROW uses to which part 2860 applies. The final rule makes no changes to the version of this definition that appeared in the proposed rule.

The definition for the term ''Communications uses rent schedule'' was moved here from § 2801.5. The change is necessary to maintain consistency in terminology throughout new part 2860. The term ''communications uses rent schedule'' continues to apply to all types of communications uses identified in the previous definition of the term at § 2801.5 for purposes of identifying and collecting rent, and it also applies to the

following additional uses added to this definition: ''facility manager,'' ''internet service provider (ISP),'' ''passive reflector,'' and ''local exchange network.'' The final rule includes only minor, nonsubstantive changes to the version of this definition that appeared in the proposed rule.

The rule adds the term and definition of ''duly filed application'' to explain that it is an application that includes all the elements required by § 2864.25. One commenter asked that the BLM change the definition for the term ''duly filed application'' to include a reference to § 2864.25, not § 2804.25 as it was written in the proposed rule. In response to this comment, the citation in the rule changed to § 2864.25.

The rule adds the term and a definition of ''occupant.'' Occupants are entities, other than the holder of a grant, which use a facility covered by that authorization. The final rule makes no changes to the version of this definition that appeared in the proposed rule.

A commenter stated that the BLM should revise the proposed rule language to clarify that before the BLM will issue a grant to allow placement of equipment on Federal property (or property owned by others who presumably have similar concerns), permission must be attained from the agency.

The authorization for communications uses provides for subleasing of uses so the agency does not need to be involved in every change within a communications facility so long as the subleased collocated use is within the existing facility or on the existing tower. The final rule is not revised in response to this comment.

Section 2861.8 Severability

This section of the rule, which is based on existing § 2801.8 and parallels § 2881.8 in the final rule, states that if a court holds any provisions of the rules in this part or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances should not be affected. If any portion of this final rule were to be stayed or invalidated by a reviewing court, the remaining elements would continue to provide BLM with important and independently effective tools relating to the administration of its ROW program. For example, the cost recovery provisions in this final rule may function independently of the provisions concerning communications uses and FLPMA Section 512. Similarly, the provisions implementing FLPMA Section 512 and the provisions governing communications uses may function independently. Individual sections of the rule may function independently as well. The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2861.9 When do I need a grant?

This section explains the communications-related activities that require an authorization. The final rule makes no changes to the version of this section that appeared in the proposed rule.

Subpart 2862—Lands Available for Grants

Section 2862.11 How does the BLM designate communications sites and establish communications site management plans?

Section 2862.11 describes how the BLM designates communications sites and when communications site management plans are prepared. This section is based on existing § 2802.11, which describes how the BLM designates ROW corridors and designated leasing areas.

Under § 2862.11(a), the BLM will coordinate in the preparation of the communications site management plans with other Federal agencies, State, local, and Tribal governments, and the public, consistent with the coordination requirements of existing § 2802.11(a).

Paragraph (b) identifies factors the BLM considers when determining land suitability for communications uses, in addition to the factors described in existing § 2802.11(b). One commenter recommended adding ''proximity to private and residential property'' to the list of factors that the BLM considers under paragraph (b). The BLM will not revise § 2802.11(b) because the suggested addition is already covered by § 2802.11(b)(7).

Paragraph (c) provides for communications site management plans, which are implementation-level plans that tier to the applicable RMP. While communications site management plans are generally adopted outside the land use planning process, the BLM often refers to these plans in RMPs. The identification of communications sites and the adoption of their complementary management plans must be supported by appropriate NEPA analysis, which may take the form of an applicable categorical exclusion or determination that a prior NEPA analysis is adequate.

A commenter noted that RMP revisions may be necessary if existing RMPs do not address communication sites. Communication site management plans are site specific plans regarding the current and future communication site uses at a specific location and are a technical report to supplement an RMP, since the site can change over time throughout the life of the RMP. This comment does not make any suggestions for changes to the rule and thus is outside the scope of this rulemaking effort.

Ultimately, the final rule makes no changes to the version of this section that appeared in the proposed rule.

Subpart 2864—Applying for Grants

Section 2864.10 What should I do before I file my application?

Section 2864.10 is based on existing § 2804.10. Section 2864.10(a) describes the purpose of a preliminary application review meeting. Preliminary application review meetings provide valuable information and reveal project constraints to proponents. This information should result in more thorough and complete applications that may streamline BLM application processing, consistent with E.O. 13821 and a Presidential Memorandum directed to the Secretary, both issued on January 8, 2018. A preliminary application review meeting is not a requirement but is strongly encouraged.

Paragraph (b) prompts applicants to ask the BLM for a copy of any applicable communications site management plan for the site of the proposed project. By using an existing communications site management plan as a reference, applicants can better develop an application that is consistent with the site management plan, which will help streamline the BLM's application processing.

Paragraph (c) specifies what an applicant should acquire before submitting an application to the BLM. A complete communications uses application almost always requires proof of a Federal Communications Commission (FCC) license. If an applicant has already included a license as part of its application, it eliminates the need for the BLM to request that information, and thereby cuts down on processing times.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2864.12 What must I do when submitting my application?

Section 2864.12 describes the supplemental information needed to accompany the SF–299, which is required for all communications uses applications. Section 2864.12 is based

on existing § 2804.12 but includes additional specific communications uses requirements for applications. Existing § 2804.12(f) states that the BLM may require you to submit additional information during the processing of your application. This section standardizes the requirements specific to communications uses to streamline the application process for these types of authorizations. Paragraph (a) of this section clarifies that when an application for a ROW is filed electronically, an actual signature may not be required. Instead of a manual signature, the applicant could meet the BLM's standards for electronic commerce. This revision allows applicants to file their applications electronically. These changes streamline application submissions and allow for more flexibility in how applications are submitted.

Paragraph (a)(1) of this section refers to § 2804.12 for a list of attachments that should be included in all applications.

Paragraph (a)(2) requires an applicant to provide proof of their FCC license. This requirement is consistent with current BLM practice, and the BLM is incorporating this requirement into the regulations to notify applicants of what to expect. There is no expectation that this new language will create any additional burden for communications uses applicants.

Paragraph (a)(3) of this section requires an applicant to submit GIS shapefiles for a map of the proposed project. This requirement is consistent with changes that the final rule makes to § 2804.12(a)(4), which already requires an applicant to submit a map of the proposed project and now further requires an applicant to submit GIS shapefiles or equivalent format, upon request. This new requirement is expected to reduce application processing times by allowing the BLM to integrate project locations into existing resource datasets and analyze the potential resource impacts more quickly.

One commenter expressed support for the requirement in § 2864.12(a)(3) for applicants to submit GIS shapefiles with an application for a ROW. However, the commenter also noted that data shared may exclude attributes that could be considered critical infrastructure and may require a nondisclosure agreement prior to submittal. Conversely, another commenter requested the BLM modify language to: (1) retain flexibility in the geographic information required rather than requiring a specific file format (*i.e.,* shapefiles); and (2) limit data collection to what is necessary for the purposes of site management. The BLM agrees with both comments. However, the data shared need to be in a format acceptable to the BLM so that the agency can use them in the analysis of the proposed action. The final rule reflects a compromise position that requires data to be submitted in GIS shapefiles or an equivalent format. The BLM collects potential siting information such as facilities, ROW boundaries, surface disturbance, and access roads from applicants for interdisciplinary analysis. Per 43 CFR 2804.13, the BLM will keep confidential any information marked as such to the extent allowed by law.

Paragraph (a)(4) of this section requires an application to include draft engineering or construction drawings. By including these drawings, applicants should expect faster application processing times. An applicant usually produces draft construction drawings before an applicant intends to submit their application, so the BLM does not expect this requirement to create any additional burden. The BLM expects that the inclusion of this information in the application will streamline application processing times.

Paragraph (a)(5) of this section requires that a communications uses application include technical data related to communication equipment used in and on the proposed facility. This rule specifies the types of technical data, such as frequencies and power output of the proposed use, that applicants must submit to allow the BLM to determine whether the proposed use would be consistent with the applicable communications site management plan and would be compatible with existing communications uses at the proposed communications site. This provision is consistent with current BLM policy, which requires this information from applicants.

Paragraph (a)(6) requires an applicant to provide a communications uses plan of development (POD) in support of an application. The BLM may require a POD for an application under § 2804.25(c). The POD is an essential tool for the BLM to understand the scope and complexity of the proposed project. A complete POD can drastically reduce the time spent on processing an application, primarily during the NEPA process. Since BLM policy already requires a POD to be submitted with all applications, this rule should not create an additional burden on the applicant.

Paragraph (b) states that the BLM may require additional information from an applicant about their application while it is being processed. For example, the BLM may require an applicant to submit information about the applicant's plans to comply with a visual plan included in the RMP for the area (*e.g.,* paint color or stealth design). These changes explain that the BLM will not process an application until the additional information has been submitted. The BLM anticipates this change will help expedite application review and processing. This paragraph is based on existing § 2804.12(f).

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2864.24 Do I always have to use Standard Form 299 when submitting my application for a Communications Uses authorization?

This section requires applicants to use Standard Form 299 to file applications for communications uses. The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2864.25 How will the BLM process my Communications Uses application?

Section 2864.25 provides that the BLM will process communications uses applications consistent with existing § 2804.25. In addition, this section requires the BLM to approve or deny a duly filed application for a grant within 270 days. This is in accordance with the MOBILE NOW Act, which requires Federal agencies to approve or deny a communications facility installation application within 270 days of receiving a duly filed application. The BLM believes this new regulation will shorten application processing times and establish consistency among BLM offices.

Two commenters expressed support for the 270-day timeline to help expedite application review times and decisions. One commenter requested that the BLM clarify whether the 270-day timeline outlined in proposed § 2864.25 would affect public involvement opportunities, including scoping and comment period durations.

The 270-day processing time limit is not discretionary. It is a legislatively mandated requirement of the MOBILE NOW Act. The MOBILE NOW Act requires agencies to approve or deny applications within 270 days of a duly filed application. (See definitions at 43 CFR 2861.5 for the definition of a duly filed application.) For the large majority of applications, the 270-day processing time limit is sufficient for BLM to complete the NEPA process, including the public comment period. All public comments on proposed actions subject to the 270-day processing time limit will

need to be delivered to the agency within the timeframes given for public comments to ensure the BLM has time to review and, where appropriate, incorporate comments into the NEPA analysis. The BLM does not anticipate shortening public comment periods, but for proposed actions subject to the 270-day processing time limit, the agency will have less ability to review and incorporate comments received after the timeframes given for public comment.

While the BLM normally meets the 270-day time frame, sometimes the BLM is not able to complete its application review process in that time. Any work conducted beyond the 270 days should be with the applicant's agreement.

One commenter recommended the BLM further modify this language to indicate that an application will be deemed complete after BLM notification of completeness or the passage of 60 days from submission of a duly filed application, whichever is earlier. Because the BLM cannot process an incomplete application, the BLM cannot adopt the commenter's suggestion that an application be deemed complete 60 days after it is filed, regardless of the completeness of the application. If an application is incomplete, the BLM will notify the applicant within 60 days of receiving the application as to what is needed to complete the application.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2864.26 Under what circumstances may the BLM deny my application?

Section 2864.26 is based on existing § 2804.26 and identifies when an application for communications uses may be denied. Reasons for denial include the provisions of existing § 2804.26, along with reasons specific to communications uses, such as interference with other communications users.

Paragraph (a) of this section is based on § 2804.26(a)(1), which states that an application may be denied if the proposed use is inconsistent with any other previously authorized ROW, including communications uses on the public lands. It is the goal of the BLM to allow multiple communications uses within a communications site area if they are compatible with one another. Existing communications uses ROW authorization holders will be given the opportunity during the application process to provide evidence of potential interference with their use. The BLM will evaluate any such evidence to determine if the subsequently proposed communications uses might potentially interfere with the previously authorized communications uses, and if so, whether a denial is warranted under the circumstances.

Under paragraphs (b) and (c) of this section, an application can be denied if the proposed use presents a public health or safety issue or is not in conformance with the RMP or communications site management plan.

One commenter requested the BLM modify the proposed rule language to provide the criteria the BLM will use when deciding whether an application is denied for failure to comply with BLM requests for additional information.

The BLM declines to change the rule in response to this comment. The BLM may require additional information above what is specifically required in the regulations in order to make an informed decision on an application. Additional information could be site specific information, such as detailed visual resource management analysis, that is difficult to anticipate and categorize in advance. Failure to receive the information from an applicant prevents the BLM from making a fully informed decision. The BLM also uses the seven criteria defined in § 2804.26 for denying an application. The BLM will send a deficiency notice, usually with a deadline, before denying an application. If an application is denied, the applicant has an opportunity to appeal the decision.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2864.35 How will the BLM prioritize my Communications Uses application?

Section 2864.35 describes how the BLM will prioritize applications for grants. This section is based on existing § 2804.35, which describes how the BLM prioritizes solar and wind applications. Under this section, the BLM will prioritize processing applications for grants that meet the needs of underserved, rural, and Tribal communities and first responders. This section was added in response to E.O. 13821, discussed earlier in this preamble.

A commenter expressed support for prioritizing applications for grants that meet the needs of underserved, rural, and Tribal communities and first responders. The commenter requested the BLM provide additional information regarding how the categories are further defined and how they might be prioritized amongst each other in the event a given site is proposed on property that overlaps multiple categories.

The BLM did not address the portion of the comment requesting the BLM further define and prioritize the categories of ''underserved,'' ''rural,'' ''Tribal,'' and ''first responder.'' The BLM will address each application on a case-by-case basis and will provide further guidance on this issue as necessary. The final rule makes no changes to the version of this section that appeared in the proposed rule.

Subpart 2865—Terms and Conditions of Grants

Section 2865.14 What rights does a grant provide?

Section 2865.14 describes the rights provided by a grant, in addition to the rights described in existing § 2805.14.

Paragraph (a) of this section is based on existing § 2805.14(a) but has been revised to clarify that only facilities explicitly allowed by an authorization are acceptable. The final rule makes no changes to the version of this paragraph that appeared in the proposed rule.

Paragraph (b) of this section is based on existing § 2805.14(b) and revises the language so that subleasing provisions are consistent between communications uses and all other ROWs. In response to a commenter's request to clarify the term ''subleasing'' as it relates to the rights granted under an authorization and whether subleasing refers only to collocations within or on authorized facilities, this final rule revises the proposed rule to include definitions of ''ancillary'' and ''subleasing'' in § 2801.5 to help clarify each term.

Paragraph (c) of this section is based on existing § 2805.14(c) and states that the authorization holder may allow another entity to conduct day-to-day operations of the facility, as authorized by the BLM. Section 2805.14(c) describes access to lands, but this section instead refers to ''lands or facilities.'' This change is consistent with other changes to the regulations moved to new part 2860 from part 2800, which acknowledge that an authorization may be either a grant to use a facility or a grant for the use of public lands. The final rule makes no changes to the version of this paragraph that appeared in the proposed rule.

Paragraph (d) of this section sets the standard length for a grant at 30 years. The BLM considers a 30-year-term to be consistent with Section 504(b) of FLPMA's ''reasonable term'' limitation, and that interpretation is being carried forward for grants under this new part. The BLM may determine in a given case that a shorter term is appropriate for an

authorization. For example, a BLM office could determine the resource issues at the proposed site, such as environmental or Tribal concerns, may warrant a shorter term for the authorization. One commenter expressed support for the 30-year term for communications use grants included in the proposed rule, as consistent with FLPMA, because it will provide increased investment certainty for applicants. The final rule makes no changes to the version of this paragraph that appeared in the proposed rule.

One commenter requested the BLM modify proposed rule language to address when and how owners can attain rights to keep beam paths that require clear line-of-sight communication free of obstructions on BLM-managed land.

The BLM is not modifying the proposed rule in response to this comment. It is the holder's responsibility to propose communications use locations on public lands that meet the needs of the applicant. The applicant is responsible for including issues such as the beam path reliability in their POD. The POD should contain clear direction as to how the holder would need to operate and maintain their beam path in the future to achieve a clear path for operations. The agency would subsequently analyze the proposal under NEPA. The final approved POD would then set the course for future maintenance actions by the holder.

Subpart 2866—Annual Rents and Payments

Subpart 2866 contains the rental requirements for grants. Many of the sections have been moved from existing subpart 2806 with no substantive changes from existing requirements. The changes from existing requirements are intended to streamline the rental process for communications uses and are discussed in detail in the following section-by-section analysis. The following chart shows which sections of existing subpart 2806 are moved into subpart 2866.

TABLE 4—NEW SUBPART 2866 VS FORMER SUBPART 2806

New section 2866 based on or moved from former section 2806			
Former section	Former title	New section	New title
Subpart 2806	Annual rents and payments	Subpart 2866	Annual rents and payments
Based on § 2806.14	Under what circumstances am I exempt from paying rent?	§ 2866.14	Under what circumstances am I exempt from paying rent?
Based on § 2806.15	Under what circumstances may BLM waive or reduce my rent?	§ 2866.15	Under what circumstances may the BLM waive or reduce my rent?
Based on § 2806.23	How will the BLM calculate my rent for linear rights-of-way the Per Acre Rent Schedule covers?	§ 2866.23	How will the BLM calculate my rent for linear rights-of-way for Communications Uses?
Moved from § 2806.30	What are the rents for communication site rights-of-way?	§ 2866.30	What are the rents for Communications Uses?
Moved from § 2806.31	How will BLM calculate rent for a right-of-way for communication uses in the schedule?	§ 2866.31	How will the BLM calculate rent for Communications Uses in the schedule?
Moved from § 2806.32	How does BLM determine the population strata served?	§ 2866.32	How does the BLM determine the population strata served for your facility?
Moved from § 2806.33	How will BLM calculate the rent for a grant or lease authorizing a single use communication facility?	§ 2866.33	How will the BLM calculate the rent for a single use communication facility grant?
Moved from § 2806.34	How will BLM calculate the rent for a grant or lease authorizing a multiple-use communication facility?	§ 2866.34	How will the BLM calculate the rent for a multiple-use communication facility grant?
Moved from § 2806.35	How will BLM calculate rent for private mobile radio service (PMRS), internal microwave, and ''other'' category uses?	§ 2866.35	How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and ''other'' category uses?
Moved from § 2806.36	If I am a tenant or customer in a facility, must I have my own grant or lease and if so, how will this affect my rent?	§ 2866.36	If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?
Moved from § 2806.37	How will BLM calculate rent for a grant or lease involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?	§ 2866.37	How will the BLM calculate rent for a grant involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?
Moved from § 2806.38	Can I combine multiple grants or leases for facilities located on one site into a single grant or lease?	§ 2866.38	Can I combine multiple grants for facilities located at one site into a single grant?
Moved from § 2806.39	How will BLM calculate rent for a lease for a facility manager's use?	§ 2866.39	How will the BLM calculate rent for a grant for a facility manager's use?
Moved from § 2806.40	How will BLM calculate rent for a grant or lease for ancillary communication uses associated with communication uses on the rent schedule?	§ 2866.40	How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?
Moved from § 2806.41	How will BLM calculate rent for communication facilities ancillary to a linear grant or other use authorization?	§ 2866.41	How will the BLM calculate rent for communication facilities ancillary to a linear grant or other use authorization?
Moved from § 2806.42	How will BLM calculate rent for a grant or lease authorizing a communication use within a federally-owned communication facility?	§ 2866.42	How will the BLM calculate rent for Communications Uses within a federally owned communications facility?

TABLE 4—NEW SUBPART 2866 VS FORMER SUBPART 2806—Continued

New section 2866 based on or moved from former section 2806			
Former section	Former title	New section	New title
Subpart 2806	Annual rents and payments	Subpart 2866	Annual rents and payments
Moved from § 2806.43, but the terms would be moved to § 2861.5.	How does BLM calculate rent for passive reflectors and local exchange networks?	§ 2866.43	How does the BLM calculate rent for passive reflectors and local exchange networks?
Moved from § 2806.44	How will BLM calculate rent for a facility owner's or facility manager's grant or lease which authorizes communication uses?	§ 2866.44	How will the BLM calculate rent for a facility owner's or facility manager's grant which authorizes Communications Uses?

For a discussion of the sections in subpart 2806 that were removed by this rule, see the preamble discussion of subpart 2806.

Section 2866.14 Under what circumstances am I exempt from paying rent?

Section 2866.14 identifies when a holder is exempt from paying rent. Paragraph (a)(1) of this section states that Federal, State, and local governments, along with their instrumentalities, are exempt from paying rent. Paragraphs (a)(2) and (a)(3) are based on paragraphs (a)(3) and (a)(4) of § 2806.14. Paragraph (b) describes the exceptions to these exemptions. Under paragraph (b)(1) of this section, a holder will not be exempt from paying rent if the holder is in trespass. This is not a change from existing requirements but has been added to the regulations to provide clarity to holders.

Paragraphs (b)(2)(i) and (b)(2)(ii) explain that a State or local government entity is not exempt from paying rent when the facility is being used for commercial purposes or when the principal source of revenue is generated from customer use charges. These requirements are consistent with existing § 2804.16(a).

Under added paragraph (b)(2)(iii), a State or local government entity is not exempt from rent if it charges rent to the United States Government for occupancy within an exempt facility (above routine operation and maintenance costs). The BLM and other Federal agencies are often charged rent to occupy space in another governmental (State or local government) facility when their authorization to occupy the public lands is exempt from rent. The BLM is making this change to encourage reciprocal rent exemptions for the United States. The provisions of this section are intended to ensure that the Federal Government is charged reasonable rates for maintenance and operations only.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2866.15 Under what circumstances may the BLM waive or reduce my rent?

Section 2866.15 includes rental reduction or waiver provisions that apply specifically to the communications uses program.

Under paragraph (a) of this section, the BLM can waive or reduce rent for holders that are licensed by the FCC as non-commercial and educational broadcasters.

Under paragraph (b) of this section, and consistent with existing Section 2806.15, the BLM can waive or reduce rent for amateur radio clubs that provide a benefit to the general public or to the programs of the Secretary, for verified nonprofit organizations, or for entities that can demonstrate undue hardship and public interest.

Paragraph (c) of this section identifies when the BLM may not waive or reduce rent. These exceptions include when an organization operates for the benefit of its members; when any portion of the authorized facility is being used for commercial purposes; when the holder is charging the United States to occupy a facility; and when a holder charges fees beyond reasonable operation and maintenance to an occupant whose rent would normally be exempt or waived by the BLM. This provision is consistent with § 2866.14(b)(2).

Paragraph (d) of this section describes when the BLM can revoke a holder's waiver of rent. Under paragraph (d) of this section, the BLM will revoke a holder's waiver if it determines that the authorization holder no longer meets the criteria for a waiver.

This section provides several additional ways by which the BLM could waive the rent of users who provide a public benefit and are not operating solely to make a profit. This section will streamline our processes by demonstrating to the public when rent can be waived or reduced and by reducing the need for the BLM to further analyze a request.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2866.23 How will the BLM calculate my rent for linear rights-of-way for Communications Uses?

Section 2866.23 is based on existing § 2806.23 and provides some additional clarification that linear communications uses, such as for fiber optic and telephone cable, will be charged rent using the linear ROW rent schedule found in § 2806.23. The communications uses rent schedule is specific to small areas, while the linear schedule is used for long and narrow ROWs, such as pipelines or power lines. Since a linear communications use is a long and narrow facility, the linear rent schedule is more appropriate.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2866.30 What are the rents for Communications Uses?

While much of part 2860 is based on sections of part 2800, which would remain as part of the rule, the communications site rent provisions (§§ 2866.30 through 2866.44) have been moved from subpart 2806 to new subpart 2866. Changes from existing provisions are discussed in this and the following sections of this preamble.

Section 2866.30 is substantively the same as existing § 2806.30. This section describes how the BLM will assess annual rent for communications uses. The final rule updates the address for the BLM and makes other minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2866.31 How will the BLM calculate rent for Communications Uses in the schedule?

Section 2866.31 is substantively the same as existing § 2806.31. There are no substantive changes from existing requirements, and the final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2866.32 How does the BLM determine the population strata served for your facility?

Section 2866.32 is substantively the same as existing § 2806.32, and there are no substantive changes from existing requirements.

Section 2866.33 How will the BLM calculate the rent for a single use communication facility grant?

Section 2866.33 is substantively the same as existing § 2806.33, and there are no substantive changes from existing requirements.

Section 2866.34 How will the BLM calculate the rent for a multiple-use communication facility grant?

Section 2866.34 is substantively the same as existing § 2806.34. There are no substantive changes from existing requirements, and the final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2866.35 How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and ''other'' category uses?

Section 2866.35 is substantively the same as existing § 2806.35. There are no substantive changes from existing requirements, and the final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2866.36 If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?

Section 2866.36 is substantively the same as existing § 2806.36, and there are no substantive changes from existing requirements.

One commenter requested the BLM revise proposed § 2866.36(c) to permit the BLM to collect the full annual rent from either the grant holder or the tenant. This comment is outside the scope of this rule. The BLM is not addressing payment collection requirements in this rulemaking.

Section 2866.37 How will the BLM calculate rent for a grant involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?

Section 2866.37 is substantively the same as existing § 2806.37, and there are no substantive changes from existing requirements.

Section 2866.38 Can I combine multiple grants for facilities located at one site into a single grant?

Section 2866.38 is substantively the same as existing § 2806.38 and is revised to require submittal of an SF 299 for BLM authorization to combine facilities into a single grant.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2866.39 How will the BLM calculate rent for a grant for a facility manager's use?

Section 2866.39 is substantively the same as existing § 2806.39. There are no substantive changes from existing requirements, and the final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2866.40 How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?

Section 2866.40 is substantively the same as existing § 2806.40, and there are no substantive changes from existing requirements. The BLM considers ''ancillary'' communication facilities to be those used solely for the purpose of internal communications.

For the final rule, the BLM added a reference to the new definition of ''ancillary'' found in § 2801.5 to provide clarity to the reader.

Section 2866.41 How will the BLM calculate rent for communications facilities ancillary to a linear grant or other use authorization?

Section 2866.41 is substantively the same as existing § 2806.41, and there are no substantive changes from existing requirements.

One commenter requested that the BLM modify the proposed rule language to acknowledge the rent exemption clause (§ 2866.14), so it is clear that the Federal rent exemption applies in circumstances where the communications use facility is authorized as ancillary to a grant but is not used for the sole purpose of internal communications.

The final rule is not modified in response to this comment. If the communications use is not for the sole purpose of internal communications, then the service is implied to be a commercial communications use. If that is the case, then the agency is allowed to charge for that use, and therefore, the use would not be rent exempt.

One commenter recommended that the proposed rule allow BLM to permit fiber optic cable on linear high voltage transmission lines as ancillary or appurtenant communication facilities and equipment that support the electric transmission grid.

The BLM believes that the final rule accounts for this comment. Fiber optic and microwave directly supporting a powerline or other facility, when not resold as a commercial use, is considered an ancillary facility, and will continue to be rent exempt. Therefore, the final rule is not modified in response to this comment.

Section 2866.42 How will the BLM calculate rent for Communications Uses within a federally-owned communications facility?

Section 2866.42 is substantively the same as existing § 2806.42, and there are no substantive changes from existing requirements.

One commenter requested the BLM modify § 2866.42(b) to clarify (1) how the term Facility Owner (as defined in § 2861.5) applies to Federal agencies that do not operate for personal or commercial purposes, and (2) that Federal agencies are exempt from paying rent even if the BLM considers them to be a facility owner.

The final rule is not modified in response to this comment. By definition, a Federal agency is a facility owner because it owns and operates equipment on public lands. The use by a Federal agency is generally exempt from rent. Occupants who occupy space within a Federal facility will hold their own authorization for which they must generally pay rent to the BLM for their communications uses of the public lands. The final rule revises the definition of a ''facility owner'' to provide clarification that a Federal purpose is one purpose for which a facility owner may operate communications equipment in the facility. The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2866.43 How does the BLM calculate rent for passive reflectors and local exchange networks?

Section 2866.43 is substantively the same as existing § 2806.43, except that

the definitions for ''passive reflector'' and ''local exchange network'' have been added to § 2861.5 instead. The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2866.44 How will the BLM calculate rent for a facility owner's or facility manager's grant which authorizes Communications Uses?

Section 2866.44 is substantively the same as existing § 2806.44. There are no substantive changes from existing requirements, and the final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Subpart 2868—Communications Uses Trespass

Section 2868.10 What is a Communications Uses trespass?

Section 2868.10 is based on § 2808.10 but provides for additional communications uses-specific circumstances that the BLM considers trespass. The intent of this section is to define a trespass so that facility owners and users understand how best to avoid unauthorized use.

Paragraph (a) states that adding to or altering from the communications facilities described in the authorization without approval from the BLM is a trespass.

Paragraph (b) of this section states that facility owners who permit communications uses of other users by allowing them to sublease any portion of their facilities without approval will be considered to be in trespass.

Paragraph (c) provides that natural structures, such as trees and rocks, may not be used to house or support equipment without the BLM's prior approval, and that doing so constitutes trespass. Using trees and rocks to house or support equipment leads to unacceptable resource damage and is not a sustainable practice.

All the provisions in this section have been a part of BLM policy for many years, but it became clear that users were confused about what the BLM considers trespass. The BLM believes that publishing these provisions as regulations offers additional clarity to the public and will lead to a reduction in unauthorized use.

One commenter stated that the BLM should modify the proposed trespass language in section 2868.10 to address concerns that: (1) language regarding placement of any type of facilities is too broad; and (2) if the regulations require authorization and, if necessary, rent to be paid to the BLM for entities that want to locate equipment on structures, the holder will retain the right to determine if the proposed use is compatible with the holder's pre-existing use.

The BLM is not modifying the rule as suggested by the comment. If a use of the public lands is not provided for in an authorization it is considered an unauthorized use and therefore a trespass. An application for a ROW should accurately describe the facilities it seeks an authorization for, and the BLM will include a description of the authorized facilities within the ROW grant. Collocated equipment should be disclosed to the BLM at the time of applications and prior to installation. If undisclosed equipment is discovered later by the BLM, it will be considered unauthorized.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

43 CFR Part 2880 Rights-of-Way Under the Mineral Leasing Act

The MLA requires that the applicant reimburse the United States for administrative and other costs incurred in processing a ROW application. The BLM refers to such costs as ''actual costs'' and defines that term to include the financial resources the BLM expends in processing and monitoring ROW activities under the MLA, including the direct and indirect costs, exclusive of management overhead costs.

The MLA does not limit or qualify the actual cost requirement, nor does it list any factors that the BLM may or should consider when determining reimbursable costs. The BLM bases actual cost information on Federal accounting and reporting systems. The BLM is making changes to part 2880 to provide consistency with the FLPMA ROW regulations at part 2800.

Part 2881—General Information

Section 2881.2 What is the objective of the BLM's right-of-way program?

This rule adds the words ''wherever practical'' to the objective described in § 2881.2(c). This change is consistent with § 2801.2(c). For a more detailed discussion, please see the preamble discussion for § 2801.2(c).

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2881.5 What acronyms and terms are used in the regulations in this part?

This rule amends the definitions of terms that appear in § 2881.5(b) to be consistent with changes to the definitions of those same terms in § 2801.5. For a detailed discussion of these changes and the BLM's response to relevant comments, please see the preamble discussion of § 2801.5.

Section 2881.7 Scope

This rule amends paragraphs (a) and (b)(1) in § 2881.7. These modifications clarify when an action will be processed under the regulations of Part 2880 and when an action will be processed under the Application for Permit to Drill (APD) regulations (43 CFR part 3160 and subpart 3171). Within the surface use plan of operation area, the BLM will process ''related facilities,'' as defined in § 2881.5, under the APD regulations. Once a pipeline or related facility leaves the surface use plan of operation area and is outside the boundary of the lease area it will be considered ''off lease'' and, at the lease boundary, becomes an activity processed under these regulations to the extent it is still on Federal land and subject to paragraph (b). Moreover, pipelines and related facilities operated by a party who is not the lessee or lease operator of a Federal oil and gas lease or that are downstream from a custody transfer metering device will be processed under these regulations regardless of whether the pipelines and related facilities are on or off lease.

These changes do not impact oil and gas operators, who must still coordinate with the BLM to manage their pipelines and related facilities. This rule ensures consistency in BLM operations and how these facilities are managed under these regulations.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2881.8 Severability

The BLM is redesignating § 2881.9 as 2881.8 to be consistent with the numbering of the equivalent sections in parts 2800 and 2860. This section of the rule states that if a court holds any provisions of the rules in this part or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances should not be affected. If any portion of this final rule were to be stayed or invalidated by a reviewing court, the remaining elements would continue to provide BLM with important and independently effective tools relating to the administration of its ROW program.

Subpart 2883—Qualifications for Holding MLA Grants and TUPs

Section 2883.14 What happens to my grant or TUP if I die?

Because an application is not an inheritable interest, the BLM is changing the title of this section from ''What happens to my application, grant, or TUP if I die?'' to ''What happens to my grant or TUP if I die?'' Paragraph (a) has been revised to remove the reference to the applicant and the application.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Subpart 2884—Applying for MLA Grants or TUPs

Section 2884.11 What information must I submit in my application?

This rule revises §§ 2884.11(a) and 2884.11(c)(6) for consistency with § 2804.12. For a detailed discussion of commenter suggestions and changes to this section, see the preamble discussion of § 2804.12.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2884.12 What are the fee categories for cost recovery?

The rule revises the title of this section to read, ''What are the fee categories for cost recovery?'' for consistency with § 2804.14. For a detailed discussion of the other changes to this section, please see the preamble discussion of § 2804.14.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2884.13 When will the BLM waive cost recovery fees?

The rule revises the title of this section to read ''When will the BLM waive cost recovery fees?'' rather than ''Who is exempt from paying processing and monitoring fees?'' The BLM is amending § 2884.13 for consistency with § 2804.16. For a detailed discussion of these changes, please see the preamble discussion of § 2804.16.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2884.14 When does the BLM reevaluate the cost recovery fees?

The rule revises the title of this section to change ''processing and monitoring'' to ''cost recovery.'' This change is consistent with the proposed changes to § 2804.15.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2884.15 What is a Master Agreement (Cost Recovery Category 5) and what information must I provide to the BLM when I request one?

The rule amends § 2884.15 to clarify the use of a Master Agreement and to replace the term ''processing and monitoring'' with ''cost recovery'' to be inclusive of administrative actions. These changes are consistent with the changes to § 2804.17. For a more detailed discussion of these changes, please see the preamble discussion of § 2804.17.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2884.16 What provisions do Master Agreements contain and what are their limitations?

The rule amends provisions in § 2884.16(a) that describe how processing and monitoring activities are included in a Master Agreement. Section 2884.16(c) was added to clarify that a Master Agreement will waive a holder's rights to request a reduction in cost recovery fees. This is the current practice of the BLM and is not a substantive change. These changes are consistent with the amendments to § 2804.18. For a more detailed discussion of these revisions, including changes to the final rule, please see the preamble discussion of § 2804.18.

Section 2884.17 How will the BLM manage my Category 6 project?

The rule amends § 2884.17 by revising the heading to read ''How will the BLM manage my Category 6 project?'' The BLM also revised § 2884.17(a) to include processing and monitoring activities. Revised § 2884.17(b) describes what the BLM will do in monitoring a grant. Paragraph (b)(4) of this section states that the BLM could collect a deposit before beginning work on a Category 6 project. These changes are consistent with the amendments to § 2804.19. For a more detailed discussion of these revisions, please see the preamble discussion of § 2804.19.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2884.21 How will the BLM process my application?

The rule amends § 2884.21 for consistency with the revisions made to § 2804.25. For a more detailed discussion of these revisions, please see the preamble discussion of § 2804.25.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2884.23 Under what circumstances may the BLM deny my application?

The rule revises paragraph (a)(6) of this section, which states that the BLM could deny your ROW application if you fail to comply with a deficiency notice. This revision makes this paragraph consistent with §§ 2804.26 and 2864.26.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2884.24 What fees must I pay if the BLM denies my application, or if I withdraw my application or relinquish my grant or TUP?

The rule amends § 2884.24 to provide consistency with § 2804.27. For a more detailed discussion of these amendments, please see the preamble discussion of § 2804.27.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2884.27 What additional requirements are necessary for grants for pipelines 24 or more inches in diameter?

The rule amends § 2884.27 by revising the title to read, ''What additional requirements are necessary for grants for pipelines 24 or more inches in diameter?'' Also, this section is revised to remove any reference to a temporary use permit (TUP). Currently, any time a new grant or TUP application is filed with the BLM and the project involves a pipeline 24 or more inches in diameter, the regulations require BLM to notify Congress of the filed application.

This rule eliminates the requirement to report a TUP for several reasons. The Mineral Leasing Act, which draws a distinction between ROWs and temporary permits, see 30 U.S.C. 185(e), requires Congressional notification only for ROWs. 30 U.S.C. 185(w). Extending this statutory requirement to TUPs, which authorize activities that are only of a temporary and limited nature, creates a significant, unnecessary workload for BLM offices, the Department, and Congress.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Subpart 2885—Terms and Conditions of MLA Grants and TUPs

Section 2885.12 What rights does a grant or TUP provide?

The rule amends the title of § 2885.12 from ''What rights does a grant or TUP convey?'' to ''What rights does a grant or TUP provide?'' to be clear that the BLM does not convey any ownership rights to a ROW holder.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2885.17 What happens if I do not pay rents and fees or if I pay the rents or fees late?

The rule amends § 2885.17 to provide consistency with § 2806.13. For a more detailed discussion of these changes, please see the preamble discussion of § 2806.13.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2885.19 What is the rent for a linear right-of-way grant?

The rule revises paragraph (b) to update the contact address of the BLM and highlight availability of the Per Acre Rent Schedule on the BLM website.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2885.24 If I hold a grant or TUP, what cost recovery fees must I pay?

The rule amends the title for § 2885.24 to read, ''If I hold a grant or TUP, what cost recovery fees must I pay?'' to include permitting and monitoring activities. The rule revises §§ 2885.24(a) and 2885.24(b) and adds a new § 2885.24(c). Section 2885.24(a) now refers you to § 2884.12(b) for the descriptions of the minor category fees. Section 2885.24(b) states that Categories 1 through 4 will be updated on an annual basis. New § 2885.24(c) explains how to obtain a copy of the current cost recovery fee schedule.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Subpart 2886—Operations on MLA Grants and TUPs

Section 2886.17 Under what conditions may the BLM suspend or terminate my grant or TUP?

Section 2886.17 is revised to add a new paragraph (c)(3), which states that the BLM may terminate your grant or TUP if it is terminated by court order. If a court were to terminate a grant or TUP, the BLM must implement the court order. This is not a change to BLM practice but provides clarity to the public.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Subpart 2887—Amending, Assigning, or Renewing MLA Grants and TUPs

Section 2887.10 When must I amend my application, seek an amendment of my grant or TUP, or obtain a new grant or TUP?

Section 2887.10(b) is revised to change the term ''processing and monitoring'' to ''cost recovery,'' consistent with § 2807.20(b).

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2887.11 May I assign or make other changes to my grant or TUP?

Section 2887.11(i) is added to clarify that an authorization amendment is necessary for a substantial deviation from location or use.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2887.12 How do I renew my grant?

The rule amends § 2887.12 to provide consistency with § 2807.22. For a more detailed discussion of these changes, please see the preamble discussion of § 2807.22.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Subpart 2888—Trespass

Section 2888.10 What is a trespass?

The BLM revised this paragraph in the final rule to add ''subleasing'' to the acts that may constitute a trespass, consistent with the similar revision to § 2808.10.

Part 2920—Leases, Permits and Easements

Subpart 2920—Leases, Permits and Easements: General Provisions

Section 2920.0–5 Definitions

Section 2920.0–5 is amended to add the term and a definition of ''cost recovery'' and is reorganized to be in alphabetical order and to make minor, nonsubstantive language changes.

The final rule includes only minor, nonsubstantive changes to the version of this section that appeared in the proposed rule.

Section 2920.6 Payment of Cost Recovery Fees

The title of § 2920.6 is amended from ''Reimbursement of costs'' to ''Payment of cost recovery fees,'' and the content of the section is updated to reflect this change. The change better explains the process of collecting estimated cost recovery fees before the work is performed rather than afterward through reimbursement.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

Section 2920.8 Fees

Section 2920.8 is amended by revising § 2920.8(b) to say, ''cost recovery fees,'' to provide consistency with the revisions made to part 2800.

The final rule makes no changes to the version of this section that appeared in the proposed rule.

IV. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866, 14094 and 13563)

Executive Order (E.O.) 12866 (58 FR 51725, October 4, 1993), as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. E.O. 13563 (76 FR 3821, January 11, 2011) reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule making process must allow for public participation and an open exchange of ideas. The BLM has developed this rule in a manner consistent with these requirements. OIRA has concluded that the rule is a significant regulatory action.

This rule would not have a significant effect on the economy. The BLM estimated that the rule would have distributional impacts in the form of transfer payments of about $3.47 million per year from firms and individuals to the BLM. Transfer payments are monetary payments from one group to another that do not affect total resources available to society.

For more detailed information, see the Economic and Threshold Analysis prepared for this rule. The economic analysis has been posted in the docket for the rule on the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE60,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.

One commenter disagreed with the BLM's findings in the Economic Analysis that the rule would not increase the burden on society or cause detrimental economic effects and requested that the BLM further evaluate the rule's compliance with Executive Orders (E.O.) 12866 and 13563, with particular focus on how public comment periods could be affected by the proposed changes to the regulation.

The BLM determined that the changes made by this rule are administrative or procedural in nature. Additionally, in preparing this regulation, the BLM was cognizant of the goal of minimizing economic impacts to ROW applicants and holders. For instance, entities that make cost recovery payments may take advantage of a Master Agreement which in many instances will reduce their costs. Also, there are opportunities for users to request reductions in cost recovery payments for hardship situations. This rule will not shorten public comment periods.

The BLM has evaluated the rule's compliance with E.O. 12866 and 13563. Under E.O. 12866, the Office of Information and Regulatory Affairs (OIRA) determined that the final rule is a significant regulatory action. The rule, like all BLM regulations, will be subject to a periodic review under E.O. 13563 to ensure the regulation remains necessary.

There are several provisions in the rule that help ensure the rule does not increase the burden on society. For instance, in § 2804.25, a new paragraph is added to the rule requiring an operating plan or agreement for all powerline ROWs, which gives the BLM an opportunity to ensure there is, in every instance, a plan to reduce risk of wildfire and other adverse impacts. Section 2805.12 includes a provision that the BLM may require grant holders to remove facilities that pose health and safety risks sooner than 3 months, as is presently the case under the existing regulation, thereby potentially reducing adverse impacts of projects in such cases. Section 2805.14 enhances protection of safety and the environment by removing the word ''minor'' from its discussion of removing vegetation. Section 2805.15 includes language clarifying that any change in the terms or conditions will require a new grant, which may require a fresh environmental analysis by the BLM. Section 2806.13 expands the provision for collecting unpaid rents, thereby promoting compensation for the use of public lands.

Revitalizing Our Nation's Commitment to Environmental Justice (E.O. 14096; E.O. 12898)

Under Executive Order 14096, ''Revitalizing Our Nation's Commitment to Environmental Justice for All'' (which builds upon Executive Order 12898 [1]) agencies must, as appropriate and consistent with applicable law, identify, analyze, and address the disproportionate and adverse human health and environmental effects (including risks) and hazards of rulemaking actions and other Federal activities on communities with environmental justice concerns. (88 FR 25251, Apr. 26, 2023). This rule streamlines the processing of ROWs and their associated fees and requires operations and maintenance plans for powerline ROWs. These rule changes are not expected to have an effect on any particular population. Therefore, this rule is not expected to negatively impact any community and is not expected to cause any disproportionate and adverse impacts to communities with environmental justice concerns.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the ''notice-and-comment'' rulemaking requirements found in the Administrative Procedure Act (5 U.S.C. 500 *et seq.*) if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the Small Business Size standards for 30 affected industries. The BLM determined that a large share of the entities in the affected industries—in the majority of the industries, over 90% of the covered entities at the national level—are small businesses as defined by the Small Business Act (SBA).[1] The BLM's analysis of this point is given in Table 3 of the Economic Analysis for this final rule.

However, the BLM believes that the impact on the small entities is not significant. In the Economic Analysis, the total cost recovery payments per year of a small entity are compared to its receipts. Table 11 in the Economic Analysis gives a break-out of small establishments by industry and size class. The table shows the cost recovery payments as a percentage of receipts. Cost recovery payments of a small business under the final rule are estimated to be $9,000 per year, including an incremental $3,500 cost attributable to the rule. For most of the size categories, cost recovery charges as a percentage of receipts are less than 1%.

Moreover, section 2804.21 of the BLM's regulations currently provides that the BLM may account for financial hardship on a case-by-case basis when determining cost recovery fees, providing an avenue for relief for small businesses if they are meaningfully impacted by cost recovery payments.

Further, the rule will benefit small businesses by streamlining the BLM's processes.

For the purpose of carrying out its review pursuant to the RFA, we certify that the rule will not have a ''significant economic impact on a substantial number of small entities,'' as that phrase is used in 5 U.S.C. 605. A regulatory flexibility analysis is therefore not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The rule will result in additional cost recovery payments (or receipts to the United States Government) paid mostly by firms and individuals. These payments are ''transfer payments.'' Transfer payments are monetary payments from one group to another that do not affect total resources available to society.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The BLM determined that the relatively minor increase in minor category fees will not

[1] 59 FR 7629, February 16, 1994.

[1] 13 CFR 121.201 and U.S. Census Bureau 2017 Economic Analysis.

pose an impact to small businesses. As explained above, cost recovery payments for a small business under the final rule are estimated to be $9,000 per year, including an incremental $3,500 cost attributable to the rule. Table 11 of the Economic Analysis shows that for most industry and size categories, cost recovery payments as a percentage of receipts are less than 1%. In a few industries, for the smallest size categories, cost recovery payments exceed 1% of receipts. In such cases, it is important to note that section 2804.21 of the BLM's existing regulations provides that the BLM may account for financial hardship on a case-by-case basis when determining cost recovery fees. Further, there are aspects of the rule that will provide operating flexibility for small businesses, likely allowing them to manage their powerline and communications site ROWs more efficiently or at reduced cost.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The rule will not have adverse effects on any of these criteria. It will encourage the development of communications uses in rural areas in accordance with E.O. 13821 and the MOBILE NOW Act.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*), agencies must prepare a written statement about benefits and costs, prior to issuing a final rule that may result in aggregate expenditure by State, local, and Tribal governments, or by the private sector, of $100 million or more in any one year.

This rule is not subject to the requirements under the UMRA. The rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or Tribal governments, in the aggregate, or to the private sector in any 1 year. The rule will not significantly or uniquely affect small governments. A statement containing the information required by the UMRA is not required.

Governmental Actions and Interference With Constitutionally Protected Property Right—Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 (53 FR 8859, March 15, 1988) identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. This rule will not interfere with private property. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132 (64 FR 43255, August 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does 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. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988 (61 FR 4729, February 5, 1996). Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175, E.O. 14112, and Departmental Policy)

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty.

In accordance with E.O. 13175 (65 FR 67249, November 9, 2000) and E.O. 14112 (88 FR 86021, December 11, 2023), the BLM has evaluated this rulemaking and determined that it would not have substantial direct effects on federally recognized Indian tribes. Nevertheless, on a government-to-government basis the BLM initiated consultation with Tribal governments that wished to discuss the rule.

In August 2021, the BLM sent a letter to federally recognized Indian Tribes and Alaska Native Corporations notifying them about the BLM's intent to pursue this rulemaking. In that letter, the BLM invited the tribes to government-to-government consultation. On October 28, 2021, the BLM met with Ahtna, Inc., an Alaska Native Regional Corporation, to discuss this and other BLM rulemakings. Ahtna encouraged BLM to work with other state land management agencies, asked for clarification of the Tribal consultation process during the BLM rulemaking process, and requested a timeline for implementation of the rule and the new cost recovery schedule. On December 1, 2021, the BLM met with the Santa Rosa Rancheria Tachi-Yokut Tribe to discuss this and other BLM rulemakings. The Tribe asked whether the time requirements for processing applications in the MOBILE NOW Act would eliminate or reduce Tribal consultation. Neither the MOBILE NOW Act nor this rule alters the BLM's responsibility to consult with Tribes. Tribal consultation will continue consistent with applicable law and policy. The Tribe also requested a timeline for when the rule would be finalized. The rule will take effect 30 days after it is published in the **Federal Register**.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

The Paperwork Reduction Act (PRA) generally provides that an agency may not conduct or sponsor, and not withstanding any other provision of law a person is not required to respond to, a collection of information, unless it displays a currently valid Office of Management and Budget (OMB) control number. Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). This rule contains new information collections that require OMB approval under the PRA. The BLM may not conduct or sponsor and, notwithstanding any other provision of law, you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

The information collection activities associated with the application process in this rule require the use of SF–299 (Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property) and the Communications Site Tenant/Customer Inventory Certification of Facility Owner or Manager. The OMB has previously approved the information collection requirements associated with BLM's use of Common Form SF–299 as part of the application process. You may view the BLM's approved Request for use of the Common Form at *http://www.reginfo.gov/public/do/PRAMain.* Additionally, § 2884.11 refers to BLM

forms Application for Permit to Drill or Reenter (BLM Form 3160–3) and Sundry Notice and Report on Wells (BLM Form 3160–5). These forms are part of the requirements for applying for MLA Grants or TUPs. The information required as part of these applications is contained in the current regulations under this paragraph and is currently approved by OMB under OMB control number 1004–0137. The rule would not change these forms, nor the associated information collected as part of the application requirements.

This rule includes provisions pertaining to non-hour burdens authorized by FLPMA and the MLA. FLPMA is the only authority under which communications uses on BLM-managed lands may be authorized. However, both FLPMA (43 U.S.C. 1734(b) and 1764(g)) and the MLA (30 U.S.C. 185(*l*)) authorize the BLM and other applicable Federal agencies to collect funds from ROW applicants or holders to reimburse an agency for expenses incurred while processing an application and monitoring a grant. When this rule becomes effective, the BLM will include non-hour burdens for other uses (*e.g.,* electric generation and pipelines) in requests to revise OMB Control Numbers 1004–0137 (Onshore Oil and Gas Operations and Production) and 1004–0206 (Competitive Processes, Terms and Conditions for Leasing of Public Lands for Solar and Wind Energy Development).

The information collection requirements identified below require approval by OMB:

(1) *Appeals/Petitions for a Stay (43 CFR 2801.10 and 43 CFR 2881.10)*—Current regulations at 43 CFR 2801.10 and 43 CFR 2881.10 provide a process for applicants to appeal a BLM decision issued under the regulations in parts 2800 and 2880, respectively, in accordance with part 4 of Title 43. All BLM decisions under parts 2800 and 2880 remain in effect pending appeal unless the Secretary of the Interior rules otherwise, or as noted in the respective part. The applicant may petition for a stay of a BLM decision under part 4 with the Department's Office of Hearings and Appeals. Unless otherwise noted, the BLM would take no action on the application while the appeal is pending. (43 CFR 2801.10(b), 2881.10(b).)

(2) *Designation of Agent or Third Party (43 CFR 2803.11)*—Amendments to § 2803.11 require notification of an intent to designate another person or entity to act on behalf of a holder of a FLPMA grant (*i.e.,* any authorization or instrument issued under FLPMA Title V, 43 U.S.C. 1761–1772). This is a new information collection activity, although existing § 2803.11 states that another person may act on the holder's behalf if the holder has ''authorized the person to do so under the laws of the State where the ROW is or will be located.'' These amendments retain the existing language and, in addition, require the following in a designation notification:

(A) Notify the BLM office having jurisdiction over the grant in writing of their intention and provide a copy of the Power of Attorney, if one exists; and

(B) Provide and maintain the current contact information for the intended agent.

If an applicant designates an agent or third party to act on their behalf, they are still responsible for following the terms and conditions of the grant. In addition, these amendments require the holder of the grant to maintain current contact information for the intended agent.

(3) *Request for a Master Agreement (43 CFR 2804.17 and 43 CFR 2884.15)*—Sections 2804.17 and 2884.15 describe the information a holder of a FLPMA grant, MLA grant, or TUP must provide to the BLM when requesting a ''Master Agreement (Cost Recovery Category 5).'' A Master Agreement, as described in §§ 2804.17 and 2884.15, is a written agreement covering processing and monitoring fees negotiated between the BLM and the holder. The term ''Cost Recovery Category 5'' refers to agreements involving multiple BLM grant approvals within defined geographic areas. As amended, §§ 2804.17 and 2884.15 will further define Cost Recovery Category 5 as involving projects within defined geographic areas ''or for a specific common activity for many projects.'' These are the only amendments to §§ 2804.17 and 2884.15.

Sections 2804.17 and 2884.15 require that a request for a Master Agreement include:

(A) A description of the geographic area covered by the Agreement and the scope of the activity the holder plans;

(B) A preliminary work plan that states what work the holder must do and what work the BLM must do to process the application;

(C) A preliminary cost estimate and a timetable for processing the application and completing the projects;

(D) A statement whether the holder wants the Agreement to apply to future applications in the same geographic area that are not part of the same projects; and

(E) Any other relevant information that the BLM needs to process the application (*e.g.,* financial information, maps, environmental or cultural data about the area covered by the application and/or grants).

(4) *Written Agreements—Category 6 Projects (43 CFR 2804.19 and 43 CFR 2884.17)*—The term ''Cost Recovery Category 6'' refers to agreements involving a large scale or highly complex FLPMA grant, MLA grant, or TUP approval. As amended, §§ 2804.14 and 2884.12 define Cost Recovery Category 6 to include activities that will require more than 64 hours or require an environmental impact statement. For Category 6 applications, the applicant and the BLM must enter into a written agreement that describes how the BLM will process the application and monitor the grant. The BLM may require that the final agreement contains a work plan and a financial plan, and a description of any existing agreements they have with other Federal agencies for cost reimbursement associated with the application or grant.

For the BLM to determine reasonable costs associated with a Category 6 project, the written agreement must include a written analysis of those factors applicable to the project, unless the applicant agrees in writing to waive consideration of reasonable costs and elects to pay actual costs. The BLM may require the applicant to submit additional information in support of their position.

(5) *Analysis of Factors—Cost Recovery Fee Determination (43 CFR 2804.21)*—Along with the written application, applicants may submit their analysis of how each of the factors, as applicable, in § 2804.21(a) pertains to their application. The BLM will notify the applicant in writing of the fee determination.

(6) *Withdrawing Applications/ Relinquishing Grants (43 CFR 2804.27 and 43 CFR 2884.24)*—Applicants may withdraw their application in writing before the BLM issues a grant. Grant holders may request to relinquish their grant in writing. If they withdraw their application or relinquish their grant, they are liable for all processing costs the United States has incurred up to the time of the withdrawal or relinquishment and for the reasonable costs of termination proceedings. Any money not paid by the applicant is due within 30 calendar days after receiving a bill for the amount due. Any money paid by the applicant that is not used to cover costs the United States incurred as a result of their application will be refunded to them.

(7*) Request for Alternative Requirement (43 CFR 2804.40)*—If the applicant is unable to meet any of the requirements in subpart 2804, they may request approval for an alternative

requirement from the BLM. Any such request is not approved until the BLM provides their approval in writing. The request for alternative must:

(A) Show good cause for the applicant's inability to meet a requirement;

(B) Suggest an alternative requirement and explain why that requirement is appropriate; and

(C) Be received in writing by the BLM before the deadline of a particular requirement has passed.

(8) *Request for Extension (43 CFR 2805.12(c)(5))*—Grant holders must take appropriate remedial action within 30 days after receipt of a written noncompliance notice unless they have been provided an extension of time by the BLM. Alternatively, they must show good cause for any delays in repairs, use, or removal; estimate when corrective action will be completed; provide evidence of diligent operation of the facilities; and submit a written request for an extension of the 30-day deadline. If they do not comply with this provision, the BLM may suspend or terminate the authorization.

(9) *Rights the United States Retains—Financial Documents (43 CFR 2805.15)*—The amendment to § 2805.15 adds to the list of rights retained by the United States the right to require a holder to submit applicable financial documents and supporting documents including, but not limited to, contractual and subleasing agreements. This amendment is consistent with the requirements of existing § 2805.12(a)(15).

(10) *Operating Plans or Agreements (43 CFR 2804.25(c)(2) and 43 CFR 2805.21(a))*—Paragraphs 2804.25(c)(2) and 2805.21(a) require an operating plan or agreement for all new powerline ROWs. Applications to amend and renew powerline ROWs must follow the same procedures as applications for new ROWs and are subject to this requirement. Existing holders of powerline ROWs are not required to submit an operating plan or agreement under the rule until they renew or amend their grant but may submit such plans on a voluntary basis. Holders of ROWs may submit an operating plan or agreement to the BLM on a voluntary basis even if their ROW is not for a powerline.

Under existing § 2804.25(c), the BLM may require applicants to submit a POD for a ROW, as necessary. Paragraph 2805.21(c) describes requirements of the operating plans or agreements that powerline ROW applicants are required to submit.

(A) Plan requirements: An operating plan or agreement must:

(i) Identify the applicable facilities to be maintained;

(ii) Take into account the holder's own operations and maintenance plans for the applicable ROW;

(iii) Include the vegetation management, inspection, operation and maintenance methods that may be used to comply with applicable law, including fire safety requirements and reliability standards established by the ERO;

(iv) Include schedules for:

(a) The applicable owner or operator to notify the BLM about non-emergency routine and major maintenance;

(b) The applicable owner or operator to request approval from the BLM about undertaking non-emergency routine and major maintenance; and

(c) The BLM to respond to a request by an owner or operator;

(v) Describe processes for:

(a) Identifying changes in conditions; and

(b) Modifying the approved operating plan or agreement, if necessary; and

(vi) Provide for the disposition of cut trees and branches, including plans for sale of forest products.

(11) *Modification of Operating Plans or Agreements (43 CFR 2805.21(e))*—Paragraph 2805.21(e) provides that the BLM will notify the holder if an operating plan or agreement requires modifications. The BLM will provide advance reasonable notice to the holder that a modification is necessary, and the holder would submit the proposed modification to the BLM. The BLM will review and approve the operating plan or agreement modification in the timeframe identified for submitting new approvals. Under § 2805.21(e)(4), the holder may continue to operate and maintain the ROW or facility in accordance with the approved operating plan or agreement, if the activity does not conflict with the identified condition that requires a plan modification.

(12) *Agreements in Lieu of Operating Plans (43 CFR 2805.21(f))*—Paragraph 2805.21(f) provides that certain holders may enter into an agreement with the BLM in lieu of an operating plan. Agreements need to include schedules, as described in section 2805.21(c)(4) and are subject to the same modification requirements of section 2805.21(e).

(13) *Notifications—Emergency Conditions (43 CFR 2805.22(a))*—Owners or operators of electric transmission or distribution lines will notify the authorized officer not later than 1 day after the date of their response to emergency conditions.

(14) *Request for Approval—Non-Emergency Conditions (43 CFR 2805.22(b))*—Owners or operators must request approval from the BLM for a proposed activity if their plan:

(A) Requires them to seek specific approval for the proposed activity; or

(B) Does not address the proposed activity. They may also need to amend their operating plan or agreement if they anticipate conducting this activity on a recurring basis.

(15) *Phasing Rent—Hardship (43 CFR 2806.22 & 43 CFR 2866.31)*—The BLM uses separate rental schedules for linear ROWs (see § 2806.22) and for communications uses grants (see § 2866.30). When the BLM adjusts its rental schedule under these sections, some holders' rents may increase dramatically. The rule includes provisions in each of these sections (see §§ 2806.22(c) and 2866.30) to provide holders experiencing undue hardship with the option to phase in the cost difference over a 3-year period. If a holder's rent would more than double from the previous year, the holder may request a phase-in of the increased rent in accordance with § 2806.15(b)(5).

(16) *Amendments (43 CFR 2807.20 and 43 CFR 2887.10)*—Applicants must amend their application or seek an amendment of their grant when there is a proposed substantial deviation in location or use. The requirements to amend an application or grant are the same as those for a new application, including paying cost recovery fees and rent according to §§ 2804.14, 2805.16, and 2806.10.

(17) *Renewals (43 CFR 2807.22 and 43 CFR 2887.12)*—Applicants must submit an application to renew their existing grant at least 120 days prior to grant expiration.

(18) *Request for Preliminary Application Review (43 CFR 2864.10)*—In addition to the provisions listed in § 2804.10, before filing their application, the applicant should:

(A) Schedule a preliminary application review meeting with the appropriate personnel in the BLM field office with jurisdiction over the lands the applicant seeks to use. During the preliminary application review meeting, the BLM can:

(i) Identify potential constraints;

(ii) Determine whether the lands are located inside a communications site management plan area;

(iii) Tentatively schedule the processing of the proposed application; and

(iv) Inform the applicant of financial obligations, such as processing and monitoring costs and rents.

(B) Request a copy of the most recent communications site management plan for that site, if one is available.

(C) Ensure the applicant has all other necessary licenses, authorizations, or permits required for the operation of the facility.

(19) *Request for Exemption (43 CFR 2806.14 and 43 CFR 2866.14)*—Applicants for or holders of an authorization for electric or telephone facilities may request an exemption if they were financed in whole or in part by, or were eligible for financing under, the Rural Electrification Act of 1936, as amended (REA) (7 U.S.C. 901 *et seq.*) or if their facilities are extensions of facilities that are exempt from paying rental. This exemption may be requested during the application process for a new grant, or an existing grant holder may request an exemption if they are now eligible after a change in policy. The BLM issued an Instruction Memorandum in 2016 (IM–2016–122) after a Memorandum of Understanding in 2014 established the new policy. Holders do not need to have sought financing from the Rural Utilities Service to qualify for this exemption. Holders will need to document the facility's eligibility for REA financing.

(20) *Request for Waiver or Reduction in Annual Rent (43 CFR 2806.15, 43 CFR 2866.15, and 43 CFR 2866.30)*—A holder may request a rent waiver or reduction if paying the full rent would cause the holder undue hardship and it is in the public interest to waive or reduce the rent. For example, an undue hardship can be a financial impact on a small business, or it could involve situations where there is a need to relocate the facility to comply with public health and safety or environmental protection laws not in effect at the time the original grant was issued. The holder would need to submit information to support an undue hardship claim. Several other sections of the rule allow a holder to request a waiver or reduction to their rent under the provisions of §§ 2806.15, 2866.15, and 2866.30.

(21) *Annual Statement (43 CFR 2866.31(c))*—By October 15 of each year, communications uses grant holders must submit to the BLM a certified statement listing any tenants and customers in their facility or facilities and the category of use for each tenant or customer as of September 30 of the same year. The BLM may require grant holders to submit additional information to calculate their rent. The BLM will determine the rent based on the annual inventory certification statement provided. The BLM requires only facility owners or facility managers to hold a grant (unless they are an occupant in a federally owned facility as described in § 2866.42) and will charge rent for grants based on the total number of communications uses within the right-of-way and the type of uses and population strata the facility or site serves. Failure to submit the annual inventory certification (by electronic correspondence or postmarked) by October 15 may result in the grantee not receiving any discounts, reductions, exemptions, or waivers (see §§ 2866.14, 2866.15, and 2866.34), for which they may have been entitled.

(22) *Request to Authorize Facilities Under a Single Grant (43 CFR 2866.38)*—Applicants holding authorizations for two or more facilities on the same communications site may submit a written request to authorize those facilities under a single grant.

(23) *Environmental Impact Statement (43 CFR 2804.14(e), 43 CFR 2884.12(e))*—In processing an application, the BLM may determine at any time that an Environmental Impact Statement (EIS) is necessary to evaluate the application. The EIS may be prepared by the applicant, the BLM, or by both parties.

A summary of the information collection burdens imposed by this rule is provided below. A detailed analysis of each information collection as contained in this rule is provided in the information collection request that has been submitted to OMB for review under the PRA.

Title of Collection: Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way.

43 CFR parts 2800, 2860, 2880 and 2920.

OMB Control Number: 1004–0219.

Form Numbers: SF–299 (Burden approved by OMB in Request for Common Form under OMB Control No. 0596–0249); BLM Forms 3160–3 and 3160–5 (Burden approved by OMB under OMB Control No. 1004–0137).

Type of Review: New Collection.

Respondents/Affected Public: Individuals, private sector, and State/local/Tribal governments who seek or hold rights-of-way on public lands.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion and annually for the Annual Statement required in 43 CFR 2866.31.

Number of Respondents: 5,554.

Annual Responses: 5,554.

Total Annual Burden Hours: 187,816.

Average Response Time: Varies from 4 to 40 hours depending on actively.

Total Annual Cost Burden (non-hour burden): $15,790,000.

If you want to comment on the information-collection requirements in this rule, please send your comments and suggestions on this information-collection request within 30 days of publication of this final rule in the *Federal Register* to OMB at *www.reginfo.gov.* Click on the link, ''Currently under Review—Open for Public Comments.''

National Environmental Policy Act

The BLM determined the promulgation of this final rule is administrative and procedural in nature and that whatever environmental effects it may have are too broad, speculative, or conjectural to lend themselves to meaningful analysis at this stage. Future actions implementing the final rule will be subject to NEPA, either collectively or case by case. The BLM also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. Therefore, the action is categorically excluded from environmental review under NEPA. 43 CFR 46.210(i). The BLM has documented this categorical exclusion's applicability to this action and posted it for public review. See DOI–BLM–WO–3500–2022–0002–CX at *www.regulations.gov.*

One commenter expressed concern that outreach efforts associated with the rule limited public awareness and opportunity to comment on the rule's environmental impacts as part of a NEPA process. This commenter also disagreed with the BLM's determination that the rule is categorically excluded from further documentation under NEPA in accordance with 43 CFR 46.210(i) and requested a more detailed environmental analysis. Another commenter expressed concern that inclusion of temporary access rights in grants could establish a precedent for future action, which could be deemed to be an ''extraordinary circumstance,'' identified at 43 CFR 46.215(e), that makes application of the categorical exclusion inappropriate.

The BLM followed all requirements to publish a proposed rule. The BLM also prepared a communication plan, posted content to the website and on social media, and published a news release. Additionally, the BLM re-opened the comment period to allow further comments.

Additional process under NEPA is not required for this rule because a categorical exclusion applies. The BLM determined that the changes made by this rule are administrative or procedural in nature and that the

environmental effects of the rule are too speculative at this stage for meaningful analysis. 43 CFR 46.210(i). Actions taken to implement the procedures in this rule will be subject to NEPA.

The BLM does not share the commenter's concern that granting temporary access rights for a ROW will establish a precedent for granting future action. Each application submitted to the BLM is evaluated on an individual basis, and granting temporary access rights for a particular ROW application does not create a precedent for future action on other applications.

The BLM has determined that none of the extraordinary circumstances applies. See Categorical Exclusion, DOI–BLM–WO–3500–2022–0002–CX at *www.regulations.gov.*

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)

This rule is not a significant energy action under E.O. 13211 (66 FR 28355, May 22, 2001). Section 4(b) of E.O. 13211 defines a ''significant energy action'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under E.O. 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of OIRA as a ''significant energy action.''

The BLM reviewed the rule and determined that it is not a significant energy action as defined by E.O. 13211. A Statement of Energy Effects is not required.

Authors

The principal authors of this rule are: Stephen Fusilier, BLM Division of Lands, Realty and Cadastral Survey; Erica Pionke, BLM Division of Lands, Realty and Cadastral Survey; Robert Wilson, BLM Division of Lands, Realty and Cadastral Survey; Delissa Minnick, BLM Division of Lands, Realty and Cadastral Survey; Jeff Holdren, BLM Division of Lands, Realty and Cadastral Survey; Jennifer Noe, BLM Division of Regulatory Affairs; assisted by the DOI Office of the Solicitor.

This action by the Principal Deputy Assistant Secretary is taken pursuant to an existing delegation of authority.

Steven H. Feldgus,

Principal Deputy Assistant Secretary, Land and Minerals Management.

List of Subjects

43 CFR Part 2800

Electric power, Highways and roads, Penalties, Public lands and rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2860

Communications, Penalties, Public lands and rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2880

Administrative practice and procedures, Common carriers, Pipelines, Federal lands and rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2920

Penalties, Public lands, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the BLM is amending 43 CFR chapter II as set forth below:

PART 2800—RIGHTS-OF-WAY UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT

■ 1. The authority citation for part 2800 continues to read as follows:

Authority: 43 U.S.C. 1733, 1740, 1763, and 1764.

Subpart 2801—General information

■ 2. Amend § 2801.2 by revising paragraph (c) to read as follows:

§ 2801.2 What is the objective of the BLM's right-of-way program?

* * * * *

(c) Promotes the use of rights-of-way in common wherever practical, considering engineering and technological compatibility, national security, and land use plans; and

* * * * *

■ 3. Amend § 2801.5 by
■ a. In paragraph (a), removing the acronym ''RMA'';
■ b. Revising and republishing paragraph (b).

The revision and republication reads as follows:

§ 2801.5 What acronyms and terms are used in the regulations in this part?

(a) * * *

(b) *Terms.* As used in this part, the term:

Acreage rent means rent assessed for solar and wind energy development grants and leases that is determined by the number of acres authorized for the grant or lease.

Act means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

Actual costs means the financial measure of resources the Federal government expends or uses in processing a right-of-way application or in monitoring the construction, operation, and termination of a facility authorized by a grant or permit. Actual costs includes both direct and indirect costs, exclusive of management overhead costs.

Ancillary means a secondary use entirely within the scope of a primary authorization that is for the sole purpose of supporting the operations allowed by that primary authorization and that the same holder of the primary authorization does not make available to third parties through commercial sales.

Application filing fee means a filing fee specific to solar and wind energy applications. This fee is an initial payment for the reasonable costs for processing, inspecting, and monitoring a right-of-way.

Assignment means the transfer, in whole or in part, of any right or interest in a right-of-way grant or lease from the holder (assignor) to a subsequent party (assignee) with the BLM's written approval. A change in ownership of the grant or lease, or other related change-in-control transaction involving the holder, including a merger or acquisition, also constitutes an assignment for purposes of these regulations requiring the BLM's written approval, unless applicable statutory authority provides otherwise.

Casual use means activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements. *Examples of casual use include:* Surveying, marking routes, and collecting data to use to prepare grant applications.

Commercial purpose or activity refers to the circumstance where a holder attempts to produce a profit by allowing the use of its facilities by an additional party. BLM may assess an appropriate rent for such commercial activities. The holder's use may not otherwise be subject to rent charges under BLM's rental provisions.

Complete application means the BLM has verified that your application contains all of the information required under section 2804.12. The BLM will notify you after it determines that your application is complete.

Cost recovery is a fee charged to an applicant or holder to pay the United States for processing and monitoring costs that concern applications and other documents relating to the public lands, or that are incurred when processing, inspecting, or monitoring any proposed or authorized rights-of-way located on the public lands.

Designated leasing area means a parcel of land with specific boundaries identified by the BLM land use planning process as being a preferred location for solar or wind energy development that may be offered competitively.

Designated right-of-way corridor means a parcel of land with specific boundaries identified by law, Secretarial order, the land use planning process, or other management decision, as being a preferred location for existing and future linear rights-of-way and facilities. The corridor may be suitable to accommodate more than one right-of-way use or facility, provided that they are compatible with one another and the corridor designation.

Discharge has the meaning found at 33 U.S.C. 1321(a)(2) of the Clean Water Act.

Exempt from rent means that the BLM is precluded by statute or regulation from collecting rent.

Facility means an improvement or structure, whether existing or planned, that is or would be owned and controlled by the grantee within a right-of-way.

Grant means any authorization or instrument (*e.g.,* easement, lease, license, or permit) BLM issues under Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761 *et seq.,* and those authorizations and instruments BLM and its predecessors issued for like purposes before October 21, 1976, under then existing statutory authority. It does not include authorizations issued under the Mineral Leasing Act (30 U.S.C. 185).

Hazard tree, for purposes of vegetation management for a powerline facility and when used in section 2805.22 of this part, means any tree, brush, shrub, other plant, or part thereof, hereinafter ''vegetation'' (whether located on public lands inside or outside the linear boundary of the right-of-way for the powerline facility), that has been designated, prior to failure, by a certified or licensed arborist or forester under the supervision of the Bureau of Land Management or the right-of-way holder to be:

(i) Dead; likely to die or fail before the next routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; and

(ii) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the minimum vegetation clearance distance as determined in accordance with applicable reliability and safety standards and as identified in the right-of-way for the powerline facility and the associated approved operating plan or agreement.

Hazardous material means:

(i) Any substance or material defined as hazardous, a pollutant, or a contaminant under CERCLA at 42 U.S.C. 9601(14) and (33);

(ii) Any regulated substance contained in or released from underground storage tanks, as defined by the Resource Conservation and Recovery Act at 42 U.S.C. 6991;

(iii) Oil, as defined by the Clean Water Act at 33 U.S.C. 1321(a) and the Oil Pollution Act at 33 U.S.C. 2701(23); or

(iv) Other substances applicable Federal, state, tribal, or local law define and regulate as ''hazardous.''

Holder means any entity with a BLM right-of-way authorization.

Maintenance when the term is used in relation to vegetation management for a powerline facility means:

(i) With respect to routine maintenance, the repair or replacement of any component of a powerline facility due to ordinary wear and tear, such as repair of broken strands of conductors and overhead ground wire; replacement of hardware (*e.g.,* insulator assembly) and accessories; maintenance of counterpoise, vibration dampers, and grading rings; scheduled replacement of decayed and deteriorated wood poles; and aerial or ground patrols to perform observations, conduct inspections, correct problems, and document conditions to provide for operation in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement;

(ii) With respect to non-routine maintenance, the realigning, upgrading, rebuilding, or replacing an entire powerline facility or any segment thereof, including reconductoring, as identified in an approved operating plan or agreement; and

(ii) With respect to maintenance to address emergency conditions, the immediate repair or replacement of any component of a powerline facility that is necessary to prevent imminent loss, or to redress the loss, of electric service due to equipment failure in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

Management overhead costs means Federal expenditures associated with a particular Federal agency's directorate. The BLM's directorate includes all State Directors and the entire Washington Office staff, except where a State Director or Washington Office staff member is required to perform work on a specific right-of-way case.

Maximum operating sag means the theoretical position of a powerline facility conductor (wire) when operating at 100 degrees Celsius, which must be accounted for when determining minimum vegetation clearance distance.

Megawatt (MW) capacity fee means the fee paid in addition to the acreage rent for solar and wind energy development grants and leases. The MW capacity fee is the approved MW capacity of the solar or wind energy grant or lease multiplied by the appropriate MW rate. A grant or lease may provide for stages of development, and the grantee or lessee will be charged a fee for each stage by multiplying the MW rate by the approved MW capacity for the stage of the project.

Megawatt rate means the price of each MW of capacity for various solar and wind energy technologies as determined by the MW rate formula. Current MW rates are found on the BLM's MW rate schedule, which can be obtained at any BLM office or at *http://www.blm.gov.* The MW rate is calculated by multiplying the total hours per year by the net capacity factor, by the MW hour (MWh) price, and by the rate of return, where:

(i) *Net capacity factor* means the average operational time divided by the average potential operational time of a solar or wind energy development, multiplied by the current technology efficiency rates. The BLM establishes net capacity factors for different technology types but may determine another net capacity factor to be more appropriate, on a case-by-case or regional basis, to reflect changes in technology, such as a solar or wind project that employs energy storage technologies, or if a grant or lease holder or applicant is able to demonstrate that another net capacity factor is appropriate for a particular project or region. The net capacity factor for each technology type is:

(A) Photovoltaic (PV)—20 percent;

(B) Concentrated photovoltaic (CPV) and concentrated solar power (CSP)—25 percent;

(C) CSP with storage capacity of 3 hours or more—30 percent; and

(D) Wind energy—35 percent;

(ii) *Megawatt hour (MWh) price* means the 5 calendar-year average of the annual weighted average wholesale prices per MWh for the major trading hubs serving the 11 western States of the continental United States (U.S.);

(iii) *Rate of return* means the relationship of income (to the property owner) to revenue generated from authorized solar and wind energy development facilities based on the 10-year average of the 20-year U.S. Treasury bond yield rounded to the nearest one-tenth percent; and

(iv) *Hours per year* means the total number of hours in a year, which, for purposes of this part, means 8,760 hours.

Minimum vegetation clearance distance (MVCD) means the calculated distance (stated in feet or meters) that is used to prevent flashover between conductors and vegetation for various altitudes and operating voltages. The MVCD is measured from a conductor's maximum operating sag to vegetation on public lands within the linear right-of-way for a powerline facility and on public lands adjacent to either side of the linear right-of-way for a powerline facility for purposes of felling or pruning hazard trees, which the right-of-way holder uses to determine whether vegetation poses a system reliability hazard to the powerline facility.

Monetary value of the rights and privileges you seek means the objective value of the right-of-way or what the right-of-way grant is worth in financial terms to the applicant.

Monitoring activities means those activities the Federal Government performs to ensure compliance with a right-of-way grant, including administrative actions, such as assignments, amendments, or renewals.

(i) For Monitoring Categories 1 through 4, monitoring activities include inspecting construction, operation, maintenance, and termination of permanent or temporary facilities and protection and rehabilitation activities up to the time the holder completes rehabilitation of the right-of-way, and the BLM approves it;

(ii) For Monitoring Category 5 (Master Agreements), monitoring activities include those actions or activities agreed to in the Master Agreement; and

(iii) For Monitoring Category 6, monitoring activities include those actions or activities agreed to between the BLM and the applicant.

Operating plan or agreement means a plan or agreement prepared by the right-of-way holder, approved by the authorized officer, and incorporated by reference into the corresponding right-of-way that provides for long-term, cost-effective, efficient, and timely inspection, operation, maintenance, and vegetation management of the facility or facilities on public lands within the linear right-of-way and on public lands adjacent to either side of the linear right-of-way to fell or prune hazard trees and to construct, reconstruct, and maintain access roads and trails, to enhance electric reliability, promote public safety, and avoid fire hazards.

Operations and maintenance means activities conducted by a ROW holder to manage facilities and vegetation within and adjacent to the ROW boundary.

Performance and reclamation bond means the document provided by the holder of a right-of-way grant or lease that provides the appropriate financial guarantees, including cash, to cover potential liabilities or specific requirements identified by the BLM for the construction, operation, decommissioning, and reclamation of an authorized right-of-way on public lands.

(i) *Acceptable bond instruments.* The BLM will accept cash, cashier's or certified check, certificate or book entry deposits, negotiable U.S. Treasury securities, and surety bonds from the approved list of sureties (U.S. Treasury Circular 570) payable to the BLM. Irrevocable letters of credit payable to the BLM and issued by banks or financial institutions organized or authorized to transact business in the United States are also acceptable bond instruments. An insurance policy can also qualify as an acceptable bond instrument, provided that the BLM is a named beneficiary of the policy, and the BLM determines that the insurance policy will guarantee performance of financial obligations and was issued by an insurance carrier that has the authority to issue policies in the applicable jurisdiction and whose insurance operations are organized or authorized to transact business in the United States.

(ii) *Unacceptable bond instruments.* The BLM will not accept a corporate guarantee as an acceptable form of bond instrument.

Powerline facility means one or more electric distribution or transmission lines authorized by a right-of-way, and all appurtenances to those lines supporting conductors of one or more electric circuits of any voltage for the transmission of electric energy, overhead ground wires, and communications equipment that is owned by the right-of-way holder; that solely supports operation and maintenance of the electric distribution or transmission lines; and that is not leased to other parties for communications uses that serve other purposes.

Processing activities means those actions or activities the Federal Government undertakes to evaluate an application for a right-of-way grant, including administrative actions, such as assignments, amendments, or renewals. It also includes preparation of an appropriate environmental document and compliance with other legal requirements in evaluating an application.

(i) For Processing Categories 1 through 4, processing activities means preliminary application reviews, application processing and administrative actions related to the right-of-way or temporary use permit;

(ii) For Processing Category 5 (Master Agreements), processing activities means those actions or activities agreed to in the Master Agreement; and

(iii) For Processing Category 6, processing activities means those actions or activities agreed to between the BLM and the applicant.

Public lands means any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through BLM without regard to how the United States acquired ownership, except lands:

(i) Located on the Outer Continental Shelf; and

(ii) Held for the benefit of Indians, Aleuts, and Eskimos.

Reasonable costs has the meaning found at section 304(b) of the Act.

Reclamation cost estimate (RCE) means the estimate of costs to restore the land to a condition that will support pre-disturbance land uses. This includes the cost to remove all improvements made under the right-of-way authorization, return the land to approximate original contour, and establish a sustainable vegetative community, as required by the BLM. The RCE will be used to establish the appropriate amount for financial guarantees of land uses on the public lands, including those uses authorized by right-of-way grants or leases issued under this part.

Release has the meaning found at 42 U.S.C. 9601(22) of CERCLA.

Right-of-way means the public lands that the BLM authorizes a holder to use or occupy under a particular grant or lease.

Screening criteria for solar and wind energy development refers to the policies and procedures that the BLM uses to prioritize how it processes solar and wind energy development right-of-way applications to facilitate the environmentally responsible

development of such facilities through the consideration of resource conflicts, land use plans, and applicable statutory and regulatory requirements. Applications for projects with lesser resource conflicts are anticipated to be less costly and time-consuming for the BLM to process and will be prioritized over those with greater resource conflicts.

Short-term right-of-way grant means any grant issued for a term of 3 years or less for such uses as storage sites, construction areas, and site testing and monitoring activities, including site characterization studies and environmental monitoring.

Subleasing means allowing another party or parties to use your facility for the purposes specified in your authorization, for which use you may charge fees. The BLM may permit subleasing under the requirements of 43 CFR 2805.14 and 2865.14.

Substantial deviation means a change in the authorized location or use that requires-construction or use outside the boundaries of the right-of-way, or any change from, or modification of, the authorized use. The BLM may determine that there has been a substantial deviation in some of the following circumstances: When a right-of-way holder adds overhead or underground lines, pipelines, structures, or other facilities within the right-of-way not expressly included in the current grant. Maintenance actions or safety-related improvements within an existing right-of-way, including vegetation management, are not considered a substantial deviation. Activities undertaken to reasonably prevent and suppress wildfires on or adjacent to the right-of-way do not constitute a substantial deviation.

Third party means any person or entity other than BLM, the applicant, or the holder of a right-of-way authorization.

Tramway means a system for carrying passengers, logs, or other material using traveling carriages or cars suspended from an overhead cable or cables supported by a series of towers, hangers, tailhold anchors, guyline trees, etc.

Transportation and utility corridor means a parcel of land identified through a land use planning process as being a preferred location for existing and future linear rights-of-way and facilities. The corridor may be suitable to accommodate more than one right-of-way use or facility, provided that the uses are compatible with one another and the corridor designation.

Vegetation management means:

(i) *Emergency vegetation management*—unplanned felling and pruning of vegetation on public lands within the linear right-of-way for a powerline facility and unplanned felling and pruning of hazard trees on abutting public lands that have contacted or present an imminent danger of contacting the powerline facility to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard; and

(ii) *Non-emergency (routine) vegetation management*—planned actions as described in an operating plan or agreement periodically taken to fell or prune vegetation on public lands within the linear right-of-way for a powerline facility and on abutting public lands to fell or prune hazard trees to ensure normal powerline facility operations and to prevent wildfire in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

Waived from rent means a discretionary decision by the BLM to reduce the rent. Waivers may result in a reduction in rent or no rent at all.

Zone means a geographic grouping necessary for linear right-of-way rent assessment purposes, covering all lands in the contiguous United States.

§ 2801.9 [Amended]

■ 4. Amend § 2801.9 by removing paragraph (a)(5) and redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(5) and (a)(6).

Subpart 2802—Lands Available for FLPMA Grants

■ 5. Amend § 2802.10 by revising paragraph (c) to read as follows:

§ 2802.10 What lands are available for grants?

* * * * *

(c) You should contact the BLM to:

(1) Determine the appropriate BLM office with which to coordinate;

(2) Determine whether or not the land you want to use is available for that use; and

(3) Begin discussions about any application(s) you may need to file.

Subpart 2803—Qualifications for Holding FLPMA Grants

■ 6. Revise § 2803.11 to read as follows:

§ 2803.11 Can another person act on my behalf?

Another person may act on your behalf if you have authorized that person to do so under the laws of the State where the right-of-way is or will be located.

(a) If you intend to designate another person or entity to act on your behalf or operate as your third-party agent, you must first:

(1) Notify the BLM office having jurisdiction over your grant in writing of your intention and provide a copy of the Power of Attorney, if one exists; and

(2) Provide and then maintain the current contact information for the intended agent.

(b) If you designate an agent or third-party to act on your behalf after you have been issued a grant, you are still responsible for ensuring the terms and conditions of the grant are followed.

■ 7. Amend § 2803.12 by revising the section heading and paragraph (a) to read as follows:

§ 2803.12 What happens to my grant if I die?

(a) If a grant holder dies, any inheritable interest in a grant will be distributed under State law.

* * * * *

Subpart 2804—Applying for FLPMA Grants

■ 8. Amend § 2804.12 by revising paragraphs (a) introductory text and (a)(4) to read as follows:

§ 2804.12 What must I do when submitting my application?

(a) File your application on Standard Form 299, available from any BLM office or at *https://www.blm.gov,* and fill in the required information. The application must include the applicant's original signature or meet the BLM standards for electronic commerce. Your complete application must include the following:

* * * * *

(4) A map of the project showing its proposed location and existing facilities adjacent to the proposal, and Geographic Information Systems (GIS) shapefiles, or equivalent format, when requested by the BLM;

* * * * *

■ 9. Revise § 2804.14 to read as follows:

§ 2804.14 What are the fee categories for cost recovery?

(a) Unless your fees are waived under § 2804.16, you must pay cost recovery fees for the reasonable costs associated with your application and grant. Subject to applicable laws and regulations, if your application involves Federal agencies other than the BLM, your fee may also include the reasonable costs estimated to be incurred by those Federal agencies. Instead of paying the BLM a fee for the reasonable costs incurred by other Federal agencies in processing your application, you may pay other Federal agencies directly. The

fees for Categories 1 through 4 (see paragraph (b) of this section) are one-time fees and are not refundable. Reasonable costs are those costs defined in Section 304(b) of FLPMA (43 U.S.C. 1734(b)). The fees are categorized based on an estimate of the amount of time that the Federal Government will expend to process your application, issue a decision granting or denying the application, and monitor that land use authorization.

(b) The BLM bases cost recovery fees on categories. The BLM will update the fee schedule for Categories 1 through 4 each calendar year, based on the previous year's change in the IPD–GDP, as measured second quarter to second quarter rounded to the nearest dollar. The BLM will update Category 5 fees, which may include preliminary application review, processing, and monitoring, as specified in the applicable Master Agreement. Category 6 fees are for situations when a right-of-way activity will require more than 64 hours, or when an environmental impact statement (EIS) is required and may include preliminary application review costs. The cost recovery categories and the estimated range of Federal work hours for each category are:

TABLE 1 TO PARAGRAPH (b)—COST RECOVERY CATEGORIES

FLPMA right-of-way cost recovery category descriptions	Federal work hours involved
Category 1. Processing and monitoring associated with an application or existing grant ...	Estimated Federal work hours are ≤8.
Category 2. Processing and monitoring associated with an application or existing grant ...	Estimated Federal work hours are >8 ≤24.
Category 3. Processing and monitoring associated with an application or existing grant ...	Estimated Federal work hours are >24 ≤40.
Category 4. Processing and monitoring associated with an application or existing grant ...	Estimated Federal work hours are >40 ≤64.
Category 5. Master Agreements *	Varies, depending on the agreement.
Category 6. Processing and monitoring associated with an application or existing grant, including preliminary-application reviews *.	Estimated Federal work hours are >64.

* Preliminary application review costs are those expenses related to meetings held between a Federal agency and the applicant to discuss a right-of-way application. These reviews are required only when an application is for a wind or solar right-of-way but are encouraged for other right-of-way application filings. A Master Agreement may include preliminary application review costs.

(c) You may obtain a copy of the current year's cost recovery fee schedule at *https://www.blm.gov,* by contacting your local BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Director (HQ–350), Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240.

(d) After an initial review of your application, the BLM will notify you of the cost recovery category into which your application fits. You must then submit to the BLM the appropriate payment for that category before the BLM will begin processing your application. Your signature on a cost recovery Master Agreement constitutes your agreement with the cost recovery category decision. If you disagree with the category that the BLM has determined for your application, you may appeal the decision under § 2801.10. For Category 5 and 6 applications or grants, see §§ 2804.17, 2804.18, and 2804.19. If you paid the cost recovery fee and you appeal a Category 1 through 4 or Category 6 determination, the BLM will work on your application or grant while the appeal is pending. If the Interior Board of Land Appeals (IBLA) finds in your favor, you will receive a refund or an adjustment of your cost recovery fee.

(e) In processing your application, the BLM may determine at any time that the application requires preparing an EIS. If this occurs, the BLM will send you a decision changing your cost recovery category to Category 6. You may appeal this decision under § 2801.10.

(f) To expedite processing of your application, you may notify the BLM in writing that you are waiving application of the factors identified in §§ 2804.20(a) and 2804.21 to determine reasonable costs and are electing to pay the actual costs incurred by the BLM in processing your application and monitoring your grant.

■ 10. Amend § 2804.15 by revising the section heading to read as follows:

§ 2804.15 When does the BLM reevaluate the cost recovery fees?

* * * * *

■ 11. Revise § 2804.16 to read as follows:

§ 2804.16 When will the BLM waive cost recovery fees?

(a) The BLM may waive your cost recovery fees if:

(1) You are a State or local government, or an agency of such a government, and the BLM issues the grant for governmental purposes benefitting the general public. However, if you collect revenue from charges you levy on customers for services similar to those of a profit-making corporation or business, or you assess similar fees to the United States for similar purposes, cost recovery fees will not be waived;

(2) Your application under this subpart is associated with a cost-share road or reciprocal right-of-way agreement; or

(3) You are a Federal agency, and your cost recovery category determination is Category 1 to 4.

(b) The BLM will not waive your cost recovery fees if you are in trespass.

■ 12. Amend § 2804.17 by revising the section heading and paragraph (a) to read as follows:

§ 2804.17 What is a Master Agreement (Cost Recovery Category 5) and what information must I provide to the BLM when I request one?

(a) A Master Agreement (Cost Recovery Category 5) is a written agreement covering processing and monitoring fees (see § 2804.14) negotiated between the BLM and you that involves multiple BLM grant approvals and/or monitoring scenarios for projects within defined geographic areas or for a specific common activity for many projects.

* * * * *

■ 13. Revise and republish § 2804.18 to read as follows:

§ 2804.18 What provisions do Master Agreements contain and what are their limitations?

(a) A Master Agreement:

(1) Specifies that you must comply with all applicable laws and regulations;

(2) Describes the work you will do and the work the BLM will do to complete right-of-way activities;

(3) Describes the method of periodic billing, payment, and auditing;

(4) Describes the processes, studies, or evaluations you will pay for;

(5) Explains how the BLM will monitor a grant and how the BLM will receive payment for this work;

(6) Describes existing agreements between the BLM and other Federal agencies for cost reimbursement;

(7) Contains provisions allowing for periodic review and updating, if required;

(8) Contains specific conditions for terminating the Agreement;

(9) May be prepared so that it includes previously granted rights-of-way held by the right-of-way holder; and

(10) Contains any other provisions BLM considers necessary.

(b) BLM will not enter into any Agreement that is not in the public interest.

(c) If you sign a Master Agreement, you waive your right to request a reduction of cost recovery fees.

■ 14. Amend § 2804.19 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 2804.19 How will the BLM manage my Category 6 project?

(a) For Category 6 applications, you and the BLM must enter into a written agreement that describes how the BLM will process your application and monitor your grant. The BLM may require that the final agreement contain a work plan and a financial plan, and a description of any existing agreements you have with other Federal agencies for cost reimbursement associated with your application or grant.

(b) In processing your application, the BLM will:

(1) Determine the issues subject to analysis under NEPA;

(2) Prepare a preliminary work plan, if applicable;

(3) Develop a preliminary financial plan, if applicable, which estimates the reasonable costs of processing your application and monitoring your project;

(4) Collect, in advance and at the BLM's discretion, a deposit for your Category 6 project to initiate processing your application while all of the plans and agreements are being completed;

(5) Discuss with you:

(i) The preliminary plans and data;

(ii) The availability of funds and personnel;

(iii) Your options for the timing of processing and monitoring fee payments; and

(iv) Financial information you must submit; and

(6) Complete final scoping and develop final work and financial plans that reflect any work you have agreed to do. The BLM will also present you with the final estimate of the reasonable costs for which you must reimburse the BLM, including the cost for monitoring the project, using the factors in §§ 2804.20 and 2804.21 of this subpart.

* * * * *

■ 15. Amend § 2804.20 by revising the section heading, introductory text, and paragraph (a) introductory text to read as follows:

§ 2804.20 How does the BLM determine reasonable costs for Category 6 right-of-way activities?

The BLM will consider the factors in paragraph (a) of this section and § 2804.21 of this subpart to determine reasonable costs. Submit to the BLM field office having jurisdiction over the lands covered by your application a written analysis of those factors applicable to your project unless you agree in writing to waive consideration of those factors and elect to pay actual costs (see § 2804.14(f) of this subpart). Submitting your analysis with the application will expedite its handling. The BLM may require you to submit additional information in support of your position. The BLM will continue to work on your application while you are responding to our request, as long as a deposit has been received by the BLM as provided in § 2804.19(a)(4).

(a) *FLPMA factors.* If the BLM determines that a Category 6 cost recovery fee is appropriate for your project, the BLM will apply the following factors as set forth in Section 304(b) of FLPMA, 43 U.S.C. 1734(b), to determine the amount you owe:

* * * * *

■ 16. Amend § 2804.21 by revising the section heading and paragraphs (a) introductory text, (a)(2), (a)(7), and (b) to read as follows:

§ 2804.21 What other factors will the BLM consider in determining cost recovery fees?

(a) *Other factors.* If you include this information in your application, in arriving at your cost recovery fee in any category, the BLM will consider whether:

* * * * *

(2) The costs of performing any or all right-of-way activities grossly exceed the costs of constructing the project;

* * * * *

(7) For whatever other reason, such as public benefits or public services provided, cost recovery fees would be inconsistent with prudent and appropriate management of public lands and with your equitable interests or the equitable interests of the United States.

(b) *Fee determination.* With your written application, submit your analysis of how each of the factors, as applicable, in paragraph (a) of this section, pertains to your application. The BLM will notify you in writing of the fee determination. You may appeal this decision under § 2801.10 of this part.

■ 17. Amend § 2804.25 by:

■ a. Revising the section heading and paragraph (a)(1);

■ b. Redesignating paragraph (c)(2) as (c)(3) and adding a new paragraph (c)(2); and

■ c. Revising paragraph (d).

The revisions and addition read as follows:

§ 2804.25 How will the BLM process my application?

(a) * * *

(1) Identify your cost recovery fee described at § 2804.14, unless you are exempt from paying fees; and

* * * * *

(c) * * *

(2) For all powerline rights-of-way, you must submit an operating plan or agreement, unless you have an approved plan that meets the requirements of § 2805.21; or

* * * * *

(d) *Customer service standard.* The BLM will process your complete application as follows:

TABLE 1 TO PARAGRAPH (d)

Processing category	Processing time	Conditions
1–4	60 calendar days	If processing your application will take longer than 60 calendar days, the BLM will notify you in writing of this fact prior to the 30th calendar day and inform you of when you can expect a final decision on your application.
5	As specified in the Master Agreement.	The BLM will process applications as specified in the Master Agreement.

TABLE 1 TO PARAGRAPH (d)—Continued

Processing category	Processing time	Conditions
6	Over 60 calendar days ..	The BLM will notify you in writing within the initial 60-day processing period of the estimated processing time.

* * * * *

■ 18. Amend § 2804.26 by adding paragraph (a)(9) to read as follows:

§ 2804.26 Under what circumstances may the BLM deny my application?

(a) * * *

(9) You do not comply with a deficiency notice (see § 2804.25(c)) within the time specified in the notice or with a BLM request for additional information needed to process your application.

* * * * *

■ 19. Revise § 2804.27 to read as follows:

§ 2804.27 What fees must I pay if the BLM denies my application or if I withdraw my application or relinquish my grant?

If the BLM denies or you withdraw your application, or you relinquish your grant, you owe the current fees for the applicable cost recovery category as set forth at § 2804.14, unless you have a Category 5 or 6 application, in which case, the following conditions apply:

(a) If the BLM denies your Category 5 or 6 right-of-way application, you are liable for all reasonable costs that the United States incurred in processing it. The money you have not paid is due within 30 calendar days after receiving a bill for the amount due;

(b) You may withdraw your Category 5 or 6 application in writing before the BLM issues a grant. If you do so, you are liable for all reasonable processing costs the United States has incurred up to the time you withdraw the application and for the reasonable costs of terminating your application. Any money you have not paid is due within 30 calendar days after receiving a bill for the amount due. Any money you paid that is not used to cover costs the United States incurred as a result of your application will be refunded to you; and

(c) You may relinquish your grant in writing. If you do so, you are liable for all reasonable costs the United States has incurred up to the time you relinquish the grant and for the reasonable costs of closing your grant. Any cost recovery fees you have not previously paid are due within 30 calendar days after receiving a bill for the amount due. The BLM will refund any cost recovery fees you paid in Categories 5 or 6 that were not used to cover costs the United States incurred as a result of your grant.

■ 20. Amend subpart 2805 by revising the heading to read as follows:

Subpart 2805—Terms and Conditions of Grants

■ 21. Amend § 2805.11 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and adding a new paragraph (b) to read as follows:

§ 2805.11 What does a grant contain?

* * * * *

(b) *Right of ingress and egress to a right-of-way.* To facilitate the use of a right-of-way, the authorized officer must include in the grant rights of ingress and egress, as may be necessary for access to and from the right-of-way. Access routes must be identified in the grant and may include existing roads or other infrastructure.

* * * * *

■ 22. Amend § 2805.12 by revising the section heading, and paragraphs (a)(4), (a)(8)(vi), (c)(5), and (d)(3) to read as follows:

§ 2805.12 With what terms and conditions must I comply?

(a) * * *

(4) Do everything reasonable to prevent and suppress wildfires on or adjacent to the right-of-way;

* * * * *

(8) * * *

(vi) Ensure that you construct, operate, maintain, and decommission the facilities authorized by the right-of-way in a manner consistent with the grant, including the approved POD, if one was required, or any approved operating plan or agreement;

* * * * *

(c) * * *

(5) Repair and place into service, or remove from the site, damaged or abandoned facilities that:

(i) Have been inoperative for any continuous period of 3 months and present a hazard to the public lands; or

(ii) Present a hazard to human health or safety. You must take appropriate remedial action within 30 days after receipt of a written noncompliance notice unless you have been provided an extension of time by the BLM. Alternatively, you must show good cause for any delays in repairs, use, or removal; estimate when corrective action will be completed; provide evidence of diligent operation of the facilities; and submit a written request for an extension of the 30-day deadline. If you do not comply with this provision, the BLM may suspend or terminate the authorization under §§ 2807.17 through 2807.19; and

* * * * *

(d) * * *

(3) You must repair and place into service, or remove from the site, damaged or abandoned facilities that:

(i) Have been inoperative for any continuous period of 3 months and present a hazard to the public lands; or

(ii) Present a hazard to human health or safety; and

* * * * *

■ 23. Amend § 2805.14 by revising the section heading and paragraphs (b), (d), and (e) to read as follows:

§ 2805.14 What rights does a grant provide?

* * * * *

(b) If your authorization specifically allows for subleasing, you may allow other parties to use your facility for the purposes specified in your authorization and you may charge fees for such use. If your authorization does not specifically allow subleasing, you may not let anyone else use your facility and you may not charge for its use unless the BLM authorizes or requires it in writing;

* * * * *

(d) Do trimming, pruning, and removal of vegetation to maintain the right-of-way or facility and protect public health and safety;

(e) Use common varieties of stone and soil which are necessarily removed during construction of the project in constructing the project within the authorized right-of-way, or use vegetation removed during maintenance of the right-of-way, so long as any necessary authorization to remove or use such materials has been obtained from the BLM pursuant to applicable laws;

* * * * *

■ 24. Amend § 2805.15 by revising paragraphs (a) and (e) and adding paragraphs (f) and (g) to read as follows:

§ 2805.15 What rights does the United States retain?

* * * * *

(a) Access the lands and enter the facilities described in the authorization. The BLM will give you reasonable notice before it enters any facility on the right-of-way;

* * * * *

(e) Change the terms and conditions of your grant as a result of changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment. After a grant is signed by the BLM, any modification of the terms and conditions generally requires the BLM to issue a new or amended grant;

(f) Terminate your authorization for non-compliance; and

(g) Require you to provide applicable financial documents and supporting documents including, but not limited to, contractual and subleasing agreements.

■ 25. Revise § 2805.16 to read as follows:

§ 2805.16 If I hold a grant, what cost recovery fees must I pay?

(a) You must pay a fee to the BLM for the reasonable costs the Federal Government incurs in processing, inspecting, and monitoring the construction, operation, maintenance, and termination of the project and protection and rehabilitation of the public lands that your grant covers. Instead of paying the BLM a fee for the reasonable costs incurred by other Federal agencies in processing or monitoring your grant, you may pay the other Federal agencies directly for such costs. The BLM will annually adjust the Category 1 through 4 cost recovery fees in the manner described at § 2804.14(b). The BLM will update Category 5 cost recovery fees as specified in the applicable Master Agreement. Category 6 cost recovery fees are addressed at § 2805.17(c). The BLM categorizes the cost recovery fees based on the estimated number of work hours necessary to process and monitor your grant. Category 1 through 4 cost recovery fees are not refundable. The Federal work hours for each category and their descriptions are found at § 2804.14(b).

(b) The BLM will update the cost recovery fee schedule for Categories 1 through 4 each calendar year, based on the previous year's change in the IPD–GDP, as measured second quarter to second quarter and rounded to the nearest dollar. The BLM will update Category 5 cost recovery fees as specified in the applicable Master Agreement.

(c) You may obtain a copy of the current year's cost recovery fee schedule from any BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Director (HQ–350), Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240. The BLM also posts the current cost recovery fee schedule at *https://www.blm.gov.*

■ 26. Add §§ 2805.21 and 2805.22 to read as follows:

§ 2805.21 What is an operating plan or agreement for electric transmission and distribution and other rights-of-way?

(a) *Operating plans or agreements.* An operating plan or agreement:

(1) Is required for all new, renewed, and amended powerline rights-of-way (see section 2804.25(c)(2)); and

(2) May be submitted on a voluntary basis by:

(i) Holders of powerline rights-of-way not subject to Section (a)(1); and

(ii) Holders of rights-of-way other than powerline rights-of-way.

(b) *Electric Reliability Organization (ERO) standards:* Holders subject to mandatory reliability standards established by the ERO (or superseding standards) may use those standards as part of the operating plan or agreement.

(c) *Plan requirements:* An operating plan or agreement must:

(1) Identify the applicable transmission or distribution facilities to be maintained;

(2) Take into account the holder's own operations and maintenance plans for the applicable right-of-way;

(3) Include vegetation management, inspection, operation and maintenance, and fire prevention plans, including methods to comply with applicable law, such as fire safety requirements and reliability standards established by the ERO;

(4) Include schedules for:

(i) The holder to notify the BLM about routine and major maintenance;

(ii) The holder to request approval from the BLM to undertake routine and major maintenance; and

(iii) The BLM to respond to a request by a holder under paragraph (c)(4)(ii) of this section;

(5) Describe processes for:

(i) Identifying changes in conditions; and

(ii) Modifying the approved operating plan or agreement, if necessary; and

(6) Provide for the disposition of cut trees and branches, including plans for sale of forest products.

(d) *Plan approval.* The BLM will, to the extent practicable, review and decide whether to approve an operating plan or agreement within 120 days.

(e) *Operating plan or agreement modifications:* The BLM may notify a holder that changed conditions warrant a modification to the operating plan or agreement.

(1) The BLM will provide advance reasonable notice that the holder must submit an operating plan or agreement modification.

(2) The holder must submit a proposed operating plan or agreement modification to the BLM to address the changed condition identified by the BLM.

(3) The BLM will, to the extent practicable, review and approve modifications in the same 120-day timeframe that applies to the initial submission of an operating plan or agreement.

(4) The holder may continue to implement any element of an approved operating plan or agreement that does not directly and adversely affect the condition precipitating the need for modification.

(f) *Agreements in lieu of an operating plan:* Certain holders meeting the requirements described in paragraph (g) of this section may enter into an agreement with the BLM in lieu of an operating plan.

(g) *Eligibility to enter into an agreement:* Holders of a right-of-way for an electric transmission or distribution facility are eligible to enter into an agreement with the BLM if they:

(1) Are not subject to the mandatory reliability standards established by the ERO; or

(2) Sold less than or equal to 1,000,000 megawatt hours of electric energy for purposes other than resale during each of the 3 calendar years prior to submitting a request to enter into an agreement to the BLM.

§ 2805.22 Special provisions for vegetation management for electric transmission and distribution rights-of-way.

(a) *Emergency Conditions.* If vegetation or hazard trees have contacted or present an imminent danger of contacting an electric transmission or distribution line from within or adjacent to an electric transmission or distribution right-of-way, the electric transmission or distribution line holder:

(1) May prune or remove the vegetation or hazard tree to avoid the disruption of electric service or to eliminate immediate fire and safety hazards; and

(2) Shall notify the authorized officer not later than 1 day after the date of the response to emergency conditions.

(b) *Non-Emergency Conditions.* For non-emergency conditions, the holder of a right-of-way for an electric transmission or distribution facility must conduct vegetation management activities in accordance with the terms and conditions of the grant, §§ 2805.12(a)(4) and 2805.14(d), and any approved operating plan or agreement.

(1) You must request approval from the BLM for a proposed activity if your plan:

(i) Requires you to seek specific approval for the proposed activity; or

(ii) Does not address the proposed activity. You may also need to amend your operating plan or agreement if you anticipate conducting this activity on a recurring basis.

(2) If the BLM does not timely respond to your request according to the schedule set forth in the approved operating plan or agreement, if your request pertains to vegetation management activities, including the removal of hazard trees or other wildfire risk reduction activities, and if the proposed action does not conflict with your approved operating plan or agreement, you may proceed with the proposed activity.

(c) *Wildfire prevention.* You must do everything reasonable to prevent and suppress wildfires on or adjacent to the right-of-way. Reasonable actions include:

(1) Pruning or removal of vegetation or hazard trees to prevent fire ignition from electric transmission and distribution facilities during emergency conditions or cyclic maintenance; and

(2) Cooperating with the BLM in its efforts to investigate, suppress, and respond to fires within and near the right-of-way.

Subpart 2806—Annual Rents and Payments

■ 27. Amend § 2806.13 by revising paragraph (e) and adding paragraph (h) to read as follows:

§ 2806.13 What happens if I do not pay rents and fees or if I pay the rents or fees late?

* * * * *

(e) Subject to applicable laws and regulations, the BLM will retroactively bill for uncollected or under-collected rent, fees, and late payments.

* * * * *

(h) You must pay rent even if you have not been sent or received a courtesy bill.

■ 28. Amend § 2806.14 by revising paragraph (a)(4) to read as follows.

§ 2806.14 Under what circumstances am I exempt from paying rent?

(a) * * *

(4) Electric or telephone facilities constructed on the right-of-way were financed in whole or in part, or eligible for financing, under the Rural Electrification Act of 1936, as amended (REA) (7 U.S.C. 901 *et seq.*) or are extensions of such facilities. You do not need to have sought financing from the Rural Utilities Service to qualify for this exemption. The BLM may require you to document the facility's eligibility for REA financing.

* * * * *

■ 29. Amend § 2806.15 by revising and republishing paragraph (b) and removing paragraph (c) to read as follows:

§ 2806.15 Under what circumstances may BLM waive or reduce my rent?

* * * * *

(b) A BLM State Director may, on a case-by-case basis, evaluate and approve any requests for waiver or reduction in the annual rent for grants if you show the BLM that:

(1) You are a non-profit organization, corporation, or association which is not controlled by, or is not a subsidiary of, a profit making corporation or business enterprise and the facility or project will provide a benefit or special service to the general public or to a program of the Secretary;

(2) You provide without charge, or at reduced rates, a valuable benefit to the public at large or to the programs of the Secretary of the Interior;

(3) Your grant describes your intended use of new and existing routes to access your right-of-way (see § 2805.11(b)). This paragraph does not apply to oil and gas leases issued under part 3100 of this chapter;

(4) Your grant involves a cost share road or a reciprocal right-of-way agreement not subject to subpart 2812 of this chapter. In these cases, the BLM will determine the rent based on the proportion of use; or

(5) Paying the full rent will cause you undue hardship and it is in the public interest to waive or reduce your rent. In your request for a waiver or rental reduction you must include a suggested alternative rental payment plan or timeframe within which you anticipate resuming full rental payments. The BLM may also require you to submit specific financial and technical data or other information that corrects or modifies the statement of financial capability required by § 2804.12(a)(5) of this part.

■ 30. Amend § 2806.20 by revising paragraph (c) to read as follows:

§ 2806.20 What is the rent for a linear right-of-way grant?

* * * * *

(c) You may obtain a copy of the current Per Acre Rent Schedule at *https://www.blm.gov,* from any BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240.

§§ 2806.30 through 2806.44 [Removed]

■ 31. Remove the undesignated heading ''Communication Site Rights-of-Way'' and

§§ 2806.30 through 2806.44.

■ 32. Amend § 2806.52 by adding a paragraph heading to paragraph (a)(3), and revising paragraphs (a)(6) and (b)(2) to read as follows:

§ 2806.52 Rents and fees for solar energy development grants.

* * * * *

(a) * * *

(3) *Basis of assignment.* * * *

* * * * *

(6) *Copies.* You may obtain a copy of the current per acre zone rates for solar energy development (solar energy acreage rent schedule) at *https://www.blm.gov,* from your local BLM state, district, or field office, or by writing: Attention to the National Renewable Energy Coordination Office, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240.

(b) * * *

(2) *MW rate schedule.* You may obtain a copy of the current MW rate schedule for solar energy development at *https://www.blm.gov,* from your local BLM state, district, or field office, or by writing: Attention to the National Renewable Energy Coordination Office, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240.

* * * * *

Subpart 2807—Grant Administration and Operation

■ 33. Amend § 2807.12 by redesignating paragraph (g) as paragraph (h) and adding a new paragraph (g) to read as follows:

§ 2807.12 If I hold a grant, for what am I liable?

* * * * *

(g) The BLM will not impose strict liability for damages or injuries resulting from:

(1) The BLM unreasonably withholding or delaying approval of an operating plan or agreement submitted under § 2805.21; or

(2) The BLM failing to adhere to an applicable schedule in an approved plan (see § 2805.21(d)).

* * * * *

■ 34. Amend § 2807.17 by revising paragraph (b) to read as follows:

§ 2807.17 Under what conditions may the BLM suspend or terminate my grant?

* * * * *

(b) A grant also terminates when:

(1) The grant contains a term or condition that has been met that requires the grant to terminate;

(2) BLM consents in writing to your request to relinquish the grant;

(3) A court terminates it or requires the BLM to terminate it; or

(4) It is required by law to terminate.

* * * * *

■ 35. Amend § 2807.20 by revising paragraphs (b) and (d) to read as follows:

§ 2807.20 When must I amend my application, seek an amendment of my grant, or obtain a new grant?

* * * * *

(b) The requirements to amend an application or grant are the same as those for a new application, including paying cost recovery fees and rent according to §§ 2804.14, 2805.16, and 2806.10.

* * * * *

(d) Grants issued prior to October 21, 1976:

(1) If there is a proposed substantial deviation in the location or use, or terms and conditions of your right-of-way grant, you must apply for a new grant consistent with the remainder of this section. The BLM may keep the old grant in effect for the portion of the right-of-way not amended and issue a new grant for the new use or location, or terms and conditions.

(2) If you wish to renew your grant, you must apply for a new grant.

(3) If the BLM has terminated your grant due to non-compliance with the terms and conditions of your grant, you must apply for a new grant.

(4) If the BLM approves your application for an amendment, the BLM will terminate your old grant and you will receive a new grant under 43 U.S.C. 1761 *et seq.* and the regulations in this part. The BLM may include the same terms and conditions in the new grant as were in the original grant as to annual rent, duration, and nature of interest if the BLM determines, based on current land use plans and other management decisions, that it is in the public interest to do so.

* * * * *

■ 36. Amend § 2807.22 by revising paragraph (f) and adding paragraph (h) to read as follows:

§ 2807.22 How do I renew my grant?

* * * * *

(f) If you make a timely and sufficient application for a renewal of your existing grant, in accordance with this section, and you are in conformance with applicable laws, regulations, and terms and conditions in your grant, the existing grant does not expire until the BLM has issued a decision to approve or deny the renewal application. Within 60 days of receiving an application for a renewal, the BLM will notify you in writing of its determination regarding the timeliness and sufficiency of your application. If the BLM determines that your application is timely and sufficient, the BLM's written notice will confirm that until the BLM issues a decision on your renewal application, your existing grant will remain valid, provided that you remain in compliance with applicable laws, regulations, and terms and conditions.

* * * * *

(h) If you do not submit your application under paragraphs (a) or (b) of this section at least 120 days prior to grant expiration, it is considered delinquent; the BLM will not be subject to the customer service standards in this section; and it will be processed only as the BLM has time and resources available.

Subpart 2808—Trespass

■ 37. Amend § 2808.10 by revising paragraph (a) to read as follows:

§ 2808.10 What is a trespass?

(a) Trespass is using, occupying, developing, or subleasing the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization. Trespass is a prohibited act.

* * * * *

■ 38. Add part 2860 to read as follows:

PART 2860—COMMUNICATIONS USES

Sec.

Authority: 43 U.S.C. 1733, 1740, 1763 and 1764.

Subpart 2861—General Information

§ 2861.1 What requirements of part 2800 apply to my grant?

Grants issued under this part must comply with the requirements of part 2800, except as otherwise described in this part.

§ 2861.2 What is the objective of the BLM's Communications Uses program?

It is the BLM's objective to authorize and administer communications uses under Title V of the Federal Land Policy and Management Act of 1976 and the regulations in this part to qualified individuals or business or governmental entities and to direct and control communications uses on public lands in a manner that:

(a) Protects the natural resources associated with public lands and adjacent lands, whether private or administered by a governmental entity;

(b) Facilitates the orderly development of communications uses on BLM-administered lands and provides for a safe and high-quality communications environment for the public;

(c) Prevents unnecessary or undue degradation to public lands;

(d) Collects fair market value for communications uses that occupy BLM-administered lands through the collection of annual rental fees;

(e) Promotes the expansion of communications uses in rural America and use of rights-of-way in common wherever practical, considering engineering and technological compatibility, national security, and land use plans; and

(f) Coordinates, to the fullest extent possible, all BLM actions under the regulations in this part with State and local governments, Tribes, interested individuals, and appropriate quasi-public entities.

§ 2861.5 What acronyms and terms are used in the regulations in this part?

In addition to the acronyms and terms listed in this section, the acronyms and terms listed in part 2800 of this chapter apply to this part. As used in this part:

RMA means the Ranally Metro Area Population Ranking as published in the most recent edition of the Rand McNally Commercial Atlas and Marketing Guide.

Annual inventory certification means a report that the holder of a grant submits to the BLM each year to report the uses within or on their facilities (see § 2866.31(c)).

Base rent means the dollar amount required from an authorization holder on BLM managed lands based on the communications uses with the highest value in the associated facility or facilities, as calculated according to the communications uses rent schedule. If a facility manager's or facility owner's scheduled rent is equal to the highest rent charged a tenant in the facility or facilities, then the facility manager's or facility owner's use determines the dollar amount of the base rent. Otherwise, the facility owner's, facility manager's, customer's, or tenant's use with the highest value, and which is not otherwise excluded from rent, determines the base rent.

Communications facility has the same meaning as *facility* under § 2801.5(b) of this chapter. *Communications site* means an area of public land designated for wireless communications uses that may be limited to a single communications facility, but most often encompasses more than one, and is identified by name, usually featuring a local prominent landmark.

Communications site management plans means implementation-level plans that provide direction to the users for the day-to-day operations of the communications site. *Communications uses* means any uses associated with the transmission of data, voice, or video, or any other transmission or reception uses authorized by 43 U.S.C. 1761(a)(5). Communications uses may occur in or on a communications facility or a linear facility, such as a telephone line or fiber optic cable line.

Communications uses rent schedule is a schedule of rents for the following types of communications uses, including related technologies, located in a facility associated with a particular grant. All use categories include ancillary communications equipment, such as internal microwave or internal one- or two-way radio, that are directly related to operating, maintaining, and monitoring the primary uses listed below. The Federal Communications Commission (FCC) may or may not license the primary uses. The type of use and community served, identified on an FCC license, if one has been issued, do not supersede either the definitions in this subpart or the procedures in § 2866.30 for calculating rent for communications facilities and uses located on public land:

(i) *Television broadcast* means a use that broadcasts UHF and VHF audio and video signals for general public reception. This category does not include low-power television (LPTV) or rebroadcast devices, such as translators, or transmitting devices, such as microwave relays serving broadcast translators;

(ii) *AM and FM radio broadcast* means a use that broadcasts amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception. This category does not include low-power FM radio; rebroadcast devices, such as translators; or boosters or microwave relays serving broadcast translators;

(iii) *Cable television* means a use that transmits video programming to multiple subscribers in a community over a wired or wireless network. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, or personal or internal antenna systems, such as private systems serving hotels and residences;

(iv) *Broadcast translator, low-power television, and low-power FM radio* means a use of translators, LPTV, or low-power FM radio (LPFM). Translators receive a television or FM radio broadcast signal and rebroadcast it on a different channel or frequency for local reception. In some cases, the translator relays the true signal to an amplifier or another translator. LPTV and LPFM are broadcast translators that originate programming. This category also includes translators associated with public telecommunication services;

(v) *Commercial mobile radio service (CMRS)* means commercial mobile radio uses that provide mobile communication service to individual customers. Examples of CMRS include: Community repeaters, trunked radio (specialized mobile radio), two-way radio voice dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment, and other two-way voice and paging services;

(vi) *Facility managers* are grant holders that lease building, tower, and related facility space to a variety of tenants and customers as part of the holder's business enterprise, but do not own or operate communication

equipment in the facility for their own uses;

(vii) *Cellular telephone* means a system of mobile or fixed communication devices that uses a combination of radio and telephone switching technology and provides public switched network services to fixed or mobile users, or both, within a defined geographic area. The system consists of one or more cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, or microwave communications link equipment. Examples include: Personal Communication Service, Enhanced Specialized Mobile Radio, Improved Mobile Telephone Service, Air-to-Ground, Offshore Radio Telephone Service, Cell Site Extenders, and Local Multipoint Distribution Service;

(viii) *Private mobile radio service (PMRS)* means uses supporting private mobile radio systems primarily for a single entity for mobile internal communications. PMRS service is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. Examples include: Private local radio dispatch, private paging services, and ancillary microwave communications equipment for controlling mobile facilities;

(ix) *Microwave* means communications uses that:

(A) Provide long-line intrastate and interstate public telephone, television, and data transmissions; or

(B) Support the primary business of pipeline and power companies, railroads, land resource management companies, or wireless internet service provider (ISP) companies;

(x) *Internet service provider (ISP)* refers to a holder who utilizes wireless technology to connect subscribers to the internet;

(xi) *Passive reflector* means various types of non-powered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and a terminal. A passive reflector commonly serves a microwave communication system. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power;

(xii) *Local exchange network* means radio service that provides basic telephone service, primarily to rural communities; and

(xiii) *Other communications uses* means private communications uses, such as amateur radio, personal/private receive-only antennas, natural resource and environmental monitoring equipment, and other small, low-power devices used to monitor or control remote activities.

Customer means an occupant who is paying a facility manager, facility owner, or tenant for using all or any part of the space in the facility, or for communication services, and is not selling communication services or broadcasting to others. The BLM considers persons or entities benefitting from private or internal communications uses located in a holder's facility as customers for purposes of calculating rent. Customer uses are not included in calculating the amount of rent owed by a facility owner, facility manager, or tenant, except as noted in §§ 2806.34(b)(4) of this chapter and 2866.42. Examples of customers include: Users of PMRS, users in the microwave category when the microwave use is limited to internal communications, and all users in the category of ''Other communications uses'' (see paragraph (xiii) of the definition of *communications uses rent schedule* in this section).

Duly filed application means an application which includes all the elements required by § 2864.25.

Facility means an improvement or structure, whether existing or planned, that is or would be owned and controlled by the authorization holder. For purposes of communications site rights-of-way, facility means the building, tower, cabinet, and related incidental structures or improvements authorized under the terms of the authorization.

Facility manager means a person or entity that leases space in a facility to communications users and:

(i) Holds a communication use grant;

(ii) Owns a communications facility on lands covered by that grant; and

(iii) Does not own or operate communications equipment in the facility for personal or commercial purposes.

Facility owner means a person or entity that may or may not lease space in a facility to communications users and:

(i) Holds a communications uses grant;

(ii) Owns a communications facility on lands covered by that grant; and

(iii) Owns and operates their own communications equipment in the facility for personal, Federal, or commercial purposes.

Grant means an authorization or instrument (*e.g.,* lease) the BLM issues under Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761 *et seq.,* and those authorizations and instruments the BLM and its predecessors issued for like purposes before October 21, 1976, under then existing statutory authority.

Occupant means an entity who uses any portion of a facility owned by a grant holder.

Site means an area, such as a mountaintop, where a holder locates one or more communication or other right-of-way facilities.

Tenant means an occupant who is paying a facility manager, facility owner, or other entity for occupying and using all or any part of a facility. A tenant operates communication equipment in the facility for profit by broadcasting to others or selling communication services. For purposes of calculating the amount of rent that the BLM charges, a tenant's use does not include:

(i) Private mobile radio or internal microwave use that is not being sold; or

(ii) A use in the category of ''Other Communications Uses'' (*see* paragraph (xiii) of the definition of *Communications uses rent schedule* in this section).

§ 2861.8 Severability.

If a court holds any provisions of the rules in this part or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances will not be affected.

§ 2861.9 When do I need a grant?

You must have an authorization under this part to use public lands for communications uses systems or facilities over, under, on, or through public lands. These include, but are not limited to systems for transmitting or receiving electronic signals and other means of communication by:

(a) Installing a facility that is not under a current valid authorization; or

(b) Installing a linear communications facility, such as fiber optic cable.

Subpart 2862—Lands Available for Grants

§ 2862.11 How does the BLM designate communications sites and establish communications site management plans?

(a) The BLM may determine the location and boundaries of communications sites. When establishing a communications site, the BLM coordinates with other Federal agencies, State, local, and Tribal governments, and the public to identify resource-related issues, concerns, and needs.

(b) When determining which lands may be suitable for communications sites, the BLM will consider all factors described in § 2802.11(b). Additional

factors the BLM will consider include, but are not limited to, access to the site, existing infrastructure, signal coverage, available space, and industry demand.

(c) The BLM may establish a communications site management plan to guide the development of communications uses at the site. The plans describe the types of communications uses that are permitted to operate at a communications site.

Subpart 2864—Applying for Grants

§ 2864.10 What should I do before I file my application?

In addition to the suggested actions listed in § 2804.10, before you file your application you should:

(a) Schedule a preliminary application review meeting with the appropriate personnel in the BLM field office having jurisdiction over the lands you seek to use. Preliminary application review meetings help you to plan your project, coordinate with the BLM, and ensure a smooth permitting process. During the preliminary application review meeting, the BLM can:

(1) Identify potential constraints;

(2) Determine whether the lands are located inside a communications site management plan area;

(3) Tentatively schedule the processing of your proposed application; and

(4) Inform you of your financial obligations, such as processing and monitoring costs and rents.

(b) Request a copy of the most recent communications site management plan for that site if one is available.

(c) Ensure you have all other necessary licenses, authorizations, or permits required for the operation of your facility.

§ 2864.12 What must I do when submitting my application?

(a) You must file your application on a hard copy of Standard Form 299, available from any BLM office or electronically at *http://www.blm.gov,* and fill in the required information as completely as possible. The application must include the applicant's original signature or meet the BLM standards for electronic commerce. Your complete application must include the following:

(1) All necessary information under § 2804.12 of this chapter;

(2) Federal Communications Commission (FCC) call sign, or license, for all licensed uses;

(3) Geographic Information Systems (GIS) shapefiles, or equivalent format;

(4) Draft engineering/construction drawings of your proposed facility;

(5) Technical data related to your project; and

(6) Draft communications use plan of development.

(b) The BLM may at any time during the application process request additional information relevant to the permitting of your proposal. You must submit this information before the BLM will continue processing your application.

§ 2864.24 Do I always have to use Standard Form 299 when submitting my application for a Communications Uses authorization?

You must file an application for communications uses using Standard Form 299.

§ 2864.25 How will the BLM process my Communications Uses application?

The BLM will process your communications uses application in accordance with the provisions in § 2804.25. The BLM will notify you in writing with an offer of an authorization or a denial of your application within 270 days of receiving a duly filed application.

§ 2864.26 Under what circumstances may the BLM deny my application?

In addition to the considerations listed in § 2804.26, the BLM may deny your application under this part if:

(a) The proposed use would interfere with previously authorized uses of public lands, including rights-of-way for communications uses;

(b) The proposed use presents a public health or safety issue; or

(c) The proposed use is not in conformance with the applicable resource management plan or communications site management plan.

§ 2864.35 How will the BLM prioritize my Communications Uses application?

The BLM will prioritize your application in a manner that assists in meeting the needs of underserved, rural, and Tribal communities and first responders to strengthen telecommunications infrastructure throughout the United States.

Subpart 2865—Terms and Conditions of Grants

§ 2865.14 What rights does a grant provide?

In addition to the rights listed in § 2805.14 of this chapter, the authorization provides to you the right to:

(a) Use the described lands to construct, operate, maintain, and terminate authorized facilities within the right-of-way for authorized purposes under the terms and conditions of your authorization;

(b) If your authorization specifically allows for subleasing, allow other parties to use your facility for the purposes specified in your authorization and charge fees for such use. If your authorization does not specifically authorize subleasing, you may not let anyone else use your facility and you may not charge for its use unless the BLM authorizes or requires it in writing;

(c) Allow others to utilize the lands or facilities if the authorization specifies; and

(d) Hold the grant for a term of 30 years, unless the BLM determines a shorter term is appropriate.

Subpart 2866—Annual Rents and Payments

General Provisions

§ 2866.14 Under what circumstances am I exempt from paying rent?

(a) You are exempt from rent under this part if:

(1) You are a Federal, State, or local governmental entity (except as provided by paragraph (b) of this section);

(2) You have been granted an exemption under a statute providing for such; or

(3) Your facilities were financed in whole or in part, or are eligible for financing, under the Rural Electrification Act of 1936, as amended (REA) (7 U.S.C. 901 *et seq.*) or are extensions of such facilities. However, when a holder who is exempt from rent under REA adds non-eligible tenant uses on the authorization, the holder will become subject to rent in accordance with §§ 2866.30 through 2866.44.

(b) Exceptions:

(1) The exemptions in this section do not apply if you are in trespass.

(2) If you are a governmental entity, you are not exempt from rent when:

(i) The facility, system, space, or any part of the authorization is being used for commercial purposes;

(ii) You are a municipal utility or cooperative whose principal source of revenue is customer charges; or

(iii) You charge the United States rent for occupancy within or on your facility beyond standard operation and maintenance fees.

§ 2866.15 Under what circumstances may the BLM waive or reduce my rent?

(a) The BLM may waive or reduce your rent if you are licensed by the FCC as noncommercial and educational.

(b) The BLM may evaluate and approve, in writing, any requests for waiver or reduction in the annual rent for authorizations granted to:

(1) An amateur radio club (such as Civil Air Patrol) which provides a

benefit to the general public or to the programs of the Secretary of the Interior;

(2) A nonprofit organization; or

(3) Holders that demonstrate that their rates will cause undue hardship and that it is in the public interest to waive or reduce the rent (see § 2806.15(b)(5)).

(c) The BLM will not waive or reduce your rent when:

(1) Your organization exists and operates for the principal benefit of its members;

(2) The facility, system, space, or any part of the right-of-way area is being used for commercial purposes;

(3) You charge the United States to occupy your facility; or

(4) You charge rent to your occupant or occupants, beyond standard operation and maintenance fees, when those occupants' use or uses are exempted or waived from rent by the BLM.

(d) The BLM will revoke your existing waiver or reduction of rent if the BLM determines that you no longer meet the criteria above for a waiver or reduction.

§ 2866.23 How will the BLM calculate my rent for linear rights-of-way for Communications Uses?

The BLM will calculate your rent for linear rights-of-way for communications uses, such as telephone lines and fiber optic cable, as provided in § 2806.23.

§ 2866.30 What are the rents for Communications Uses?

(a) *Rent schedule.* You may obtain a copy of the current schedule from any BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C St. NW, Mail Stop 2134LM, Washington, DC 20240. The BLM also posts the current communications use rent schedule at *http://www.blm.gov.*

(1) The BLM uses a rent schedule to calculate the rent for communications uses. The schedule is based on population strata (the population served), as depicted in the most recent version of the Ranally Metro Area (RMA) Population Ranking, and the type of communications use or uses for which the BLM normally grants communication site rights-of-way. These uses are listed as part of the definition of ''communications uses rent schedule,'' set out at § 2861.5.

(2) The BLM will update the schedule annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers, U.S. City Average (CPI–U), as of July of each year (difference in CPI–U from July of one year to July of the following year), and the RMA population rankings.

(3) The BLM will limit the annual adjustment based on the Consumer Price Index to no more than 5 percent. The BLM will review the rent schedule to ensure that the schedule reflects fair market value.

(b) *Uses not covered by the schedule.* The communications uses rent schedule does not apply to:

(1) Communications uses located entirely within the boundaries of an oil and gas lease, and solely supporting the operations of the oil and gas lease (see parts 3160 through 3190 of this Chapter);

(2) Communications facilities and uses ancillary to a linear authorization that are entirely within the scope of an authorized linear right-of-way, such as a railroad authorization or an oil and gas pipeline authorization, that solely support the operations authorized by that right-of-way and that are owned and operated by the authorization holder for that right-of-way;

(3) Linear communications uses not listed on the schedule, such as telephone lines, fiber optic cables, and new technologies;

(4) Grants for which the BLM determines the rent by competitive bidding; or

(5) Communication facilities and uses for which a BLM State Director concurs that:

(i) The expected annual rent, that the BLM estimates from market data, exceeds the rent from the rent schedule by at least five times; or

(ii) The communication site serves a population of one million or more and the expected annual rent for the communications use or uses is more than $10,000 above the rent from the rent schedule.

§ 2866.31 How will the BLM calculate rent for Communications Uses in the schedule?

(a) *Basic rule.* The BLM calculates rents for:

(1) Single-use facilities by applying the rent from the communications uses rent schedule (see § 2866.30) for the type of use and the population strata served; and

(2) Multiple-use facilities, whose authorizations provide for subleasing, by setting the rent of the highest value use in the facility or facilities as the base rent (taken from the rent schedule) and adding to the base rent 25 percent of the rent from the rent schedule for all tenant uses in the facility or facilities that are not already being used as the base rent (rent = base rent + 25 percent of all rent due to additional tenant uses in the facility or facilities) (see also §§ 2866.32 and 2866.34).

(b) *Exclusions.* When calculating rent, the BLM will exclude customer uses, except as provided for at §§ 2866.34(b)(4) and 2866.42. The BLM will also exclude those uses exempted from rent by § 2866.14 of this subpart, and any uses for which rent has been waived or reduced to zero as described in § 2866.15.

(c) *Annual statement.* By October 15 of each year, you, as a grant holder, must submit to the BLM a certified statement listing any tenants and customers in your facility or facilities and the category of use for each tenant or customer as of September 30 of the same year. The BLM may require you to submit additional information to calculate your rent. The BLM will determine the rent based on the annual inventory certification statement provided. The BLM requires only facility owners or facility managers to hold a grant (unless you are an occupant in a federally owned facility as described in § 2866.42) and will charge you rent for your grant based on the total number of communications uses within the right-of-way and the type of uses and population strata the facility or site serves. If you fail to submit your annual inventory certification by October 15 (by electronic correspondence or postmarked), you may not receive any discounts, reductions, exemptions, or waivers (see §§ 2866.14, 2866.15, and 2866.34), to which you may have been entitled.

§ 2866.32 How does the BLM determine the population strata served for your facility?

(a) The BLM determines the population strata served as follows:

(1) If the site or facility is within a designated RMA, the BLM will use the population strata of the RMA;

(2) If the site or facility is within a designated RMA, and it serves two or more RMAs, the BLM will use the population strata of the RMA having the greatest population;

(3) If the site or facility is outside an RMA, and it serves one or more RMAs, the BLM will use the population strata of the RMA served having the greatest population;

(4) If the site or facility is outside an RMA and the site does not serve an RMA, the BLM will use the population strata of the community it serves having the greatest population, as identified in the current edition of the Rand McNally Road Atlas; or

(5) If the site or facility is outside an RMA, and it serves a community of less than 25,000, the BLM will use the lowest population strata shown on the rent schedule.

(b)(1) The BLM considers all facilities (and all uses within the same facility)

located at one site to serve the same RMA or community. However, at its discretion, the BLM may make case-by-case exceptions in determining the population served at a particular site by uses not located within the same facility and not authorized under the same grant. For example, when a site has a mix of high-power and low-power uses that are authorized by separate grants, and only the high-power uses are capable of serving an RMA or community with the greatest population, the BLM may separately determine the population strata served by the low-power uses (if not collocated in the same facility with the high-power uses), and calculate the rent as described in § 2866.30.

(2) For purposes of rent calculation, all uses within the same facility and/or authorized under the same grant must serve the same population strata.

(3) For purposes of rent calculation, the BLM will not modify the population rankings published in the Rand McNally Commercial Atlas and Marketing Guide or the population of the community served.

§ 2866.33 How will the BLM calculate the rent for a single use communication facility grant?

The BLM calculates the rent for a grant authorizing a single-use communication facility from the communications uses rent schedule (see § 2866.30 of this subpart), based on your authorized single use and the population strata it serves (see § 2866.32 of this subpart).

§ 2866.34 How will the BLM calculate the rent for a multiple-use communication facility grant?

(a) *Basic rule.* The BLM first determines the population strata the communication facility serves according to § 2866.32 of this subpart and then calculates the rent assessed to facility owners and facility managers for a grant for a communication facility that authorizes subleasing with tenants, customers, or both, as follows:

(1) The BLM will determine the rent of the highest value use in the facility or facilities as the base rent, and add to it 25 percent of the rent from the rent schedule (see § 2866.30) for each tenant use in the facility or facilities;

(2) If the highest value use is not the use of the facility owner or facility manager, the BLM will consider the owner's or manager's use like any tenant or customer use in calculating the rent (see § 2866.35(b) for facility owners and § 2866.39(a) for facility managers);

(3) If a tenant use is the highest value use, the BLM will exclude the rent for that tenant's use when calculating the additional 25 percent amount under paragraph (a)(1) of this section for tenant uses;

(4) If a holder has multiple uses authorized under the same grant, such as a TV and a FM radio station, the BLM will calculate the rent as in paragraph (a)(1) of this section. In this case, the TV rent would be the highest value use and the BLM would charge the FM portion according to the rent schedule as if it were a tenant use.

(b) *Special applications.* The following provisions apply when calculating rents for communications uses exempted from rent under § 2866.14 of this subpart or communications uses whose rent has been waived or reduced to zero under § 2866.15 of this subpart:

(1) The BLM will exclude exempted uses or uses whose rent has been waived or reduced to zero (see §§ 2866.14 and 2866.15) of either a facility owner or a facility manager in calculating rents. The BLM will exclude similar uses (see §§ 2866.14 and 2866.15) of a customer or tenant if they choose to hold their own grant (see § 2866.36) or are occupants in a Federal facility (see § 2866.42(a));

(2) The BLM will charge rent to a facility owner whose own use is either exempted from rent or whose rent has been waived or reduced to zero (see §§ 2866.14 and 2866.15), but who has tenants in the facility, in an amount equal to the rent of the highest value tenant use plus 25 percent of the rent from the rent schedule for each of the remaining tenant uses subject to rent;

(3) The BLM will not charge rent to a facility owner, facility manager, or tenant (when holding a grant) when all of the following occur:

(i) The BLM exempts from rent, waives, or reduces to zero the rent for the holder's use (see §§ 2866.14 and 2866.15);

(ii) Rent from all other uses in the facility is exempted, waived, or reduced to zero, or the BLM considers such uses as customer uses; and

(iii) The holder is not operating the facility for commercial purposes (see § 2866.15(c)(2)) with respect to such other uses in the facility; and

(4) If a holder, whose own use is exempted from rent or whose rent has been waived or reduced to zero, is conducting a commercial activity with customers or tenants whose uses are also exempted from rent or whose rent has been waived or reduced to zero (see §§ 2866.14 and 2866.15), the BLM will charge rent, notwithstanding § 2866.31(b), based on the highest value use within the facility. This paragraph (b)(4) does not apply to facilities exempt from rent under § 2866.14(a)(3) except when the facility also includes ineligible facilities.

§ 2866.35 How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and ''other'' category uses?

If an entity engaged in a PMRS, internal microwave, or ''other'' use is:

(a) Using space in a facility owned by either a facility owner or facility manager, the BLM will consider the entity to be a customer and not include these uses in the rent calculation for the facility; or

(b) The facility owner, the BLM will follow the provisions in § 2866.31 to calculate rent for a grant involving these uses. However, the BLM includes the rent from the rent schedule for a PMRS, internal microwave, or other use in the rental calculation only if the value of that use is equal to or greater than the value of any other use in the facility. The BLM excludes these uses in the 25 percent calculation (see § 2866.31(a)) when their value does not exceed the highest value in the facility.

§ 2866.36 If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?

(a) You may have your own authorization, but the BLM does not require a separate grant for tenants and customers using a facility authorized by a BLM grant that contains a subleasing provision. The BLM charges the facility owner or facility manager rent based on the highest value use within the facility (including any tenant or customer use authorized by a separate grant) and 25 percent of the rent from the rent schedule for each of the other uses subject to rent (including any tenant or customer use a separate grant authorizes and the facility owner's use if it is not the highest value use).

(b) If you own a building, equipment shelter, or tower on public lands for communication purposes, you must have an authorization under this part, even if you are also a tenant or customer in someone else's facility.

(c) The BLM will charge tenants and customers who hold their own grant in a facility, as grant holders, the full annual rent for their use based on the BLM communications use rent schedule. The BLM will also include such tenant or customer use in calculating the rent the facility owner or facility manager must pay.

§ 2866.37 How will the BLM calculate rent for a grant involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?

The BLM will include the single use in calculating rent for each grant authorizing that use. For example, a television station locates its antenna on a tower authorized by grant ''A'' and locates its related broadcast equipment in a building authorized by grant ''B.'' The statement listing tenants and customers for each facility (see § 2866.31(c) of this subpart) must include the television use because each facility is benefitting economically from having the television broadcast equipment located there, even though the combined equipment is supporting only one single end use.

§ 2866.38 Can I combine multiple grants for facilities located at one site into a single grant?

If you hold grants for two or more facilities on the same communications site, you may submit an SF–299 application and be subject to cost recovery for the BLM to authorize those facilities under a single grant. The highest value use in all the combined facilities determines the base rent. The BLM then charges for each remaining use in the combined facilities at 25 percent of the rent from the rent schedule. These uses include those uses the BLM previously calculated as base rents when the BLM authorized each of the facilities on an individual basis.

§ 2866.39 How will the BLM calculate rent for a grant for a facility manager's use?

(a) The BLM will follow the provisions in § 2866.31 to calculate rent for a grant involving a facility manager's use. However, the BLM includes the rent from the rent schedule for a facility manager's use in the rental calculation only if the value of that use is equal to or greater than the value of any other use in the facility. The BLM excludes the facility manager's use in the 25 percent calculation (see § 2866.31(a)) when its value does not exceed the highest value in the facility.

(b) If you are a facility owner and you terminate your use within the facility, but want to retain the grant for other purposes, the BLM will continue to charge you for your authorized use until the BLM amends the grant to change your use to facility manager or to some other communications use.

§ 2866.40 How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?

If the ancillary communication equipment is used solely in direct support of the primary use (see the definition of communications uses rent schedule in § 2861.5 and the definition of ancillary in § 2801.5 of this chapter), the BLM will calculate and charge rent only for the primary use.

§ 2866.41 How will the BLM calculate rent for communications facilities ancillary to a linear grant or other use authorization?

When a communications facility is authorized as ancillary to (*i.e.,* used for the sole purpose of internal communications) a grant or some other type of use authorization (*e.g.,* a mineral lease or sundry notice), the BLM will determine the rent using the linear rent schedule (see § 2866.20) or rent scheme associated with the other authorization, and not the communications uses rent schedule.

§ 2866.42 How will the BLM calculate rent for Communications Uses within a federally owned communications facility?

(a) If you are an occupant of a federally owned communication facility, you must have your own grant and pay rent in accordance with these regulations; and

(b) If a Federal agency holds a grant and agrees to operate the facility as a facility owner under § 2866.31, occupants do not need a separate BLM grant, and the BLM will calculate and charge rent to the Federal facility owner under §§ 2866.30 through 2866.44.

§ 2866.43 How does the BLM calculate rent for passive reflectors and local exchange networks?

The BLM calculates rent for passive reflectors and local exchange networks by using the same rent schedules for passive reflectors and local exchange networks as the Forest Service uses for the region in which the facilities are located. You may obtain the pertinent schedules from the Forest Service or from any BLM state or field office in the region in question. For passive reflectors and local exchange networks not covered by a Forest Service regional schedule, the BLM will use the provisions in § 2806.70 of this chapter to determine rent. See the Forest Service regulations at 36 CFR chapter II.

§ 2866.44 How will the BLM calculate rent for a facility owner's or facility manager's grant which authorizes Communications Uses?

This section applies to a grant that authorizes a mixture of communications uses, some of which are subject to the communications uses rent schedule and some of which are not. The BLM will determine rent for these grants under the provisions of this section.

(a) The BLM establishes the rent for each of the uses in the facility that are not covered by the communications uses rent schedule using § 2806.70 of this chapter.

(b) The BLM establishes the rent for each of the uses in the facility that are covered by the rent schedule using §§ 2866.30 and 2866.31.

(c) The BLM determines the facility owner or facility manager's rent by identifying the highest rent in the facility of those established under paragraphs (a) and (b) of this section and adding to it 25 percent of the rent of all other uses subject to rent.

Subpart 2868—Communications Uses Trespass

§ 2868.10 What is a Communications Uses Trespass?

In addition to the provisions of § 2808.10 of this chapter, holders of a grant must comply with this section. The following are prohibited:

(a) Placement of any type of facilities such as generators, fuel tanks, equipment cabinets, additional towers or wind or solar power generation equipment on the public lands without formal BLM authorization to do so;

(b) Subleasing communications facilities by allowing another entity to place equipment or utilize your tower without having BLM subleasing authority to do so; or

(c) Affixing communications equipment, such as antennas, to vegetation or rocks on public lands without express authorization to do so.

PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

■ 39. The authority citation for part 2880 continues to read as follows:

Authority: 30 U.S.C. 185 and 189, and 43 U.S.C. 1732(b), 1733, and 1740.

Subpart 2881—General Information

■ 40. Amend § 2881.2 by revising paragraph (c) to read as follows:

§ 2881.2 What is the objective of the BLM's right-of-way program?

* * * * *

(c) Promotes the use of rights-of-way in common wherever practical, considering engineering and technological compatibility, national security, and land use plans; and

* * * * *

■ 41. Amend § 2881.5 by revising and republishing paragraph (b) to read as follows:

§ 2881.5 What acronyms and terms are used in the regulations in this part?

(b) *Terms.* Unless a term is defined in this part, the defined terms in part 2800 of this chapter apply to this part. As used in this part, the term:

Act means section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

Actual costs means the financial measure of resources the Federal government expends or uses in processing a right-of-way application or in monitoring the construction, operation, and termination of a facility authorized by a grant or permit. Actual costs include both direct and indirect costs, exclusive of management overhead costs.

Casual use means activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements. Examples of casual use include: Surveying, marking routes, and collecting data to prepare applications for grants or TUPs.

Complete application means your application contains all the required information under § 2884.11 and you received notification from the BLM that your application is complete.

Cost recovery is a fee charged to an applicant or holder to cover the costs incurred by the BLM in the processing and monitoring associated with a right-of-way grant or TUP on public lands.

Exempt from rent means that the BLM is precluded by statute or policy from collecting rent.

Facility means an improvement or structure, whether existing or planned, that is, or would be, owned and controlled by the grant or TUP holder within the right-of-way or TUP area.

Federal lands means all lands owned by the United States, except lands:

(i) In the National Park System;

(ii) Held in trust for an Indian or Indian tribe; or

(iii) On the Outer Continental Shelf.

Grant means any authorization or instrument BLM issues under section 28 of the Mineral Leasing Act, 30 U.S.C. 185, authorizing a nonpossessory, nonexclusive right to use Federal lands to construct, operate, maintain, or terminate a pipeline. The term includes those authorizations and instruments BLM and its predecessors issued for like purposes before November 16, 1973, under then existing statutory authority. It does not include authorizations issued under FLPMA (43 U.S.C. 1761 *et seq.*).

Monitoring activities means those activities, subject to § 2886.11, the Federal Government performs to ensure compliance with a right-of-way grant or TUP, such as assignments, amendments, or renewals.

(i) For Monitoring Categories 1 through 4, monitoring activities include inspecting construction, operation, maintenance, and termination of permanent or temporary facilities and protection and rehabilitation activities up to the time the holder completes rehabilitation of the right-of-way or TUP and the BLM approves it;

(ii) For Monitoring Category 5 (Master Agreements), monitoring activities include those actions or activities agreed to in the Master Agreement; and

(iii) For Monitoring Category 6, monitoring activities include those actions or activities agreed to between the BLM and the applicant.

Oil or gas means oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from them.

Pipeline means a line crossing Federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities, but does not include a lessee's or lease operator's production facilities located on its oil and gas lease.

Pipeline system means all facilities, whether or not located on Federal lands, used by a grant holder in connection with the construction, operation, maintenance, or termination of a pipeline.

Processing activities means those activities the Federal Government undertakes to evaluate an application for a right-of-way grant or TUP, including activities such as assignments, amendments, or renewals. It also includes preparation of an appropriate environmental document and compliance with other legal requirements in evaluating an application.

(i) For Processing Categories 1 through 4, processing activities include preliminary application reviews, application processing, and administrative actions such as assignments and amendments to the right-of-way or TUP;

(ii) For Processing Category 5 (Master Agreements), processing activities include those actions or activities agreed to in the Master Agreement; and

(ii) For Processing Category 6, processing activities include those actions or activities agreed to between the BLM and the applicant.

Production facilities means a lessee's or lease operator's pipes and equipment used on its oil and gas lease to aid in extracting, processing, and storing oil or gas. The term includes:

(i) Storage tanks and processing equipment;

(ii) Gathering lines upstream from such tanks and equipment, or in the case of gas, upstream from the point of delivery; and

(iii) Pipes and equipment, such as water and gas injection lines, used in the production process for purposes other than carrying oil and gas downstream from the wellhead.

Related facilities means those structures, devices, improvements, and sites, located on Federal lands, which may or may not be connected or contiguous to the pipeline, the substantially continuous use of which is necessary for the operation or maintenance of a pipeline, such as:

(i) Supporting structures;

(ii) Airstrips;

(iii) Roads;

(iv) Campsites;

(v) Pump stations, including associated heliports, structures, yards, and fences;

(vi) Valves and other control devices;

(vii) Surge and storage tanks;

(viii) Bridges;

(ix) Monitoring and communication devices and structures housing them;

(x) Terminals, including structures, yards, docks, fences, and storage tank facilities;

(xi) Retaining walls, berms, dikes, ditches, cuts and fills; and

(xii) Structures and areas for storing supplies and equipment.

Right-of-way means the Federal lands BLM authorizes a holder to use or occupy under a grant.

Substantial deviation means a change in the authorized location or use that requires-construction or use outside the boundaries of the right-of-way or TUP area or any change from, or modification of, the authorized use. The BLM may determine that there has been a substantial deviation in some of the following circumstances: When a right-of-way holder adds overhead or underground lines, pipelines, structures, or other facilities not expressly included in the current grant or TUP. Operation and maintenance actions or safety related improvements within an existing right-of-way are not considered a substantial deviation. Activities undertaken to reasonably prevent and suppress wildfires on or adjacent to the right-of-way do not constitute a substantial deviation.

Temporary use permit or TUP means a document BLM issues under 30 U.S.C. 185 that is a revocable, nonpossessory privilege to use specified Federal lands in the vicinity of and in connection with a right-of-way, to construct, operate, maintain, or terminate a pipeline or to

protect the environment or public safety. A TUP does not convey any interest in land.

Third party means any person or entity other than BLM, the applicant, or the holder of a right-of-way authorization.

■ 42. Amend § 2881.7 by revising paragraphs (a) and (b)(1) to read as follows:

§ 2881.7 Scope.

(a) *What do these regulations apply to?* The regulations in this part apply to:

(1) Issuing, amending, assigning, renewing, and terminating grants and TUPs for pipelines, or parts thereof, that are:

(i) On Federal land and outside the boundary of any Federal oil and gas lease;

(ii) Within the boundary of a Federal oil and gas lease but owned by a party who is not a lessee or lease operator with respect to that lease; or

(iii) Within the boundary of a Federal oil and gas lease but downstream from a custody transfer metering device; and

(2) All grants and permits the BLM and its predecessors previously issued under Section 28 of the Act.

(b) * * *

(1) Production facilities on an oil and gas lease that operate for the benefit of the lease;

* * * * *

§ 2881.9 [Redesignated as § 2881.8]

■ 43. Redesignate § 2881.9 as § 2881.8.

Subpart 2883—Qualifications for Holding MLA Grants and TUPs

■ 44. Amend § 2883.14 by revising the section heading and paragraph (a) to read as follows:

§ 2883.14 What happens to my grant or TUP if I die?

(a) If a grant or TUP holder dies, any inheritable interest in the grant or TUP will be distributed under State law.

* * * * *

Subpart 2884—Applying for MLA Grants or TUPs

■ 45. Amend § 2884.11 by revising paragraphs (a) introductory text and (c)(6) to read as follows:

§ 2884.11 What information must I submit in my application?

(a) File your application on Form SF–299 or as part of an Application for Permit to Drill or Reenter (BLM Form 3160–3) or Sundry Notice and Report on Wells (BLM Form 3160–5), available from any BLM office. The application must include the applicant's original signature or meet the BLM standards for electronic commerce. Your complete application must include:

* * * * *

(c) * * *

(6) A map of the project, showing its proposed location and showing existing facilities adjacent to the proposal. The required map may include Geographic Information Systems (GIS) file geodatabases (FGDB), or equivalent format such as shapefiles or .kmz files, as requested by the BLM;

* * * * *

■ 46. Revise § 2884.12 to read as follows:

§ 2884.12 What are the fee categories for cost recovery?

(a) You must pay a cost recovery fee with the application to cover the costs to the Federal Government of processing your application before the Federal Government incurs them. These cost recovery fees are for the processing and monitoring activities associated with your grant. Subject to applicable laws and regulations, if your application will involve Federal agencies other than the BLM, your fee may also include the reasonable costs estimated to be incurred by those Federal agencies. Instead of paying the BLM a fee for the estimated work of other Federal agencies in processing your application, you may pay other Federal agencies directly for the costs estimated to be incurred by them. The cost recovery fees for Categories 1 through 4 (see paragraph (b) of this section) are not refundable. The fees are categorized based on an estimate of the amount of time that the Federal Government will spend to process your application and monitor your grant.

(b) The BLM bases cost recovery fees on categories. The BLM will update the fee schedule for Categories 1 through 4 each calendar year, based on the previous year's change in the IPD–GDP, as measured second quarter to second quarter, rounded to the nearest dollar. The BLM will update Category 5 fees, which may include preliminary application review, processing, and monitoring, as specified in the applicable Master Agreement. Category 6 fees are for situations when a right-of-way activity will require more than 64 hours, or when an environmental impact statement (EIS) is required and may include preliminary application review costs. The cost recovery categories and the estimated range of Federal work hours for each category are:

TABLE 1 TO PARAGRAPH (b)—MLA RIGHT-OF-WAY COST RECOVERY FEE CATEGORIES

MLA right-of-way cost recovery category descriptions	Federal work hours involved
Category 1. Processing and monitoring associated with an application or existing grant or TUP	Estimated Federal work hours are ≤8.
Category 2. Processing and monitoring associated with an application or existing grant or TUP	Estimated Federal work hours are >8 ≤24.
Category 3. Processing and monitoring associated with an application or existing grant or TUP	Estimated Federal work hours are >24 ≤40.
Category 4. Processing and monitoring associated with an application or existing grant or TUP	Estimated Federal work hours are >40 ≤64.
Category 5. Master Agreements	Varies, depending on the agreement.

TABLE 1 TO PARAGRAPH (b)—MLA RIGHT-OF-WAY COST RECOVERY FEE CATEGORIES—Continued

MLA right-of-way cost recovery category descriptions	Federal work hours involved
Category 6. Processing and monitoring associated with an application or existing grant or TUP, including preliminary-application reviews.*	Estimated Federal work hours are >64.

* Preliminary application review costs are those expenses related to meetings held between a Federal agency and the applicant to discuss a right-of-way application. These reviews are not required but are encouraged.

(c) You may obtain a copy of the current cost recovery fee schedule at *https://www.blm.gov,* by contacting your local BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240.

(d) After an initial review of your application, the BLM will notify you of the processing category into which your application fits. You must then submit the appropriate payment for that category before the BLM will begin processing your application. Your signature on a cost recovery Master Agreement constitutes your agreement with the cost recovery category decision. For reimbursement of the BLM's costs for Category 5 and 6 right-of-way applications or grants, see §§ 2884.15, 2884.16, and 2884.17. If you disagree with the category that the BLM has determined for your application, you may appeal the decision under § 2881.10. If you paid the cost recovery fee and you appeal a Category 1 through 4 determination, the BLM will work on your application, grant, or TUP while the appeal is pending. If IBLA finds in your favor, you will receive a refund or adjustment of your cost recovery fee.

(e) In processing your application, the BLM may determine at any time that the application requires preparing an EIS. If this occurs, the BLM will send you a decision changing your cost recovery category to Category 6. You may appeal the decision under § 2881.10.

(f) If you hold an authorization relating to TAPS, the BLM will send you a written statement seeking reimbursement of actual costs within 60 calendar days after the close of each quarter. Quarters end on the last day of March, June, September, and December. In processing applications and administering authorizations relating to TAPS, the Department of the Interior will avoid unnecessary employment of personnel and needless expenditure of funds.

■ 47. Revise § 2884.13 to read as follows:

§ 2884.13 When will the BLM waive cost recovery fees?

(a) The BLM may waive your cost recovery fees if you are a:

(1) State or local government, or an agency of such a government, and the BLM issues the grant for governmental purposes benefitting the general public. However, if you collect revenue from charges you levy on customers for services similar to those of a profit-making corporation or business, or you assess similar fees to the United States for similar purposes, cost recovery fees will not be waived; or

(2) Federal agency, and your cost recovery category determination is Category 1 to 4.

(b) The BLM will not waive your cost recovery fees if you are in trespass.

■ 48. Amend § 2884.14 by revising the section heading to read as follows:

§ 2884.14 When does the BLM reevaluate the cost recovery fees?

* * * * *

■ 49. Amend § 2884.15 by revising the section heading and paragraph (a) to read as follows:

§ 2884.15 What is a Master Agreement (Cost Recovery Category 5) and what information must I provide to the BLM when I request one?

(a) A Master Agreement (Cost Recovery Category 5) is a written agreement covering processing and monitoring fees (see § 2884.16 of this part) negotiated between the BLM and you that involves multiple BLM grant or TUP approvals for projects within a defined geographic area or for a specific common activity for many projects.

* * * * *

■ 50. Amend § 2884.16 by:

■ a. Revising paragraphs (a)(2), (5) and (8);

■ b. Redesignating paragraph (a)(9) as (a)(10) and adding a new paragraph (a)(9); and

■ c. Adding paragraph (c).

The additions and revisions read as follows:

§ 2884.16 What provisions do Master Agreements contain and what are their limitations?

(a) * * *

(2) Describes the work you will do and the work the BLM will do to complete right-of-way activities;

* * * * *

(5) Explains how the BLM will monitor actions on a grant or TUP and how the BLM will receive payment for this work;

* * * * *

(8) Contains specific conditions for terminating the Agreement;

(9) May be prepared so that it includes previously granted rights-of-way held by the right-of-way holder; and

* * * * *

(c) If you sign a Master Agreement, you waive your right to request a reduction of cost recovery fees.

■ 51. Amend § 2884.17 by

■ a. Revising the section heading, paragraph (a), and paragraph (b)(3);

■ b. Redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(5) and (b)(6); and

■ c. Adding a new paragraph (b)(4).

The revisions and addition read as follows:

§ 2884.17 How will the BLM manage my Category 6 project?

(a) For Category 6 applications, you and the BLM must enter into a written agreement that describes how the BLM will process your application or monitor your grant. The BLM may require that the final agreement contains a work plan and a financial plan, and a description of any existing agreements you have with other Federal agencies for cost reimbursement associated with such application or grant.

(b) * * *

(3) Develop a preliminary financial plan, if applicable, which estimates the actual costs of processing your application and monitoring your project;

(4) Collect, in advance and at the BLM's discretion, a deposit for your Category 6 project to initiate processing your application while all of the plans and agreements are being completed;

* * * * *

■ 52. Amend § 2884.21 by revising paragraph (c) to read as follows:

§ 2884.21 How will the BLM process my application?

* * * * *

(c) *Customer service standard.* The BLM will process your complete application as follows:

TABLE 1 TO PARAGRAPH (c)

Processing category	Processing time	Conditions
1–4	60 calendar days	If processing your application(s) for a right-of-way or TUP will take longer than 60 calendar days, the BLM will notify you in writing of this fact prior to the 30th calendar day and inform you of when you can expect a final decision on your application.
5	As specified in the Master Agreement.	The BLM will process your right-of-way or TUP application(s) as specified in the Master Agreement.
6	Over 60 calendar days	The BLM will notify you in writing within the initial 60-day processing period of the estimated processing time.

* * * * *

■ 53. Amend § 2884.23 by revising paragraph (a)(6) to read as follows:

§ 2884.23 Under what circumstances may the BLM deny my application?

(a) * * *

(6) You do not comply with a deficiency notice (see § 2804.25(c)) or with any requests from the BLM for additional information needed to process the application.

* * * * *

■ 54. Revise § 2884.24 to read as follows:

§ 2884.24 What fees must I pay if the BLM denies my application, or if I withdraw my application or relinquish my grant or TUP?

If the BLM denies your application, you withdraw it, or you relinquish your grant or TUP, you owe the current fees for the applicable cost recovery category as set forth at § 2884.12(b), unless you have a Category 5 or 6 application. Then, the following conditions apply:

(a) If the BLM denies your Category 5 or 6 application, you are liable for the actual costs that the United States incurred in processing it. The money you have not paid is due within 30 calendar days after receiving a bill for the amount due;

(b) If you withdraw your application in writing before the BLM issues a grant or TUP, you are liable for all actual processing costs the United States has incurred up to the time you withdraw the application and for the actual costs of terminating your application. Any money you have not paid is due within 30 calendar days after receiving a bill for the amount due; and

(c) If you relinquish your grant or TUP in writing, you are liable for all actual costs the United States has incurred up to the time you relinquish the grant and for the actual costs of closing your grant. Any cost recovery money you have not previously paid is due within 30 calendar days after receiving a bill for the amount due. The BLM will refund any cost recovery money you paid in Categories 5 or 6 that was not used to cover costs the United States incurred as a result of your grant.

■ 55. Revise § 2884.27 to read as follows:

§ 2884.27 What additional requirements are necessary for grants for pipelines 24 or more inches in diameter?

If an application is for a grant for a pipeline 24 inches or more in diameter, the BLM will not issue or renew the grant until after the BLM notifies the appropriate committees of Congress in accordance with 30 U.S.C. 185(w).

Subpart 2885—Terms and Conditions of MLA Grants and TUPs

■ 56. Amend § 2885.12 by revising the section heading to read:

§ 2885.12 What rights does a grant or TUP provide?

* * * * *

■ 57. Amend § 2885.17 by revising paragraph (e) and adding a new paragraph (g) to read as follows:

§ 2885.17 What happens if I do not pay rents and fees or if I pay the rents or fees late?

* * * * *

(e) The BLM will retroactively bill for uncollected or under-collected rent, including late payment and administrative fees.

* * * * *

(g) The BLM will not approve any further activities associated with your right-of-way until the BLM receives any outstanding payments that are due.

58. Amend § 2885.19 by revising paragraph (b) to read as follows:

§ 2885.19 What is the rent for a linear right-of-way grant?

* * * * *

(b) You may obtain a copy of the current Per Acre Rent Schedule at *https://www.blm.gov,* by contacting your local BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240.

■ 59. Revise § 2885.24 to read as follows:

§ 2885.24 If I hold a grant or TUP, what cost recovery fees must I pay?

(a) Subject to § 2886.11, you must pay a fee to the BLM for any costs the Federal Government incurs in processing, inspecting, and monitoring the construction, operation, maintenance, and termination of the pipeline and protection and rehabilitation of the Federal lands your grant or TUP covers. The BLM categorizes the cost recovery fees based on the estimated number of work hours necessary to manage your grant or TUP. Categories 1 through 4 fees are not refundable. The description of each Category and the associated work hours is found at § 2884.12(b).

(b) The BLM will update the cost recovery fee schedule for Categories 1 through 4 each calendar year, based on the previous year's change in the IPD–GDP, as measured second quarter to second quarter rounded to the nearest dollar. The BLM will update Category 5 cost recovery fees as specified in the applicable Master Agreement.

(c) You may obtain a copy of the current cost recovery fee schedule at *https://www.blm.*gov, by contacting your local BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Mail Stop 2134LM, Washington, DC 20240.

Subpart 2886—Operations on MLA Grants and TUPs

■ 60. Amend § 2886.17 by revising paragraph (c)(2), redesignating

paragraph (c)(3) as paragraph (c)(4) and adding a new paragraph (c)(3) to read as follows:

§ 2886.17 Under what conditions may BLM suspend or terminate my grant or TUP?

* * * * *

(c) * * *

(2) The BLM consents in writing to your request to relinquish the grant or TUP;

(3) A court terminates it or requires the BLM to terminate it; or

* * * * *

Subpart 2887—Amending, Assigning, or Renewing MLA Grants and TUPs

■ 61. Amend § 2887.10 by revising paragraph (b) to read as follows:

§ 2887.10 When must I amend my application, seek an amendment of my grant or TUP, or obtain a new grant or TUP?

* * * * *

(b) The requirements to amend an application or a grant or TUP are the same as those for a new application, including paying cost recovery fees and rent according to §§ 2884.12, 2885.23, 2885.19, and 2886.11.

* * * * *

■ 62. Amend § 2887.11 by adding paragraph (i) to read as follows:

§ 2887.11 May I assign or make other changes to my grant or TUP?

* * * * *

(i) You must seek an amendment of your authorization if you propose a substantial deviation in location or use.

■ 63. Amend § 2887.12 by revising paragraph (b) and adding paragraphs (f) and (g) to read as follows:

§ 2887.12 How do I renew my grant?

* * * * *

(b) The BLM may modify the terms and conditions of the grant at the time of renewal, and you must pay the cost recovery fees.

* * * * *

(f) If you do not submit your application under paragraph (a) of this section at least 120 days prior to authorization expiration, it is considered delinquent; the BLM will not be subject to the customer service standards in this chapter, and it will be processed only as time and resources are available.

(g) The BLM will review your application and determine if you have complied with all of the provisions in this part and whether or not your authorized use will be renewed. The BLM will notify you within 30 days from acceptance of a complete application if it will take longer than 60 days to review your application.

Subpart 2888—Trespass

■ 64. Amend § 2888.10 by revising paragraph (a) to read as follows:

§ 2888.10 What is a trespass?

(a) Trespass is using, occupying, developing, or subleasing the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization. Trespass is a prohibited act.

* * * * *

PART 2920—LEASES, PERMITS AND EASEMENTS

■ 65. The authority citation for part 2920 continues to read as follows:

Authority: 43 U.S.C. 1740.

Subpart 2920—Leases, Permits and Easements: General Provisions

■ 66. Revise § 2920.0–5 to read as follows:

§ 2920.0–5 Definitions.

As used in this part, the term:

(a) *Applicant* means any person who submits an application for a land use authorization under this part.

(b) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(c) *Casual use* means any short-term non-commercial activity that does not cause appreciable damage or disturbance to the public lands, their resources, or improvements, and that is not prohibited by closure of the lands to such activities.

(d) *Cost recovery* is a fee charged to an applicant or holder to reimburse the United States for processing and monitoring costs that concern applications and other documents relating to the public lands, or that are incurred when processing, inspecting, or monitoring any proposed or authorized leases, permits, and easements located on the public lands.

(e) *Easement* means an authorization for a non-possessory, non-exclusive interest in lands which specifies the rights of the holder and the obligation of the Bureau of Land Management to use and manage the lands in a manner consistent with the terms of the easement.

(f) *Knowing and willful* means that a violation is *knowingly and willfully* committed if it constitutes the voluntary or conscious performance of an act which is prohibited or the voluntary or conscious failure to perform an act or duty that is required. The term does not include performances or failures to perform which are honest mistakes or which are merely inadvertent. The term includes, but does not require, performances or failures to perform which result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or terms of a lease, permit, and easement. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistake nor mere inadvertency. Conduct which is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

(g) *Land use authorization* means any authorization to use the public lands issued under this part.

(h) *Land use proposal* means an informal statement, in writing, from any person to the authorized officer requesting consideration of a specified use of the public lands.

(i) *Land use plan* means resource management plans or management framework plans prepared by the Bureau of Land Management pursuant to its land use planning system.

(j) *Lease* means an authorization to possess and use public lands for a fixed period of time.

(k) *Permit* means a short-term revocable authorization to use public lands for specified purposes.

(l) *Person* means any person or entity legally capable of conveying and holding lands or interests therein, under the laws of the State within which the lands or interests therein are located, who is a citizen of the United States, or in the case of a corporation, is subject to the laws of any State or of the United States.

(m) *Proponent* means any person who submits a land use proposal, either on his/her own initiative or in response to a notice for submission of such proposals.

(n) *Public lands* means lands or interests in lands administered by the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos.

■ 67. Amend § 2920.6 by revising the section heading and paragraphs (b), (d), and (h) to read as follows:

§ 2920.6 Payment of cost recovery fees.

* * * * *

(b) The selected land use applicant shall pay cost recovery fees to the United States for reasonable administrative and other costs incurred by the United States in processing a land use authorization application and in monitoring construction, operation, maintenance, and rehabilitation of facilities authorized under this part, including preparation of reports and statements required by the National Environmental Policy Act of 1969 (43 U.S.C. 4321 *et seq.*). The payment of cost recovery fees shall be in accordance with the provisions of §§ 2804.14 and 2805.16 of this chapter.

* * * * *

(d) A selected applicant who withdraws, in writing, a land use application before a final decision is reached on the authorization is responsible for all reasonable costs incurred by the United States in processing the application up to the day that the authorized officer receives notice of the withdrawal and for costs subsequently incurred by the United States in terminating the proposed land use authorization process. Payment of cost recovery fees shall be made within 30 days of receipt of notice from the authorized officer of the amount due.

* * * * *

(h) The authorized officer shall, on request, give a selected applicant an estimate, based on the best available cost information, of the reasonable costs that may be incurred by the United States in processing the proposed land use authorization. However, payment of cost recovery fees shall not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

■ 68. Amend § 2920.8 by revising paragraph (b) to read as follows:

§ 2920.8 Fees.

* * * * *

(b) *Cost Recovery fees.* Each request for renewal, transfer, or assignment of a lease or easement must be accompanied by non-refundable cost recovery fees determined in accordance with the provisions of §§ 2804.14 and 2805.16 of this chapter.

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 58
Excise Tax on Repurchase of Corporate Stock; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 58

[REG–115710–22]

RIN 1545–BQ59

Excise Tax on Repurchase of Corporate Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would provide guidance regarding the application of the new excise tax on repurchases of corporate stock made after December 31, 2022. The proposed regulations would affect certain publicly traded corporations that repurchase their stock or whose stock is acquired by certain specified affiliates. Another notice of proposed rulemaking (REG–118499–23) on this topic is published in the Proposed Rules section of this issue of the **Federal Register** to propose rules on procedure and administration applicable to this new excise tax.

DATES: Written or electronic comments and requests for a public hearing must be received by June 11, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–115710–22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

Send paper submissions to: CC:PA:01:PR (REG–115710–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning proposed §§ 58.4501–1 through 58.4501–6, Samuel G. Trammell at (202) 317–6975; concerning proposed § 58.4501–7, Brittany N. Dobi at (202) 317–5469; concerning proposed § 1.1275–6(f)(12)(iii), Jonathan A. LaPlante at (202) 317–3900; concerning submissions of comments and requests for a public hearing, Vivian Hayes at (202) 317–6901 (not toll-free numbers) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking proposes regulations under section 4501 of the Internal Revenue Code (Code) that would implement the new excise tax on repurchases of corporate stock (stock repurchase excise tax) imposed by section 4501 for repurchases made after December 31, 2022. As proposed in this notice of proposed rulemaking, the regulations are proposed to be added as proposed subpart A of new 26 CFR part 58 (Stock Repurchase Excise Tax Regulations), which is proposed to be added to subchapter D of 26 CFR chapter I (Miscellaneous Excise Taxes). This notice of proposed rulemaking also proposes to amend regulations under section 1275 of the Code in 26 CFR part 1 (Income Tax Regulations) to implement the provisions of section 4501. Another notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register** relating to the stock repurchase excise tax proposes rules on procedure and administration applicable to the reporting and payment of the stock repurchase excise tax that would be added as proposed subpart B of 26 CFR part 58.

I. Overview of Section 4501

A. In General

Section 4501 was added to a new chapter 37 of the Code by the enactment of section 10201 of Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). Section 4501 imposes the stock repurchase excise tax on each covered corporation for repurchases made after December 31, 2022. The stock repurchase excise tax is equal to one percent of the fair market value of any stock of the corporation that is repurchased by the corporation during the taxable year. Section 4501(a). For purposes of the stock repurchase excise tax, the term ''covered corporation'' means any domestic corporation the stock of which is traded on an established securities market (within the meaning of section 7704(b)(1) of the Code). Section 4501(b).

Section 4501(c)(1) provides that repurchases of covered corporation stock to which the stock repurchase excise tax may apply include the following two types of transactions. First, the term ''repurchase'' means a redemption within the meaning of section 317(b) of the Code with regard to the stock of a covered corporation (section 317(b) redemption). Section 4501(c)(1)(A). Second, the term ''repurchase'' also means any transaction determined by the Secretary of the Treasury or her delegate (Secretary) to be economically similar to a section 317(b) redemption (economically similar transaction). Section 4501(c)(1)(B).

B. Specified Affiliates

For purposes of the stock repurchase excise tax, section 4501(c)(2)(A) provides a special rule that treats the acquisition of stock of a covered corporation by a specified affiliate of the covered corporation, from a person who is not the covered corporation or a specified affiliate of the covered corporation, as a repurchase of the stock of the covered corporation by the covered corporation. For this purpose, the term ''specified affiliate'' means, with regard to any corporation, (i) any corporation more than 50 percent of the stock of which is owned (by vote or by value), directly or indirectly, by the corporation, and (ii) any partnership more than 50 percent of the capital interests or profits interests of which is held, directly or indirectly, by the corporation. Section 4501(c)(2)(B).

C. Adjustment to Amount Taken Into Account Under Section 4501(a)

The stock repurchase excise tax is applied to the fair market value of any stock of the covered corporation repurchased by the covered corporation during its taxable year. However, the amount of these repurchases is reduced by the fair market value of any issuances of the covered corporation's stock during the covered corporation's taxable year (netting rule).

Specifically, the netting rule provides that the amount taken into account under section 4501(a) with respect to any stock repurchased by a covered corporation is reduced by the fair market value of any stock issued by the covered corporation during the taxable year, including the fair market value of any stock issued or provided to employees of the covered corporation or employees of a specified affiliate of the covered corporation during the taxable year (whether or not the stock is issued or provided in response to the exercise of an option to purchase the stock). Section 4501(c)(3).

D. Special Rules for Certain Acquisitions and Repurchases of Stock of Certain Foreign Corporations

Section 4501(d) provides special rules for the imposition of the stock repurchase excise tax on acquisitions of

stock of applicable foreign corporations and covered surrogate foreign corporations. For purposes of section 4501(d), the term ''applicable foreign corporation'' means any foreign corporation the stock of which is traded on an established securities market. Section 4501(d)(3)(A). The term ''covered surrogate foreign corporation'' means any surrogate foreign corporation (as determined under section 7874(a)(2)(B) of the Code by substituting ''September 20, 2021'' for ''March 4, 2003'' each place it appears) the stock of which is traded on an established securities market, but only with respect to taxable years that include any portion of the applicable period with respect to that corporation under section 7874(d)(1). Section 4501(d)(3)(B).

Section 4501(d)(1) applies in the case of an acquisition of stock of an applicable foreign corporation by a specified affiliate of the corporation (other than a foreign corporation or a foreign partnership (unless the partnership has a domestic entity as a direct or indirect partner)) from a person that is not the applicable foreign corporation or a specified affiliate of the applicable foreign corporation. If section 4501(d)(1) applies, then for purposes of determining the stock repurchase excise tax: (i) the specified affiliate is treated as a covered corporation with respect to the acquisition; (ii) the acquisition is treated as a repurchase of stock of a covered corporation by the covered corporation; and (iii) the adjustment under section 4501(c)(3) (that is, the netting rule) is determined only with respect to stock issued or provided by the specified affiliate to employees of the specified affiliate.

Section 4501(d)(2) applies in the case of either a repurchase of stock of a covered surrogate foreign corporation by the covered surrogate foreign corporation, or an acquisition of stock of a covered surrogate foreign corporation by a specified affiliate of such corporation. If section 4501(d)(2) applies, then for purposes of determining the stock repurchase excise tax: (i) the expatriated entity (within the meaning of section 7874(a)(2)(A)) with respect to the covered surrogate foreign corporation is treated as a covered corporation with respect to the repurchase or acquisition; (ii) the repurchase or acquisition is treated as a repurchase of stock of a covered corporation by the covered corporation; and (iii) the adjustment under section 4501(c)(3) is determined only with respect to stock issued or provided by the expatriated entity to employees of the expatriated entity.

E. Statutory Exceptions to the Application of Section 4501(a)

Section 4501(e) lists transactions that are statutorily excepted, in whole or in part, from the application of section 4501(a), each referred to as a ''statutory exception'' in this preamble. As a result of the statutory exceptions, section 4501(a) does not apply to a repurchase of a covered corporation's stock:

(1) To the extent that the repurchase is part of a reorganization (within the meaning of section 368(a) of the Code) and no gain or loss is recognized on the repurchase by the shareholder under chapter 1 of the Code (chapter 1) by reason of the reorganization (section 4501(e)(1));

(2) In any case in which the stock repurchased is, or an amount of stock equal to the value of the stock repurchased is, contributed to an employer-sponsored retirement plan, employee stock ownership plan (ESOP), or similar plan (section 4501(e)(2));

(3) In any case in which the total value of the stock repurchased during the taxable year does not exceed $1,000,000 (section 4501(e)(3));

(4) Under regulations prescribed by the Secretary, in cases in which the repurchase is by a dealer in securities in the ordinary course of business (section 4501(e)(4));

(5) By a regulated investment company (RIC), as defined in section 851 of the Code, or by a real estate investment trust (REIT), as defined in section 856(a) of the Code (section 4501(e)(5)); or

(6) To the extent that the repurchase is treated as a dividend for purposes of the Code (section 4501(e)(6)).

F. Regulations and Other Guidance

Under section 4501(f), the Secretary is authorized to prescribe such regulations and other guidance as are necessary or appropriate to carry out, and to prevent the avoidance of, the purposes of the stock repurchase excise tax. Regulations or other guidance described in section 4501(f) may include guidance: (i) to prevent the abuse of the statutory exceptions; (ii) to address special classes of stock and preferred stock; and (iii) for the application of the special rules for acquisitions of stock of certain foreign corporations under section 4501(d).

G. Applicability of Stock Repurchase Excise Tax Provisions

Except to the extent that a statutory exception applies, the stock repurchase excise tax applies to repurchases after December 31, 2022, subject to the netting rule. *See* section 10201(d) of the IRA.

In contrast to the December 31, 2022, effective date expressly provided by section 10201(d) of the IRA with regard to repurchases, the netting rule expressly takes into account any issuances by a covered corporation during the entirety of its taxable year. *See generally* section 4501(c)(3). Specifically, under the netting rule, the amount taken into account under section 4501(a) with respect to any repurchases is ''reduced by the fair market value of *any stock issued by the covered corporation during the taxable year.* ''Section 4501(c)(3) (*emphasis added*). Therefore, a covered corporation with a taxable year that both began before January 1, 2023, and ended after December 31, 2022, may apply the netting rule to reduce the fair market value of the covered corporation's repurchases of stock during the portion of that taxable year beginning on January 1, 2023, by the fair market value of all issuances of its stock during the entirety of that taxable year.

H. No Deduction for Payment of Stock Repurchase Excise Tax

No deduction is allowed for the payment of the stock repurchase excise tax. *See* section 275(a)(6) of the Code (as amended by section 10201(b) of the IRA to add a reference to chapter 37, which contains section 4501).

II. Notice 2023–2

On January 17, 2023, the Treasury Department and the IRS published Notice 2023–2, 2023–3 I.R.B. 374, to provide initial guidance regarding the application of the stock repurchase excise tax. Specifically, the Treasury Department and the IRS published Notice 2023–2 to facilitate administration of the stock repurchase excise tax by describing rules expected to be provided in forthcoming proposed regulations for determining the amount of stock repurchase excise tax owed, along with anticipated rules for reporting and paying any liability for the tax.

Under those rules, the amount of stock repurchase excise tax imposed on a covered corporation equals the product obtained by multiplying one percent by the stock repurchase excise tax base of the covered corporation. The ''stock repurchase excise tax base'' is the amount (not less than zero) obtained by: (i) determining the aggregate fair market value of all repurchases of the covered corporation's stock by the covered corporation during its taxable year; (ii) reducing that amount by the fair market value of stock of the covered corporation repurchased during its taxable year to the extent any statutory

exceptions apply; and then (iii) further reducing that amount by the aggregate fair market value of stock of the covered corporation issued or provided by the covered corporation during its taxable year under the netting rule.

The Treasury Department and the IRS have received feedback on the stock repurchase excise tax, including in response to Notice 2023–2. Based on the feedback received, and based on further consideration of section 4501 and Notice 2023–2, the Treasury Department and the IRS are proposing these regulations under section 4501 to be added as a new part 58 under the Miscellaneous Excise Taxes, as well as adding new § 1.1275–6(f)(12)(iii) to 26 CFR part 1.

The issues related to section 4501 and Notice 2023–2 with respect to which stakeholders have provided feedback, as well as issues that the Treasury Department and the IRS have considered after the publication of Notice 2023–2, are discussed in the following Explanation of Provisions.

Explanation of Provisions

Subpart A of new part 58 would provide operative rules under section 4501. Proposed § 58.4501–1 would provide an overview of the stock repurchase excise tax, generally applicable definitions, the scope of the regulations implementing that tax, and certain operating rules applicable to those regulations. Proposed § 58.4501–2 would provide general rules regarding the application and computation of the stock repurchase excise tax and proposed § 58.4501–7 would provide rules specifically relating to the application of section 4501(d). Except as provided in proposed § 58.4501–7, proposed § 58.4501–3 would provide rules regarding the application of the exceptions in section 4501(e) (other than the de minimis exception described in section 4501(e)(3) and to which proposed § 58.4501–2(b)(2) applies), and proposed § 58.4501–4 would provide rules regarding the application of section 4501(c)(3). Proposed § 58.4501–5 would provide examples that illustrate the application of section 4501, other than the provisions of proposed § 58.4501–7 (which are illustrated by examples in § 58.4501–7(p) and (q)), and proposed § 58.4501–6 would provide applicability dates (other than for the rules in § 58.4501–7).

I. Statutory Effective Date; Transition Relief

A. Repurchases by a Fiscal-Year Taxpayer Prior to the Statutory Effective Date

A covered corporation is not subject to the stock repurchase excise tax with regard to a taxable year if, during that taxable year, the aggregate fair market value of the covered corporation's repurchases of its stock does not exceed $1,000,000 (de minimis exception). *See* section 4501(e)(3); *see also* section 3.03(2)(a) of Notice 2023–2.

One stakeholder requested that the proposed regulations make clear that repurchases of stock by a fiscal-year taxpayer prior to the January 1, 2023, effective date of section 4501 are not taken into account for purposes of applying the de minimis exception. According to the stakeholder, the plain language of the statute requires that repurchases by a fiscal-year taxpayer prior to January 1, 2023, not be taken into account for any purpose under section 4501, including for purposes of applying the de minimis exception.

The Treasury Department and the IRS have interpreted section 4501 in the same manner. The rule described in section 3.03(3)(b) of Notice 2023–2 provides that repurchases by a covered corporation before January 1, 2023, are not included in the covered corporation's stock repurchase excise tax base. The proposed regulations would clarify that repurchases before January 1, 2023, are not taken into account for purposes of applying the de minimis exception. *See* proposed § 58.4501–2(c)(3).

B. Issuances by a Fiscal-Year Taxpayer Prior to the Effective Date

One stakeholder recommended that stock issued by a fiscal-year taxpayer prior to January 1, 2023, should not be taken into account for purposes of the netting rule, because such an approach would create a mismatch between the treatment of issuances for purposes of the netting rule and the treatment of repurchases for purposes of the de minimis exception. *See* part I.A of this Explanation of Provisions. Another stakeholder recommended that fiscal-year taxpayers be permitted to use only net issuances (that is, issuances net of repurchases) from the portion of their taxable year prior to January 1, 2023, because, according to the stakeholder, taxpayers arguably should not be permitted to offset gross issuances during the portion of a fiscal year before January 1, 2023, against repurchases during the portion of a fiscal year beginning on January 1, 2023.

The Treasury Department and the IRS disagree with the stakeholders' recommendations. Section 4501(c)(3) expressly provides that the amount taken into account under section 4501(a) with respect to any stock repurchased by a covered corporation is reduced by the fair market value of any stock issued by the covered corporation ''during the taxable year.'' Moreover, although section 10201(d) of the IRA expressly provides that the stock repurchase excise tax applies to *repurchases* after December 31, 2022, it does not contain similar language for *issuances.* Therefore, the Treasury Department and the IRS are of the view that, in the case of a covered corporation that has a taxable year that both begins before January 1, 2023, and ends after December 31, 2022, that covered corporation may apply the netting rule to reduce the fair market value of the covered corporation's repurchases during that taxable year by the fair market value of all issuances of its stock during the entirety of that taxable year. *See* proposed § 58.4501–4(b)(3). Thus, the proposed regulations would not adopt these recommendations.

C. Contributions by Fiscal-Year Taxpayer to Employer-Sponsored Retirement Plan Prior to Effective Date

A stakeholder also recommended that stock contributed by a fiscal-year taxpayer to an employer-sponsored retirement plan prior to the January 1, 2023, effective date of section 4501, should not be taken into account for purposes of the statutory exception in section 4501(e)(2) because, according to the stakeholder, such an approach would create a mismatch between this exception and the de minimis exception. However, as discussed in part I.B of this Explanation of Provisions, the effective date in section 10201(d) of the IRA expressly applies to repurchases (and not to issuances or contributions). Therefore, the Treasury Department and the IRS are of the view that contributions to an employer-sponsored retirement plan during the 2022 portion of a taxable year beginning before January 1, 2023, and ending after December 31, 2022, should be taken into account for purposes of section 4501(e)(2). *See* proposed § 58.4501–3(d)(5).

D. Trade Date or Settlement Date

A stakeholder asked whether the date of repurchase of stock occurs on (i) the trade date for the sale or purchase of that stock (that is, the date a broker executes the trade), or (ii) the settlement date with regard to that stock (that is, the date the shares are delivered). The

stakeholder asked this question for purposes of determining whether a repurchase occurs after the effective date of section 4501. The stakeholder requested that the proposed regulations clarify that the trade date for the sale or purchase of that stock constitutes the date of repurchase.

The proposed regulations would clarify that the date of repurchase for a regular-way sale of stock on an established securities market (that is, a transaction in which a trade order is placed on the trade date, and settlement of the transaction, including payment and delivery of the stock, occurs a standardized number of days after the trade date) is the trade date. *See* proposed § 58.4501–2(g)(2). For rules regarding the date of repurchase generally, *see* part III.B.1 of this Explanation of Provisions.

E. Transition Relief for Certain Transactions Entered Into Prior to Enactment Date

Several stakeholders requested transition relief (that is, an exemption from the stock repurchase excise tax) for certain repurchases that occur after the January 1, 2023, effective date of section 4501, pursuant to a binding commitment entered into before the August 16, 2022, enactment date of section 4501. For example, one stakeholder requested an exemption for redemptions of stock issued before the enactment date and redeemed pursuant to the terms of the stock after the effective date, on the grounds that the stock repurchase excise tax did not exist when the terms of that stock were negotiated. Another stakeholder suggested that candidates for transition relief could include: (i) redemptions by, and liquidations of, a special purpose acquisition company (SPAC) formed prior to the enactment date (to the extent the SPAC is contractually obligated to offer redemption rights to its shareholders as agreed prior to the enactment date); (ii) payments in connection with merger and acquisition (M&A) transactions pursuant to a binding commitment entered into prior to the enactment date; (iii) redemptions of non-participating, non-convertible preferred stock, and complete redemptions of tracking stock, issued prior to the enactment date; (iv) repurchases pursuant to accelerated share repurchase agreements if completed pursuant to a binding commitment entered into prior to the enactment date; and (v) liquidating distributions subject to section 331 of the Code pursuant to a plan of liquidation adopted prior to the enactment date.

The plain language of section 10201(d) of the IRA provides that the amendments made by section 10201 of the IRA apply to repurchases of stock after December 31, 2022. That section contains no reference to repurchases that occur pursuant to a binding commitment entered into prior to the enactment date. As a result, the Treasury Department and the IRS are of the view that transition relief would not be appropriate. The proposed regulations accordingly would not adopt the stakeholders' recommendation.

II. Application of the Stock Repurchase Excise Tax to Various Types of Financial Instruments

A. Definition of ''Stock''

For purposes of Notice 2023–2, ''stock'' would be defined as any instrument issued by a corporation that is stock or that is treated as stock for Federal tax purposes at the time of issuance, regardless of whether the instrument is traded on an established securities market. *See* section 3.02(25) of Notice 2023–2.

The proposed regulations generally would maintain this definition of ''stock.'' *See* proposed § 58.4501–1(b)(29). However, the proposed definition of ''stock'' would not include ''additional tier 1 preferred stock,'' which the proposed regulations would define to mean preferred stock that qualifies as additional tier 1 capital (within the meaning of 12 CFR 3.20(c), 217.20(c), or 324.20(c)) and does not qualify as common equity tier 1 capital (within the meaning of 12 CFR 3.20(b), 217.20(b), or 324.20(b)). *See* proposed § 58.4501–1(b)(29)(ii). Therefore, unless the limited-scope exception regarding additional tier 1 preferred stock applies, the stock repurchase excise tax would apply to preferred stock in the same manner as to common stock. Likewise, the stock repurchase excise tax would apply to repurchases of instruments that are not in the legal form of stock but that are treated as stock for Federal tax purposes at the time of issuance. In contrast, the stock repurchase excise tax would not apply to repurchases of instruments treated as debt for Federal tax purposes.

The proposed regulations would include the foregoing definition of ''stock'' for the following reasons. First, the plain language of section 4501 repeatedly refers to ''stock'' and does not, for example, refer solely to ''common stock.'' *See,* for example, section 4501(a) (imposing an excise tax ''equal to 1 percent of the fair market value of any stock of the corporation''); section 4501(b) (defining the term covered corporation to mean ''any domestic corporation the stock of which is traded on an established securities market''); section 4501(c)(1)(A) (defining the term repurchase to mean a redemption within the meaning of section 317(b) ''with regard to the stock of a covered corporation''). Second, if the stock repurchase excise tax were implemented to be applicable solely to common stock, then taxpayers could avoid the tax simply by repurchasing other classes of stock (or other instruments treated as stock for Federal tax purposes).

Section 4501(f)(2) authorizes the Secretary to issue such regulations and other guidance as are necessary or appropriate to carry out, and to prevent the avoidance of, the purposes of the stock repurchase excise tax, including guidance ''to address special classes of stock and preferred stock.'' Accordingly, in section 6.01(1) of Notice 2023–2, the Treasury Department and the IRS requested comments on whether there are circumstances under which special rules should be provided for redeemable preferred stock or other special classes of stock or debt (including debt with features that allow the debt to be converted into stock) and, if so, what objectively verifiable criteria should be incorporated into such special rules to provide certainty for taxpayers and the IRS.

1. Straight Preferred Stock; Mandatorily Redeemable Stock

Stakeholders recommended that the stock repurchase excise tax should not apply to redemptions of preferred stock. Although two stakeholders recommended an exception for redemptions of any type of preferred stock, other stakeholders generally recommended an exception only for redemptions of so-called ''straight preferred stock'' (that is, preferred stock that is limited and preferred as to dividends, does not participate in corporate growth to any significant extent, and is not convertible into another class of stock). *See* section 1504(a)(4)(B) and (D) of the Code. One stakeholder also argued against providing an exception for redemptions of preferred stock other than straight preferred stock. *See* part II.A.2 of this Explanation of Provisions.

The stakeholders uniformly contended that, although straight preferred stock is treated as ''stock'' for Federal tax purposes, repayments of such stock are akin to repaying debt and do not implicate the policy concerns underlying the stock repurchase excise tax. The stakeholders further contended that, if redemptions of straight preferred

stock were subject to the stock repurchase excise tax, publicly traded corporations might be incentivized to increase their leverage by issuing debt in lieu of straight preferred stock.

One stakeholder also recommended a rule under which actual or deemed issuances of straight preferred stock would not be taken into account for purposes of the netting rule. The stakeholder further recommended that exchanges of straight preferred stock for other stock (that is, for stock to which the stock repurchase excise tax applies) should be treated as economically similar transactions.

Alternatively, stakeholders recommended an exception to the stock repurchase excise tax for the redemption of stock pursuant to a mandatory redemption provision or a unilateral put option of the shareholder. In the stakeholders' view, this exception would be appropriate because such a redemption would not be within the control of (and would not be susceptible to any timing manipulation by) the issuing corporation.

As described in part II.A of this Explanation of Provisions, the plain language of section 4501 consistently refers to ''stock'' without providing any exceptions for particular types of stock. In addition, the Treasury Department and the IRS are of the view that Treasury regulations that utilize the broadly applicable term ''stock'' would facilitate the IRS's ability to administer and enforce the stock repurchase excise tax. Consequently, the Treasury Department and the IRS also are of the view that adoption of the stakeholders' numerous suggested exceptions would significantly hamper the IRS's ability to administer and enforce that tax, as well as reduce taxpayer certainty regarding its application. Therefore, except with regard to additional tier 1 preferred stock, the proposed regulations would not incorporate the stakeholders' suggested exceptions. *See* proposed §§ 58.4501–1(b)(29), 58.4501–2(e)(2), and 58.4501–4(b)(1); *see also* proposed § 58.4501–1(b)(29)(ii) and part II.A.3 of this Explanation of Provisions (discussion of additional tier 1 preferred stock).

2. Convertible Preferred Stock and Participating Preferred Stock

One stakeholder recommended that, even if straight preferred stock is excluded from the stock repurchase excise tax, preferred stock that is convertible into the issuer's common stock at the holder's option (convertible preferred stock), and preferred stock with certain dividend or liquidation participation rights that enable the holder to participate in corporate growth to a significant extent (participating preferred stock), should continue to be subject to the stock repurchase excise tax. In the stakeholder's view, a redemption of such stock generally is more akin to a redemption of common stock than to a repayment of debt or a redemption of straight preferred stock (for example, there are fewer outstanding shares of stock participating in future corporate growth after such a redemption).

For the reasons stated in part II.A.1 of this Explanation of Provisions, the Treasury Department and the IRS agree with the stakeholder's recommendation. Accordingly, under the proposed regulations, the repurchase of convertible or participating preferred stock would be subject to the stock repurchase excise tax, and the issuance of such stock would be taken into account for purposes of the netting rule. *See* proposed §§ 58.4501–1(b)(29), 58.4501–2(e)(2), and 58.4501–4(b)(1).

3. Additional Tier 1 Preferred Stock

Several stakeholders noted that the issuance and redemption of preferred stock is used routinely in certain industries as a way to manage risk. One stakeholder recommended an exception to the stock repurchase excise tax and the netting rule for redemptions or issuances of preferred stock that qualifies as additional tier 1 capital for purposes of regulatory requirements for regulated financial institutions (additional tier 1 preferred stock).

According to the stakeholder, the issuing corporation may not redeem or repurchase additional tier 1 preferred stock without prior approval from regulators. Moreover, if such an instrument is callable by its terms, (i) it may not be called for at least five years; (ii) the issuing corporation must receive prior approval from regulators to exercise the call option; and (iii) the issuing corporation must either replace the instrument with other tier 1 capital or demonstrate to regulators that it will continue to hold capital commensurate with risk.

Based on the feedback received, the Treasury Department and the IRS are of the view that the stock repurchase excise tax regulations should not apply to additional tier 1 preferred stock. *See* proposed § 58.4501–1(b)(29)(ii). Consequently, under the proposed regulations, additional tier 1 preferred stock would not be subject to the stock repurchase excise tax, and the issuance of additional tier 1 preferred stock would not be taken into account for purposes of the netting rule.

4. Convertible Debt

Stakeholders have requested confirmation that redemptions of convertible debt instruments are not subject to the stock repurchase excise tax. One stakeholder contended that such transactions should not be treated as ''economically similar'' to a section 317(b) redemption because the definition of ''redemption'' in section 317(b) encompasses only redemptions of stock, and because a redemption of a convertible debt instrument does not reduce the number of a corporation's outstanding shares. Another stakeholder contended that the determination of whether an instrument constitutes debt or equity should be made at the time of issuance. Therefore, if the convertible debt instrument is characterized as ''debt'' at the time of issuance, the subsequent redemption or cash settlement of that instrument should not be treated as a repurchase. Likewise, the issuance of a convertible debt instrument by a covered corporation should not be treated as an issuance for purposes of the netting rule.

The Treasury Department and the IRS agree with these stakeholders. Although Notice 2023–2 does not expressly address convertible debt instruments, the Treasury Department and the IRS continue to be of the view that, for purposes of the stock repurchase excise tax, whether an instrument is debt or equity should be determined at the time of issuance under Federal income tax principles, and that this characterization should not be retested while the debt instrument is outstanding. *See* proposed § 58.4501–1(b)(29); *see also* part II.B of this Explanation of Provisions. Such an approach would better facilitate the IRS's ability to administer and enforce the stock repurchase excise tax and enable taxpayers to apply the tax with greater certainty. Moreover, the term ''repurchase'' includes only section 317(b) redemptions with regard to ''stock'' of a covered corporation as well as transactions that are ''economically similar'' to such redemptions. *See* section 4501(c)(1). Accordingly, the Treasury Department and the IRS are of the view that no special rules are needed for convertible debt. However, for a discussion of the application of the netting rule to an instrument not in the legal form of stock, *see* part XI.C.9 of this Explanation of Provisions.

5. Tracking Stock

Tracking stock is an instrument that tracks the performance of a division of the parent corporation or a subsidiary (for example, by providing dividend rights that are determined by reference

to the earnings of the tracked division or subsidiary). Because tracking stock participates in corporate growth, a stakeholder recommended treating the redemption of less than all shares of a class of tracking stock in the same manner as the redemption of other common stock—that is, as subject to the stock repurchase excise tax.

However, the stakeholder also suggested that an exemption may be warranted for the redemption of an entire class of tracking stock in connection with the disposition of the underlying tracked business, because such a redemption (i) does not accrete to the interests of the corporation's remaining shareholders in the corporation's remaining assets, and (ii) may be equivalent to a distribution in partial liquidation. (As discussed in part VI.B of this Explanation of Provisions, the stakeholder recommended treating partial liquidations as generally outside the scope of the stock repurchase excise tax.)

The Treasury Department and the IRS are of the view that the treatment of tracking stock for purposes of the stock repurchase excise tax should follow the general Federal tax treatment of tracking stock. Accordingly, no special guidance regarding the proper treatment of tracking stock is included in these proposed regulations.

B. Characterization of Instruments as Stock or Debt

One stakeholder requested confirmation that the determination of whether an instrument is stock or debt for purposes of the stock repurchase excise tax is made at the time of issuance under Federal tax principles, and that this characterization is not retested subsequently while the instrument is outstanding. The Treasury Department and the IRS agree with this recommendation, because, as previously stated, such an approach under which an instrument is tested only once would better facilitate the IRS's ability to administer and enforce the stock repurchase excise tax and enable taxpayers to apply the tax with greater certainty. *See* proposed § 58.4501–1(b)(29).

C. Options and Similar Financial Instruments

1. Overview

As discussed previously, Notice 2023–2 would define ''stock'' to mean any instrument issued by a corporation that is stock or that is treated as stock for Federal tax purposes at the time of issuance. *See* section 3.02(25) of Notice 2023–2. This definition of ''stock'' generally excludes options other than options that are treated as stock for Federal tax purposes at the time of issuance.

To the extent option contracts are not treated as stock at the time of issuance, the acquisition of such contracts is not a repurchase under Notice 2023–2 because such acquisition is neither a section 317(b) redemption nor included in the exclusive list of economically similar transactions in section 3.04(4)(a) of Notice 2023–2. Consequently, under Notice 2023–2, there is a repurchase or an issuance of stock only at the time of exercise of a physically settled option (when a covered corporation repurchases or issues the actual underlying stock). In turn, the amount of such repurchase or issuance is equal to the market price of the stock on the date the stock is repurchased or issued. *See* sections 3.06(1)(a), 3.06(2), 3.08(2), and 3.08(5) of Notice 2023–2; *see also* part III of this Explanation of Provisions (discussion of valuation and timing).

Several questions have arisen regarding the application of the stock repurchase excise tax to options and similar financial instruments. In section 6.02(4) of Notice 2023–2, the Treasury Department and the IRS requested comments on: (i) whether any additional rules with regard to financial arrangements, such as options or other similar financial instruments, should be added to prevent avoidance of the stock repurchase excise tax; and (ii) how such additional rules should apply consistently for purposes of determining a covered corporation's repurchases and issuances.

2. Physical Settlement of Option Contracts

Stakeholders recommended that the fair market value of shares acquired or issued (as appropriate) by a covered corporation upon physical settlement of an option contract should be the fair market value of the shares on the date of exercise, rather than the strike price (that is, the price at which the option can be exercised). For example (Example 1), assume that corporation X issues a call option to individual A that entitles A to buy 100 shares of X stock for $100 ($1.00 per share) from X for a limited time. The terms of the option require physical settlement. On the date the option is issued, X stock is trading at $1.00 per share. On the date the option is exercised, X stock is trading at $1.30 per share. Upon settlement of the option, A pays $100 to X, which issues 100 shares of X stock (worth $130) to A.

Alternatively (Example 2), assume the same facts as in Example 1, except that X issues a put option to A that entitles A to sell 100 shares of X stock for $100 ($1.00 per share) to X, and that X stock is trading at $0.70 per share on the date the option is exercised. To settle the option, X purchases 100 shares of X stock (worth $70) for $100 from A.

As another example (Example 3), assume that A issues a call option to unrelated individual B that entitles B to buy 100 shares of X stock for $100 ($1.00 per share) from A for a limited time. The terms of the option require physical settlement. Subsequently, X purchases the option contract from B. On the date the option is exercised, X stock is trading at $1.30 per share. To settle the option, X pays $100 to A, who delivers 100 shares of X stock (worth $130) to X.

The netting rule requires the stock repurchase excise tax base to be reduced by ''the fair market value of any stock issued by the covered corporation during the taxable year.'' *See* section 4501(c)(3). Thus, according to stakeholders, the amount of the issuance in Example 1 should be $130 (the fair market value of the stock at the time of issuance) even though A pays only $100 to excise the option.

Similarly, the stock repurchase excise tax applies to ''the fair market value of any stock of the corporation which is repurchased by such corporation during the taxable year.'' *See* section 4501(a). Consequently, stakeholders suggested that the amount of the repurchase in Example 2 should be $70, and that the $30 premium paid by X represents the amount paid for a property right separate from the stock being repurchased. *Cf.* Rev. Rul. 70–108, 1970–1 C.B. 78 (holding that the right to purchase additional shares constitutes separate property from the underlying shares). Consistent with this approach, stakeholders also suggested that the amount of the repurchase in Example 3 should be $130 (the fair market value of the stock on the exercise date).

The Treasury Department and the IRS agree with the stakeholders that the amount of the issuance in Example 1 should be $130 (the fair market value of the issued stock on the exercise date) rather than $100 (the strike price paid by A). Similarly, the Treasury Department and the IRS agree that the amount of the repurchase in Example 2 should be $70 rather than $100, and that the amount of the repurchase in Example 3 should be $130 rather than $100.

The foregoing approach, which is consistent with Notice 2023–2, is embedded in the proposed rules regarding the fair market value of repurchased or issued stock. *See* proposed §§ 58.4501–2(h)(1) and

58.4501–4(e)(1), respectively. Thus, the Treasury Department and the IRS are of the view that special rules are not needed with respect to the fair market value of stock repurchased or issued upon the physical settlement of an option. However, the proposed regulations would include several examples to illustrate the proposed approach. *See* proposed § 58.4501–5(b)(26) and (28). For special rules for valuing stock issued or provided to an employee or other service provider in connection with the performance of services, *see* proposed § 58.4501–4(e)(5) and part XI.G.7 of this Explanation of Provisions.

3. Cash Settlement of Option Contracts

As previously discussed in part II.C.2 of this Explanation of Provisions, stakeholders recommended treating the physical settlement of an option as a repurchase or an issuance (as appropriate) based on the fair market value of the stock repurchased or issued on the date of exercise. In contrast, a stakeholder recommended that the cash settlement of a put option issued by a covered corporation should not be treated as a repurchase by the covered corporation, because any excess of the strike price over the fair market value of the underlying stock should be viewed as payment for property that is separate from the underlying stock. *Cf.* Rev. Rul. 70–108.

For example, assume that corporation X issues a put option to individual A that entitles A to sell 100 shares of X stock for $100 ($1.00 per share) to X, and that X stock is trading at $0.70 per share on the date the option is exercised. The terms of the option require net cash settlement; thus, X pays $30 to A to settle the option. The stakeholder recommended not treating the net cash settlement as a repurchase, even though the settlement could be construed as a purchase by X of the 100 X shares from A for $100, immediately followed by an issuance by X of 100 shares to A for $70.

For the cash settlement of a call option, the stakeholder generally recommended either (i) treating the net cash settlement as a deemed issuance of stock immediately followed by a repurchase of the same stock (resulting in no net adjustment to the stock repurchase excise tax base), or (ii) simply disregarding the cash settlement altogether for purposes of the stock repurchase excise tax. For example, assume that X issues a call option to A that entitles A to buy 100 shares of X stock for $100 ($1.00 per share) from X, and that X stock is trading at $1.30 per share on the date the option is exercised. The terms of the option require net cash settlement; thus, X pays $30 to A to settle the option.

The net cash payment in the foregoing example is the economic equivalent of (i) A paying $100 to exercise the option, (ii) X issuing 100 shares (worth $130) to A, and then (iii) X immediately redeeming those shares for $130 in cash. Thus, X could be deemed to have issued and repurchased $130 of its shares in a transaction that fully offsets for purposes of the stock repurchase excise tax. Alternatively, X's net cash settlement could be disregarded altogether and simply treated as the sale or exchange of an option. *See* section 1234(c)(2); Rev. Rul. 88–31, 1988–1 C.B. 302 (providing that the net cash settlement of a price-protection contingent value right is treated as a cash settlement of a put option subject to section 1234(c)(2)).

The Treasury Department and the IRS are of the view that, for purposes of the stock repurchase excise tax, the net cash settlement of an option should not be treated as involving a deemed issuance and repurchase of shares in the interest of simplicity and administrability. Accordingly, under the proposed regulations, the net cash settlement of an option contract would result in neither the repurchase nor the issuance of stock other than as discussed in part II.C.4 of this Explanation of Provisions. This rule would apply to the net cash settlement of an embedded option (for example, if the issuer pays the investor solely in cash on exercise of the conversion right in a convertible bond). *See* proposed §§ 58.4501–2(e)(5)(v) and 58.4501–4(f)(12).

4. Deep-in-the-Money Options

Several stakeholders recommended that options that are treated as constructively exercised at the time of their grant under Federal income tax principles (commonly referred to as ''deep-in-the-money'' options) should be treated similarly for purposes of the stock repurchase excise tax. For example, according to the stakeholders, if the grant of an option is treated as the issuance of the underlying stock as of the date of the grant for Federal income tax purposes, the grant of the option should be treated as an issuance of stock for purposes of the netting rule, and the cash settlement of the option should be treated as a repurchase of stock in the year of the settlement.

The stakeholders further recommended that the determination of whether an option is deep in the money should be made only at the time of grant and generally should not be revisited. Thus, if a corporation grants a call option that is exercisable or convertible into the corporation's stock and that is not constructively exercised at the time of grant, the stock should not be treated as issued until the option is exercised or converted into stock.

The Treasury Department and the IRS are of the view that, if a deep-in-the-money option is determined to be constructively exercised at the time of grant under Federal income tax principles, the cash settlement of such an option would be a repurchase of the underlying stock on the date of settlement under the proposed regulations. *See* proposed § 58.4501–2(e)(5)(v). However, for a discussion of the application of the netting rule to deep-in-the-money options or other instruments not in the legal form of stock, *see* part XI.C.9 of this Explanation of Provisions.

5. Section 305(a) Warrants

A stakeholder recommended that, if an option to acquire a covered corporation's stock is distributed in a distribution under section 305(a) of the Code (section 305(a) warrant), the adjustment to the stock repurchase excise tax base upon settlement of the section 305(a) warrant should be determined by reference to the strike price (and not the value of the underlying stock) because the section 305(a) distribution should be disregarded.

The Treasury Department and the IRS are of the view that the treatment of warrants distributed in a section 305 distribution should not deviate from the treatment of other types of financial instruments under the proposed regulations. The Treasury Department and the IRS view this approach as facilitating the IRS's ability to administer and enforce the stock repurchase excise tax and enable taxpayers to apply the tax with greater certainty. Accordingly, the proposed regulations would not provide special rules for warrants distributed in a section 305 distribution. *See* proposed §§ 58.4501–2(e)(5)(v) and 58.4501–4(f)(12); *see also* part II.C.3 of this Explanation of Provisions (discussion of cash settlement of option contracts).

6. Integration of Qualifying Debt Instruments Under § 1.1275–6

A stakeholder requested clarification on how section 4501 applies to a synthetic debt instrument resulting from an integrated transaction under § 1.1275–6. In general, § 1.1275–6 provides for the integration of a qualifying debt instrument (as defined in § 1.1275–6(b)(1)) with a § 1.1275–6 hedge or combination of § 1.1275–6

hedges in certain circumstances. The circumstances in which § 1.1275–6 may apply involve a convertible debt instrument as well as one or more options or other financial instruments involving underlying stock, provided that the combined cash flows of the financial instrument and the debt instrument permit the calculation of a yield to maturity under section 1272 of the Code or the right to the combined cash flows would qualify as a specified type of variable rate debt instrument, and other conditions are satisfied.

Under § 1.1275–6(f), except as otherwise provided in published guidance, the synthetic debt instrument resulting from an integrated transaction is recognized as a single debt instrument for Federal income tax purposes for the period that the transaction qualifies as an integrated transaction and is not subject to the Federal income tax rules that would apply on a separate basis to the instruments comprising the integrated transaction if the transaction were not integrated.

Because an integrated transaction does not change the amount of stock actually repurchased or issued, the Treasury Department and the IRS are of the view that the determination of whether and when stock is repurchased or issued for purposes of the stock repurchase excise tax should be determined without regard to the integration of a qualifying debt instrument with a § 1.1275–6 hedge or combination of § 1.1275–6 hedges under § 1.1275–6. *See* proposed § 1.1275–6(f)(12)(iii).

D. Forfeiture or Clawback of Restricted Stock

One stakeholder recommended that the forfeiture of restricted stock (that is, stock transferred to a service provider that is subject to a substantial risk of forfeiture at grant) that was transferred to a service provider in connection with the performance of services should not be treated as a repurchase for purposes of the stock repurchase excise tax to the extent no payment is made to the service provider in connection with the forfeiture. Instead, the stakeholder recommended treating the stock as repurchased only to the extent of any payment received in connection with the forfeiture, with any excess of the value of the stock over the amount paid treated as a forfeiture. In other words, the stakeholder recommended using the amount paid rather than market price to compute the amount of the repurchase in this situation.

The stakeholder cited to § 1.83–6(c) in support of its recommendation. Section 1.83–6(c) provides that, if (under section 83(h) of the Code and § 1.83–6(a)) a deduction, an increase in basis, or a reduction of gross income was allowable to an employer in respect of a transfer of property, and if such property subsequently is forfeited, then the amount of such deduction, increase in basis, or reduction of gross income is included in the employer's gross income for the taxable year in which the forfeiture occurs. According to the stakeholder, the fact that the employer does not recognize additional income or gain suggests that the property forfeited, to the extent it exceeds any amount paid by the employer to the forfeiting service provider, is treated as a capital contribution to the employer under section 118(a) rather than as a redemption.

Notice 2023–2 does not expressly address the forfeiture of restricted stock. Under section 3.06(2) of Notice 2023–2, if property is paid for the forfeited stock, the stock is treated as repurchased for an amount equal to the market price on the date of repurchase (regardless of the amount actually paid) because there is a section 317(b) redemption. If no property is paid in exchange for the forfeited shares, the forfeiture is not treated as a repurchase, because the forfeiture is neither a section 317(b) redemption nor treated as an economically similar transaction. However, under both Notice 2023–2 and these proposed regulations, there would be an issuance for purposes of the netting rule when the ownership of the restricted stock transfers to the recipient for Federal income tax purposes. *See* proposed § 58.4501–4(d)(2).

The Treasury Department and the IRS are of the view that, if a covered corporation takes into account an issuance of restricted stock for purposes of the netting rule because a section 83(b) election has been made, a forfeiture of such stock likewise should be treated as a repurchase. Conversely, if a covered corporation does not take into account an issuance of restricted stock for purposes of the netting rule, a forfeiture of such stock should not be treated as a repurchase. This approach is necessary to preserve consistency in the treatment of issuances and repurchases. Moreover, the economic effect of a forfeiture is similar to that of a repurchase, insofar as the shares are retired (or held as treasury stock) in both cases.

Accordingly, the proposed regulations would treat a forfeiture of restricted stock as a repurchase on the date of forfeiture (in an amount equal to the fair market value of such stock on the date of forfeiture) if such forfeited stock was treated as issued or provided under the netting rule. *See* proposed § 58.4501–2(e)(4)(vi); *see also* part XII.D of this Explanation of Provisions (discussion of a proposal to provide similar treatment with regard to forfeitures of stock issued as part of an earnout or to satisfy an indemnification obligation).

It is the view of the Treasury Department and the IRS that stock received by a covered corporation or specified affiliate pursuant to a clawback agreement (that is, a contractual provision that requires an employee to return vested stock) is economically similar to restricted stock forfeited to the covered corporation after failure to vest. Accordingly, these proposed regulations also would provide that, if the stock were treated as issued or provided under the netting rule, then the clawed back stock would be treated as repurchased on the date of clawback (in an amount equal to the fair market value of such stock on such date). *See* proposed § 58.4501–2(e)(4)(vi).

III. Valuation and Timing

A. Valuation

1. Overview

Under sections 3.06(2) and 3.08(5) of Notice 2023–2, the fair market value of stock repurchased or issued (other than stock issued or provided to an employee) is the market price of the stock on the date the stock is repurchased or issued, respectively. Thus, if the price at which the repurchased stock is purchased differs from the market price of the stock on the date the stock is repurchased, the fair market value of the stock is the market price on the date the stock is repurchased.

The Treasury Department and the IRS continue to be of the view that this approach is more consistent with the plain language of the statute, and simpler for the IRS to administer and for taxpayers to apply, than an approach that defines fair market value by reference to the amount paid to repurchase stock. For example, under Notice 2023–2, adjustments are not required for transaction costs or non-arm's-length transactions, and special rules are not needed for situations in which stock is redeemed for consideration other than cash (such as a non-publicly traded note).

Section 3.08(3)(c) of Notice 2023–2 describes a special rule for valuing stock issued or provided to employees. The fair market value of such stock is the fair market value of the stock, as determined under section 83, as of the date the stock is issued or provided to the employee, as determined under section 3.08(3)(b)

of Notice 2023–2. *See* part XI.G.7 of this Explanation of Provisions (discussion of valuing stock issued or provided to an employee or other service provider).

In section 6.01(2) of Notice 2023–2, the Treasury Department and the IRS requested comments on whether the fair market value of stock repurchased or issued should be an amount other than the market price of such stock. In section 6.01(6) of Notice 2023–2, the Treasury Department and the IRS also requested comments on whether a method should be provided for determining the market price of stock that is traded on multiple established securities markets and, if so, what modifications to the rules described in sections 3.06(2)(a)(i) and 3.08(5)(a)(i) of Notice 2023–2 (concerning acceptable methods for determining the market price of repurchased or issued stock that is traded on an established securities market) would be required.

2. Valuation in Arm's-Length Transactions

Consistent with the approach described in Notice 2023–2, stakeholders generally recommended that the fair market value of stock repurchased or issued should be the market price of the stock on the day of the repurchase or issuance, respectively. However, one stakeholder also recommended that covered corporations be required to determine fair market value based on the actual price the covered corporation pays or receives, if the repurchase or issuance is (i) from or to an unrelated party, (ii) for cash or cash-equivalents, (iii) negotiated at arm's length, and (iv) not pursuant to a pre-existing option contract or other arrangement (for example, an accelerated share repurchase agreement) that involves the delivery of stock at a price other than the stock's market price at delivery.

Similarly, another stakeholder recommended an exception to the general fair market value rule for repurchases that result from a tender offer or other, similarly negotiated transaction that sets a transaction price prior to the closing date. According to the stakeholder, it is common for the transaction price and the market price on the closing date to differ, and it is not clear why the value of a repurchase should be determined based on the market price rather than the transaction price.

The Treasury Department and the IRS continue to be of the view that an approach that references the market price of stock on the date the stock is repurchased or issued, respectively, is more consistent with the plain language of the statute, and would be simpler to administer, than an approach that references the amount paid to repurchase the stock. Moreover, the Treasury Department and the IRS are of the view that the two approaches likely would result in approximately similar values for most repurchases of publicly traded stock. Consequently, the proposed regulations would provide that the fair market value of stock repurchased or issued is the market price of the stock on the date the stock is repurchased or issued, respectively. *See* proposed §§ 58.4501–2(h)(1) and 58.4501–4(e)(1).

3. Valuation in Bankruptcy or Insolvency Workouts

Another stakeholder recommended that, in the case of a bankruptcy or insolvency workout, the fair market value of repurchased stock should equal the value of the recovery shareholders are entitled or permitted to receive under the bankruptcy or insolvency workout, rather than the market price of the stock. The stakeholder recommended this approach because the market price of the stock will take the debt restructuring into account and, thus, may be much higher than the recovery value.

However, the Treasury Department and the IRS are of the view that the proposed regulations should not adopt special valuation rules for financially troubled companies. As discussed in part XIII of this Explanation of Provisions, the Treasury Department and the IRS are of the view that distributions of cash or other non-qualifying property (that is, property that is not permitted to be received under section 354 or 355 of the Code without the recognition of gain or loss) by troubled companies to their shareholders in exchange for their stock should be subject to the stock repurchase excise tax. Moreover, section 4501 contains no indication that special valuation rules for financially troubled companies would be necessary or appropriate to carry out the purposes of the stock repurchase excise tax. The Treasury Department and the IRS are of this view because the exchange would be a section 317(b) redemption and providing a special rule would not be necessary or appropriate to carry out the purposes of section 4501.

4. Valuation of Publicly Traded Stock

a. In General

One stakeholder recommended that taxpayers be permitted (but not required) to determine the market price of publicly traded stock based on one or more commonly accepted valuation methods, such as daily volume-weighted average price (VWAP), daily average high-low price, or daily closing price. Under the stakeholder's recommendation, a taxpayer would be required to consistently apply the taxpayer's chosen method to all its repurchases and issuances throughout the taxpayer's taxable year. According to the stakeholder, this approach would be consistent with established Federal tax valuation standards for the fair market value of publicly traded securities.

Sections 3.06(2)(a)(i) and 3.08(5)(a)(i) of Notice 2023–2 describe an approach that would require taxpayers to determine the market price of repurchased or issued stock, respectively, that is traded on an established securities market by applying one of four methods: (i) the daily volume-weighted average price as determined on the date the stock is repurchased or issued; (ii) the closing price on the date the stock is repurchased or issued; (iii) the average of the high and low prices on the date the stock is repurchased or issued; and (iv) the trading price at the time the stock is repurchased or issued. Sections 3.06(2)(a)(iii) and 3.08(5)(a)(iii) of Notice 2023–2 describe an approach that would require the market price of such stock to be determined by consistently applying one of the foregoing methods to all repurchases and issuances throughout the covered corporation's taxable year (other than stock issued to employees). Another stakeholder expressed appreciation for the flexibility provided under the approach described in sections 3.06(2)(a) and 3.08(5)(a) of Notice 2023–2.

The Treasury Department and the IRS agree that commonly accepted valuation methods are an appropriate means of determining the fair market value of publicly traded stock for purposes of repurchases and issuances under section 4501. Accordingly, consistent with Notice 2023–2, the proposed regulations would include four such methods: (i) daily VWAP; (ii) daily closing price; (iii) daily average high-low price; and (iv) trading price when stock is repurchased or issued. Consistent with Notice 2023–2, to facilitate the IRS's ability to administer and enforce the stock repurchase excise tax, the Treasury Department and the IRS are of the view that taxpayers should be required (rather than merely permitted) to use one of these methods. *See* proposed §§ 58.4501–2(h)(2)(ii) and 58.4501–4(e)(2)(ii).

As reflected in sections 3.06(2)(a)(iii) and 3.08(5)(a)(iii) of Notice 2023–2, the

Treasury Department and the IRS also agree with the stakeholder that taxpayers should be required to consistently apply the chosen method to all repurchases and issuances throughout the taxable year. *See* proposed §§ 58.4501–2(h)(2)(iv) and 58.4501–4(e)(2)(iv). For special rules for valuing stock issued or provided to an employee or other service provider in connection with the performance of services, *see* proposed § 58.4501–4(e)(5) and part XI.G.7 of this Explanation of Provisions.

b. Stock Traded on Multiple Established Securities Markets

One stakeholder recommended that a covered corporation with a class of stock that trades on multiple established securities markets should be permitted to select both the valuation method and the exchange to be used in determining the fair market value of the covered corporation's stock. The stakeholder had considered an alternative approach based on the market price of the shares on the exchange with the highest trading volume on the applicable date, but the stakeholder did not recommend such an approach due to the additional complexity it would create.

The Treasury Department and the IRS are of the view that a covered corporation whose stock is traded on multiple exchanges should determine the fair market value of the covered corporation's stock by reference to trading on the exchange in the country in which the covered corporation is organized, including a regional established securities market that trades in that country. If the covered corporation's stock trades on multiple exchanges in the country in which the covered corporation is organized, fair market value is determined by reference to trading on the exchange in that country with the highest trading volume in that stock in the prior taxable year. *See* proposed §§ 58.4501–2(h)(2)(v) and 58.4501–4(e)(2)(v). It is the view of the Treasury Department and the IRS that this approach would better facilitate the IRS's ability to administer and enforce the stock repurchase excise tax and enable taxpayers to apply the tax with greater certainty.

5. Valuation of Privately Owned Stock

One stakeholder recommended that the market price of privately owned stock should be determined under general valuation principles for privately owned securities. Another stakeholder recommended that the market price of privately owned stock should equal the amount paid for such stock. According to this second stakeholder, valuation experts often disagree, and the transaction price typically is viewed as the best evidence of the value of privately owned stock. Further, allowing corporations to use the amount paid in valuing privately traded stock would relieve corporations from the need to evaluate whether there is a difference between the amount paid and the market price of such shares on the date on which ownership transfers for Federal income tax purposes.

Under the approach described in sections 3.06(2)(b) and 3.08(5)(b) of Notice 2023–2, stock that is not traded on an established securities market would be valued on the date of repurchase or issuance under the principles of § 1.409A–1(b)(5)(iv)(B)(*1*). Section 1.409A–1(b)(5)(iv)(B)(*1*) provides, in part, that the fair market value of stock as of a valuation date means a value determined by the reasonable application of a reasonable valuation method, and that the determination of whether a valuation method is reasonable (or whether an application of a valuation method is reasonable) is made based on the facts and circumstances as of the valuation date. Section 1.409A–1(b)(5)(iv)(B)(*1*) further provides that the amount paid is one factor to be considered under a reasonable valuation method. The Treasury Department and the IRS are of the view that the proposed regulations should implement the approach described in Notice 2023–2 and should not provide a separate rule that would permit taxpayers to use the amount paid, in and of itself, in determining the value of privately traded stock. *See* proposed §§ 58.4501–2(h)(3) and 58.4501–4(e)(3). For special rules for valuing stock issued or provided to an employee or other service provider in connection with the performance of services, *see* proposed § 58.4501–4(e)(5) and part XI.G.7 of this Explanation of Provisions.

As with publicly traded stock, the Treasury Department and the IRS are of the view that repurchases and issuances of privately traded stock should be valued consistently. Specifically, the proposed regulations would provide that the same valuation method must be used for all repurchases and issuances of privately owned stock belonging to the same class throughout the covered corporation's taxable year, unless the application of that method to a particular repurchase or issuance would be unreasonable under the facts and circumstances as of the valuation date. *See* proposed §§ 58.4501–2(h)(3)(ii) and 58.4501–4(e)(3)(ii). For special rules for valuing stock issued or provided to an employee or other service provider in connection with the performance of services, *see* proposed § 58.4501–4(e)(5) and part XI.G.7 of this Explanation of Provisions.

6. Annual Valuation Convention

A stakeholder also questioned whether covered corporations should be permitted to use an annual valuation convention to determine a single, uniform value for all repurchases and issuances during a taxable year. According to the stakeholder, an annual valuation convention would eliminate the distortive effects of stock price volatility. In addition, such approach would simplify netting because the use of the same price for all repurchases and issuances in the taxable year would allow netting to be computed based on the number of shares repurchased versus issued.

However, the stakeholder also acknowledged that converting the netting rule into such a ''share count'' rule would be in tension with the statutory requirement to value shares based on fair market value. The stakeholder also noted that volatility later in the year could cause a covered corporation's stock repurchase excise tax liability to rise or fall dramatically after issuances or repurchases earlier in the year, and that other Code provisions typically do not allow values to be averaged over such a long period.

The Treasury Department and the IRS agree with the stakeholder that adoption of an annual valuation convention in the proposed regulations would be inconsistent with the statutory requirement under section 4501(c)(3) to value shares based on fair market value. Accordingly, the proposed regulations would not adopt the stakeholder's annual valuation convention.

B. Timing of Issuances and Repurchases

1. In General

The approach described in sections 3.06(1)(a) and 3.08(2) of Notice 2023–2 generally provides that stock is treated as repurchased or as issued or provided, respectively, at the time at which ownership of the stock transfers for Federal income tax purposes. In turn, the approach described in sections 3.06(2) and 3.08(5) of Notice 2023–2 provides that the fair market value of stock repurchased or issued is the market price of the stock on the date the stock is repurchased or issued, respectively.

One stakeholder recommended that, consistent with the approach described in section 3.08(2) of Notice 2023–2, stock generally should be treated as issued for purposes of the netting rule

when tax ownership of the stock transfers to the recipient of the stock, rather than when the stock is issued for corporate law or financial statement purposes.

The Treasury Department and the IRS agree with the stakeholder's general recommendation and continue to be of the view that stock generally should be treated as repurchased when tax ownership of the stock transfers to the covered corporation or to the specified affiliate (as appropriate). Therefore, the proposed regulations generally would retain this approach. *See* proposed §§ 58.4501–2(g)(1) and 58.4501–4(d)(1). For specific timing rules applicable in particular situations, *see* proposed § 58.4501–2(g)(2), (3), and (4), and for special timing rules for stock issued or provided to an employee or other service provider in connection with the performance of services, *see* proposed § 58.4501–4(d)(2) and part XI.G.6 of this Explanation of Provisions.

2. Repurchase Pursuant to an Economically Similar Transaction

Under the rule described in section 3.06(1)(b) of Notice 2023–2, stock repurchased in an economically similar transaction is treated as repurchased when the shareholders of the covered corporation exchange their stock in the covered corporation. Consistent with part III.B.1 of this Explanation of Provisions and section 3.06(1)(b) of Notice 2023–2, the proposed regulations would provide that stock repurchased in an economically similar transaction described in proposed § 58.4501–2(e)(4) is treated as repurchased on the date the shareholders of the covered corporation exchange their stock in such corporation. *See* proposed § 58.4501–2(g)(2).

3. Repurchase Pursuant to a Constructive Specified Affiliate Acquisition

For a discussion of the timing rule for repurchases pursuant to a constructive specified affiliate acquisition, *see* part XIV.D of this Explanation of Provisions.

4. Accelerated Share Repurchase Agreements

Although Notice 2023–2 does not describe special rules for accelerated share repurchase (ASR) agreements, section 3.09(15), *Example 15,* of Notice 2023–2 illustrates the application of the timing rules summarized in part III.B.1 of this Explanation of Provisions in the context of an ASR agreement. That example explicitly is limited to situations in which, based on the terms of the agreement and the facts and circumstances, the date on which shares are delivered by the bank to the covered corporation is the date on which tax ownership of the shares is transferred for Federal income tax purposes. As a result, the delivery date in the example is the repurchase date. The example illustrates the general principle that the date on which tax ownership of the shares is transferred for Federal income tax purposes, which is generally based on the particular ASR agreement and the facts and circumstances of a transaction, is the repurchase date.

Several stakeholders requested guidance regarding the treatment of ASR agreements for purposes of the stock repurchase excise tax. In an ASR agreement, a corporation that wants to repurchase its outstanding shares from the market will make an initial cash payment to an investment bank in exchange for a certain number of shares. To deliver the shares to the corporation, (i) the investment bank first will borrow shares from stock lenders, and then (ii) over the term of the ASR agreement, the bank will purchase shares from the market and use such shares to gradually return the stock owed to the stock lenders.

The price the corporation ultimately pays for its shares under the ASR agreement generally is based on an averaging of the VWAP of the shares on specified days over the term of the agreement. Upon final settlement of the agreement, the bank may be required to deliver additional shares or cash to the corporation, or the corporation may owe additional purchase price to the bank, depending on the VWAP of the shares over the term of the agreement.

Several stakeholders recommended treating the initial delivery of shares by the bank to a covered corporation under an ASR agreement as a repurchase at the time of delivery, rather than at the time the bank purchases the shares from the market. Based on the plain language of section 4501(a), one stakeholder also recommended determining the amount of the repurchase by reference to the fair market value of the shares delivered on the date of delivery, rather than by reference to the initial payment amount under the ASR agreement. If the bank delivers additional shares to the covered corporation (or the covered corporation issues shares to the bank) upon final settlement of the ASR agreement, the stakeholder recommended that such delivery (or issuance) also should be considered as a repurchase (or an issuance) of shares for purposes of the stock repurchase excise tax, with the fair market value of the repurchase (or issuance) determined on that date.

The stakeholders' recommendations are consistent with Notice 2023–2, including section 3.09(15), *Example 15,* to the extent that the ASR agreement involved is one in which the date the shares are delivered by the bank to the covered corporation is the date on which tax ownership of shares is transferred for Federal income tax purposes. In such a situation, the date the shares are delivered would be the repurchase date. However, because the determination of the date on which tax ownership of shares is transferred is an inherently factual question, the Treasury Department and the IRS are of the view that no special rule should be included in the proposed regulations to determine the repurchase date for ASR agreements, and the proposed regulations would retain the approach described in Notice 2023–2. *See* proposed §§ 58.4501–2(h)(1), 58.4501–4(e)(1), and 58.4501–5(b)(15) (*Example 15*).

5. Other Forward Contracts

A stakeholder also requested guidance on how the stock repurchase excise tax applies to other forward transactions (either variable or fixed price) in which a corporation agrees to acquire or issue its stock for delivery in a future trade. The stakeholder recommended that the stock repurchase excise tax and the netting rule generally should be applied based on the fair market value of the shares at the time of their actual acquisition or issuance by the corporation. However, if the stock underlying the transaction is treated as immediately acquired or issued under Federal income tax principles (for example, if the corporation effectively acquires the benefits and burdens of stock ownership upon entering into the forward contract), the timing rules for purposes of the stock repurchase excise tax (for example, the date used for determining fair market value) should follow those Federal income tax principles.

The Treasury Department and the IRS agree with these recommendations as they relate to the determination of the date stock is treated as repurchased and the fair market value of that stock. As previously discussed, the proposed regulations generally would use Federal income tax principles to determine the date on which stock is treated as repurchased or issued. Additionally, under the proposed regulations, the fair market value of stock repurchased or issued generally would equal the market price of the stock on the date the stock is repurchased or issued. *See* proposed §§ 58.4501–2(h)(1) and 58.4501–4(e)(1). For a discussion of the application of the netting rule to forward contracts or other instruments not in the legal form

of stock, *see* part XI.C.9 of this Explanation of Provisions.

6. Stock Issued or Provided to an Employee or Other Service Provider

For a discussion of the timing rules for stock issued or provided to an employee or other service provider, *see* part XI.G.6 of this Explanation of Provisions.

IV. Definitions of ''Covered Corporation,'' ''Established Securities Market,'' and ''Specified Affiliate''

A. Becoming or Ceasing To Be a Covered Corporation

1. Overview

In section 6.02(2) of Notice 2023–2, the Treasury Department and the IRS requested comments on when a corporation should be treated as becoming or ceasing to be a covered corporation, and how repurchases and issuances by a corporation during a taxable year that are prior to the date the corporation becomes a covered corporation or after the date the corporation ceases to be a covered corporation should be treated. For example, the Treasury Department and the IRS have considered the extent to which the term ''covered corporation'' should apply to a privately held corporation that goes public, or to a publicly traded corporation that goes private, during a taxable year.

One stakeholder recommended that the stock repurchase excise tax base of a corporation that becomes a covered corporation during its taxable year (for example, because of an initial public offering (IPO)) should be increased only for section 317(b) redemptions and economically similar transactions occurring on or after the date the corporation becomes a covered corporation. The stakeholder further recommended that only stock issued by a corporation on or after the date it becomes a covered corporation should be taken into account for purposes of the netting rule.

Similarly, another stakeholder recommended that a corporation's status as a covered corporation should be determined immediately prior to a repurchase transaction. Thus, for example, a public corporation that becomes a private corporation in a repurchase would be a covered corporation with respect to that transaction.

In contrast, another stakeholder recommended that any redemption that occurs as part of a transaction should be exempt from the definition of ''repurchase'' if the corporation's stock no longer is traded on an established securities market immediately after the transaction. Alternatively, the stakeholder recommended that a corporation's status as a covered corporation be determined at the end of the repurchase transaction.

2. General Rules

The Treasury Department and the IRS are of the view that, as a general rule, a corporation should be treated as a covered corporation starting at the beginning of the corporation's ''initiation date,'' which is the date on which stock of the corporation begins to be traded on an established securities market. Based on the statutory language, the Treasury Department and the IRS are of the view that the traded instrument must be stock of the corporation (as opposed to, for example, ''when-issued'' trading of interests in to-be-issued shares of stock of the corporation). *See,* for example, section 4501(b) (defining a covered corporation as a domestic corporation the *stock* of which is traded on an established securities market). A covered corporation generally would cease being treated as a covered corporation at the end of the covered corporation's ''cessation date,'' which is the date on which stock of the covered corporation ceases to be traded on an established securities market.

The Treasury Department and the IRS are of the view that these general rules would be consistent with the statutory language in section 4501 and would facilitate the IRS's ability to administer and enforce the stock repurchase excise tax. Accordingly, the proposed regulations would incorporate these general rules. *See* proposed § 58.4501–2(d)(1) and (d)(2)(i).

Under the proposed regulations, in the case of a privately held domestic corporation that goes public, shares issued on or after the initiation date would be counted for purposes of the netting rule under the proposed regulations. In addition, the proposed regulations would provide that any repurchases, issuances, or contributions to an employer-sponsored retirement plan on or after that date would be taken into account in computing the corporation's stock repurchase excise tax base for that taxable year. In contrast, shares issued before the initiation date would not be counted for purposes of the netting rule, and any repurchases, issuances, or contributions to an employer-sponsored retirement plan before that date would not be taken into account in computing the corporation's stock repurchase excise tax base for that taxable year. *See* proposed § 58.4501–4(b)(2).

In the case of a publicly traded domestic corporation that goes private, repurchases of stock on the cessation date would be subject to the stock repurchase excise tax under the proposed regulations, unless one of the statutory exceptions applies. However, any repurchases, issuances, or contributions to an employer-sponsored retirement plan of the corporation's stock after that date generally would not be taken into account under the proposed regulations in computing the corporation's stock repurchase excise tax base for that year.

3. Exception Regarding Cessation Transactions That Include Repurchases Pursuant to the Transaction's Plan

The proposed regulations would contain an exception to the general rule that a corporation should be treated as a covered corporation starting at the beginning of its ''initiation date'' and ending at the end of its ''cessation date.'' Under the proposed regulations, if a corporation ceases to be a covered corporation pursuant to a plan that includes a repurchase, and if the corporation's cessation date precedes the date on which any repurchase undertaken pursuant to the plan occurs, then the corporation would continue to be a covered corporation until the end of the date on which the repurchase occurs. *See* proposed § 58.4501–2(d)(2)(ii). For example, under the proposed regulations, all repurchases of stock of a target covered corporation in an acquisitive reorganization would be subject to the stock repurchase excise tax (if no exception applied), even if the target covered corporation's stock ceased to be traded on an established securities market prior to the repurchase of the target covered corporation's stock in the acquisitive reorganization. Under this exception, a covered corporation's final repurchase transaction pursuant to the plan of reorganization would be included in the stock repurchase excise tax base.

4. Inbound and Outbound F Reorganizations

A stakeholder requested clarification that, consistent with the Federal income tax treatment of a foreign corporation that domesticates in an F reorganization, such a corporation is not a domestic corporation for purposes of the stock repurchase excise tax until the day after that reorganization occurs. *See* § 1.367(b)–2(f)(4) (providing that, in the case of an F reorganization in which the transferor corporation is a foreign corporation, the taxable year of such corporation ends with the close of the date of the transfer). According to the

stakeholder, this clarification is important for foreign special acquisition holding companies, which typically domesticate when combining with a domestic business.

The Treasury Department and the IRS agree with the stakeholder. Accordingly, these proposed regulations would clarify that, for purposes of the stock repurchase excise tax, a foreign corporation that transfers its assets to a domestic corporation in an F reorganization (as described in § 1.367(b)–2(f)) is not treated as a domestic corporation until the day after the reorganization. Similarly, the proposed regulations would clarify that, for purposes of the stock repurchase excise tax, a domestic corporation that transfers its assets to a foreign corporation in an F reorganization (as described in § 1.367(a)–1(e)) is not treated as a foreign corporation until the day after the reorganization. *See* proposed § 58.4501–2(d)(3).

5. Determination of Timing of Events or Transactions

The Treasury Department and the IRS have considered rules to address uncertainty that could arise from the application of the stock repurchase excise tax regulations to a series of transactions or events that occurs across multiple time zones.

The Treasury Department and the IRS request comments on this issue, including specific proposals to address the application of the stock repurchase excise tax regulations to a series of transactions or events that occurs across multiple time zones. The Treasury Department and the IRS encourage comments regarding the extent to which a proposed approach would facilitate taxpayer certainty and the IRS's ability to administer and enforce the stock repurchase excise tax regulations.

B. Determining Specified Affiliate Status

If a specified affiliate of a covered corporation acquires stock of the covered corporation from a person that is not the covered corporation or another specified affiliate of the covered corporation, the acquisition is treated as a repurchase of the stock of the covered corporation by the covered corporation. *See* section 4501(c)(2)(A); *see also* section 3.05(1) of Notice 2023–2.

Stakeholders have asked when specified affiliate status should be determined. More specifically, stakeholders have asked when valuations should be undertaken for purposes of the 50-percent vote-or-value test in section 4501(c)(2)(B), and whether fluctuations in the value of the (potential) specified affiliate's stock or partnership interests should be ignored.

The Treasury Department and the IRS are of the view that the determination of whether a corporation or partnership is a specified affiliate should be made whenever such determination is relevant for purposes of section 4501. For example, such a determination would be relevant when the potential specified affiliate acquires stock of a covered corporation or provides stock of the covered corporation to employees of the potential specified affiliate. *See* proposed § 58.4501–2(f)(2)(i).

C. Involvement Safe Harbor

As defined in section 4501(b), the term ''covered corporation'' means any domestic corporation the stock of which is traded on an established securities market (within the meaning of section 7704(b)(1)). The rule described in section 3.02(13) of Notice 2023–2 further provides that the term ''established securities'' market has the meaning provided in § 1.7704–1(b).

Section 1.7704–1(b) provides, in part, that the term ''established securities market'' includes ''[a]n interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise'' (interdealer system). *See* § 1.7704–1(b)(5). However, § 1.7704–1(d) provides a safe harbor (involvement safe harbor) under which interests in a partnership are not treated as traded on an established securities market within the meaning of § 1.7704–1(b)(5) (that is, a partnership will not be a publicly traded partnership solely due to an interdealer system), unless the partnership either (1) ''participates in the establishment of the market or the inclusion of its interests thereon,'' or (2) ''recognizes any transfers made on the market'' by redeeming the transferor or admitting the transferee as a partner or otherwise recognizing any rights of the transferee.

A stakeholder noted that shares of corporations may trade over the counter (OTC) or on similar markets, even without the corporation's involvement, and that certain of those OTC or similar markets may qualify as an interdealer system. As a result, a corporation could be a covered corporation due to independent shareholder actions without the corporation engaging in an affirmative listing on an exchange. The stakeholder requested confirmation that the involvement safe harbor in § 1.7704–1(d) applies for purposes of determining whether a corporation is a covered corporation due to an interdealer system, with adjustments as needed for application of this safe harbor to corporations rather than partnerships.

The Treasury Department and the IRS are of the view that the involvement safe harbor should not apply for purposes of the stock repurchase excise tax. The Treasury Department and the IRS view the relationship between a partnership and its partners (a contractual relationship that allows a partnership to set the terms under which interests in the partnership may be validly transferred) as different from the relationship between a corporation and its shareholders (which is determined by the corporate law governing the stock). Accordingly, the proposed regulations would not incorporate the involvement safe harbor.

D. Indirect Ownership of Specified Affiliates

As noted in part I.B of the Background section of this preamble, section 4501(c)(2)(B) defines the term ''specified affiliate'' to mean, with regard to any corporation, ''(i) any corporation more than 50 percent of the stock of which is owned (by vote or by value), *directly or indirectly,* by such corporation, and (ii) any partnership more than 50 percent of the capital interests or profits interests of which is held, *directly or indirectly,* by such corporation'' (*emphasis added*).

The proposed regulations would provide that, for purposes of section 4501(c)(2)(B), ''indirect'' ownership means a corporation's proportionate ownership in equity interests through other entities. *See* proposed § 58.4501–2(f)(2)(ii). For example, if P owns 60 percent of the stock of Sub 1, which owns 60 percent of the stock of Sub 2, then P indirectly owns 36 percent ($0.6 \times 0.6 = 0.36$) of the stock of Sub 2.

E. Foreign Securities Markets

In section 6.02(9) of Notice 2023–2, the Treasury Department and the IRS requested comments on whether the definition of ''established securities market'' should be revised to clarify the regulatory requirements under the Securities Exchange Act of 1934 that are most relevant to the determination of whether a foreign securities market is treated as an established securities market and, if so, what type of U.S. securities exchange (including which tier of a securities exchange with multiple tiers) should be the baseline for comparison.

One stakeholder recommended including an exclusive list of foreign securities markets that are treated as established securities markets, on the grounds that tax advisors should not be required to determine whether foreign securities markets have regulatory

requirements analogous to those under the Securities Exchange Act of 1934. *See* § 1.7704–1(b).

The Treasury Department and the IRS appreciate the stakeholder's recommendation. However, the Treasury Department and the IRS are of the view that the development and maintenance of an exclusive list of foreign securities markets that are treated as established securities markets would be outside the scope of the proposed regulations. As a result, the proposed regulations would not include such a list.

F. Depository Receipts

In section 6.02(10) of Notice 2023–2, the Treasury Department and the IRS requested comments on how the trading of stock through depository receipts should be treated for purposes of determining whether a corporation is a covered corporation or whether repurchased stock is traded on an established securities market. In response, one stakeholder noted that some applicable foreign corporations with domestic specified affiliates have American depository receipts (ADRs) listed in the United States. The stakeholder requested guidance to clarify that the foreign parent's ADRs would not cause the domestic specified affiliate to be treated as if the domestic specified affiliate's stock were traded on an established securities market in the United States.

The Treasury Department and the IRS are of the view that no special rules are needed in response to this request. Section 4501(b) specifically defines the term ''covered corporation'' to mean ''any *domestic corporation the stock of which* is traded on an established securities market'' (*emphasis added*). Moreover, although Notice 2023–2 does not expressly address ADRs, the definition of ''stock'' is defined with respect to an instrument issued *by the corporation. See* section 3.02(25) of Notice 2023–2. The proposed regulations would maintain this definition of ''stock.'' *See* proposed § 58.4501–1(b)(29).

ADRs that provide full voting rights with respect to the underlying corporate stock, entitle ADR holders to receive any dividends paid on the stock, and permit an ADR holder to surrender an ADR at any time in exchange for the underlying stock, may be treated as direct ownership of the underlying stock. *See* Rev. Rul. 65–218, 1965–2 C.B. 566. If an ADR is not treated as direct ownership of the underlying stock, it would be characterized in accordance with its substance. In either case, because ADRs are not issued by a domestic specified affiliate, they would not be treated as stock of the domestic specified affiliate.

Publicly available information indicates that many foreign issuers treat ADRs for Federal income tax purposes as direct ownership of their stock. On that basis, under the definition of ''stock'' in these proposed regulations, ADRs would be treated as stock of the issuer and would be relevant to determining whether the *issuer* has stock that is traded on an established securities market. Similarly, global depositary receipts (GDRs) for the stock of domestic corporations that are traded on foreign exchanges may be relevant in determining whether the *issuer* has stock that is traded on an established securities market. Because the ADRs and GDRs are not issued by a domestic specified affiliate, they would not be treated as stock of the domestic specified affiliate.

Additionally, Congress specifically wrote rules to address situations involving a publicly traded foreign corporation with a domestic specified affiliate, and those rules do not include any provisions treating the domestic specified affiliate as publicly traded as a result of the foreign corporation's stock trading on an established securities market in the United States. *See* section 4501(d); *see also* part XVI of this Explanation of Provisions (discussion of feedback relating to section 4501(d)).

V. Section 301 Distributions

Section 301(a) of the Code generally provides that a distribution of property (as defined in section 317(a)) made by a corporation to a shareholder with respect to its stock is treated in the manner provided in section 301(c). Section 301(c)(1) provides that the portion of the distribution that is a dividend (as defined in section 316) is included in gross income. Section 301(c)(2) provides that the portion of the distribution that is not a dividend is applied against and reduces the adjusted basis of the stock. Section 301(c)(3) generally provides that the portion of the distribution that is not a dividend is treated as gain from the sale or exchange of property to the extent that it exceeds the adjusted basis of the stock.

For purposes of this discussion, an actual distribution subject to section 301(c)(2) or (3) refers to a distribution of property to a shareholder with respect to the corporation's stock that does not include an exchange of such stock. In contrast, an ''in-form'' redemption treated as a distribution subject to section 301(c)(2) or (3) refers to a distribution of property to a shareholder in exchange for the corporation's stock.

A. Actual Distributions Subject to Section 301(c)(2) or (3)

Stakeholders asked whether an actual distribution (that is, a distribution that does not involve a redemption in form) to which section 301(c)(2) or (3) applies is subject to the stock repurchase excise tax. Stakeholders contended that the stock repurchase excise tax should not apply to such a distribution, because (i) it is not a section 317(b) redemption, and (ii) it is not economically similar to a section 317(b) redemption (for example, it does not decrease the number of shares outstanding). Instead, such a distribution more closely resembles a dividend, which is excluded from the stock repurchase excise tax (*see* section 4501(e)(6)).

The Treasury Department and the IRS agree that an actual distribution subject to section 301(c)(2) or (3) is not a repurchase (and, therefore, is not subject to the stock repurchase excise tax) because such a distribution is neither a section 317(b) redemption nor economically similar to such a redemption. Accordingly, and consistent with section 3.04(4)(a) of Notice 2023–2 (which does not include such distributions in the list of economically similar transactions), the proposed regulations would provide that an actual distribution subject to section 301(c)(2) or (3) is not subject to the stock repurchase excise tax. *See* proposed § 58.4501–2(e)(5)(iv).

B. Redemptions Treated as Distributions Subject to Section 301(c)(2) or (3)

Stakeholders also asked whether the stock repurchase excise tax applies to an in-form redemption that is treated as a distribution to which section 301(c)(2) or (3) applies. *See* section 302(d). One stakeholder recommended applying the stock repurchase excise tax to a non-pro rata, in-form redemption that is treated as a distribution to which section 301(c)(2) or (3) applies. However, the stakeholder contended that the stock repurchase excise tax should not apply to a pro rata, in-form redemption that is treated as a distribution to which section 301(c)(2) or (3) applies, because such a redemption is more akin to an actual section 301 distribution than a typical section 317(b) redemption. In contrast, another stakeholder recommended that the stock repurchase excise tax should apply to such a transaction because it is a redemption within the meaning of section 317(b) (for example, such a redemption decreases the number of outstanding

shares even though the redemption is pro rata).

The Treasury Department and the IRS agree that an in-form section 317(b) redemption treated as a distribution to which section 301(c)(2) or (3) applies is a repurchase based on the plain language of the statute, regardless of whether the redemption is pro rata. Accordingly, and consistent with section 3.04(3) of Notice 2023–2 (which does not include such transactions in the list of section 317(b) redemptions that are not repurchases), an in-form section 317(b) redemption treated as a distribution to which section 301(c)(2) or (3) applies would be subject to the stock repurchase excise tax under the proposed regulations. *See* proposed § 58.4501–2(e)(3) (providing an exclusive list of section 317(b) redemptions that are not repurchases).

C. Exclusion for Pro Rata Distributions

One stakeholder recommended a general exclusion from the stock repurchase excise tax for distributions made to all shareholders of a covered corporation on a wholly pro rata basis (100 percent pro rata distribution), regardless of whether such distributions involve a redemption in form. According to the stakeholder, such distributions do not implicate most of the policy considerations underlying the tax.

However, the stakeholder noted that adopting this recommendation would require the Treasury Department and the IRS to consider (i) how to determine whether a distribution is 100 percent pro rata if the covered corporation has multiple classes of stock, and (ii) the impact of such distributions on options or convertible debt instruments (to the extent such instruments thereby accrete their proportionate interests in the covered corporation).

The Treasury Department and the IRS disagree with the stakeholder's recommendation. A redemptive 100 percent pro rata distribution is a repurchase because the distribution (i) constitutes a section 317(b) redemption or (ii) is an economically similar transaction. Accordingly, the proposed regulations would not provide an exclusion for 100 percent pro rata distributions, except in the case of pro rata distributions in a complete liquidation to which section 331 or 332 (but not both) applies.

VI. Complete and Partial Liquidations

A. Complete Liquidations

Section 331(a) of the Code provides that amounts received by a shareholder in a distribution in complete liquidation of a corporation are treated as in full payment in exchange for the stock. Section 332 of the Code provides an exception to the general rule in section 331(a). If the requirements of section 332 are met, no gain or loss is recognized upon the receipt by one corporation of property distributed in complete liquidation of another corporation.

Section 332 applies only if the corporation receiving property in the liquidation satisfies the requirements of section 332(b), including the requirement that the corporation own stock in the liquidating corporation meeting the 80-percent voting and value requirements of section 1504(a)(2) of the Code (80-percent distributee). *See* section 332(b)(1).

1. Application of Stock Repurchase Excise Tax

Several stakeholders recommended that a complete liquidation by a covered corporation should not be subject to the stock repurchase excise tax because the complete liquidation terminates the covered corporation's existence. For support, these stakeholders contended that a complete liquidation provides no opportunity for the liquidating corporation to reinvest cash in the corporation's enterprise, which stakeholders stated Congress may have intended to encourage through the enactment of section 4501. In addition, these stakeholders emphasized that a complete liquidation provides no opportunity for a covered corporation to manipulate the corporation's earnings per share (EPS) or other similar metrics, which these stakeholders stated Congress may have intended to discourage through the enactment of section 4501.

As reflected in section 3.04(4)(b)(i)(A) of Notice 2023–2, the Treasury Department and the IRS are of the view that a distribution in complete liquidation of a covered corporation to which either section 331 or 332 (but not both) applies is not a repurchase. Accordingly, the Treasury Department and the IRS are of the view that such distributions should not be subject to the stock repurchase excise tax. *See* proposed § 58.4501–2(e)(5).

2. Determination of Complete Liquidation or Dissolution

Stakeholders also asked whether a distribution is in ''complete liquidation'' of a corporation for purposes of section 331 if some classes of the liquidating corporation's stock do not receive a distribution. Section 331 does not define the term ''complete liquidation.'' Instead, this term is defined in section 346(a) of the Code, which provides that, for purposes of subchapter C of chapter 1, ''a distribution shall be treated as in complete liquidation of a corporation if the distribution is one of a series of distributions *in redemption of all of the stock of the corporation pursuant to a plan*'' (*emphasis added*).

Stakeholders have questioned whether the definition of ''complete liquidation'' in section 346(a) requires a distribution on all classes of stock in order for a dissolution of a corporation to qualify as a distribution in complete liquidation to which section 331 applies. These stakeholders based their question on the language of section 332(b)(2), which provides that a distribution is considered in ''complete liquidation'' within the meaning of section 332 only if ''the distribution is by [the liquidating corporation] in complete cancellation or redemption of all its stock.'' In addition, these stakeholders referenced Treasury regulations and judicial opinions. *See* § 1.332–2(b) (''Section 332 applies only to those cases in which the recipient corporation receives at least partial payment for the stock which it owns in the liquidating corporation.''); *Spaulding Bakeries Inc.* v. *Comm'r,* 252 F.2d 693, 697 (2d Cir. 1958) (emphasizing that ''[s]ection 112(b)(6)(C) [of the Internal Revenue Code of 1939 (the predecessor statute to section 332)] requires for its application a distribution in complete cancellation or redemption of all stock of the dissolved corporation''), *aff'g* 27 T.C. 684 (1957); *H.K. Porter Co.* v. *Comm'r,* 87 T.C. 689 (1986) (agreeing with the rationale of the Second Circuit's decision in *H.K. Porter* and holding that section 332 did not apply to a dissolution because a distribution was made on the dissolving corporation's preferred stock but not its common stock).

As stated previously, the Treasury Department and the IRS are of the view that a distribution in complete liquidation of a covered corporation to which section 331 or 332(a) applies should not be treated as a repurchase. In addition, the Treasury Department and the IRS are of the view that a redemption by a covered corporation pursuant to a corporate dissolution of the covered corporation should not be treated as a repurchase. To clarify the intent of Notice 2023–2, the proposed regulations would provide that a distribution in complete liquidation of a covered corporation to which either section 331 or 332(a) (but not both) applies, a distribution pursuant to a plan of dissolution of a covered

corporation that is reported on the original (but not a supplemented or an amended) IRS Form 966, *Corporate Dissolution or Liquidation* (or any successor form), or a distribution pursuant to a deemed dissolution of the covered corporation (for instance, pursuant to a deemed liquidation under § 301.7701–3), is not a repurchase and, therefore, is not subject to the stock repurchase excise tax. *See* proposed § 58.4501–2(e)(5)(i). For the treatment of liquidations to which both sections 331 and 332 apply, *see* proposed § 58.4501–2(e)(4)(v)(A) and the discussion in part VI.A.3 of this Explanation of Provisions.

3. Liquidations to Which Both Sections 331 and 332 Apply

The rules described in section 3.04(4)(a)(v) of Notice 2023–2 provide that, if sections 331 and 332 both apply to a complete liquidation, then (i) the distribution to the 80-percent distributee is not subject to the stock repurchase excise tax, but (ii) each distribution to which section 331 applies (that is, the surrender of covered corporation stock by each minority shareholder) is subject to the stock repurchase excise tax. The Treasury Department and the IRS have arrived at this view because the 80-percent distributee is the successor to the transferor corporation (that is, the liquidating subsidiary) following the complete liquidation to which section 332 applies. *See* section 381(a)(2). In contrast to the 80-percent distributee, minority shareholders that receive liquidating distributions to which section 331 applies terminate their investment in the transferor corporation's business (that is, are not successors to the transferor corporation).

Moreover, a complete liquidation to which sections 331 and 332 both apply is substantively similar to an upstream reorganization of the liquidating subsidiary into the 80-percent distributee in which the minority shareholders receive only non-qualifying property in exchange for their stock in the liquidating subsidiary. Because such an exchange in an upstream reorganization would constitute a ''repurchase'' under the proposed regulations, the Treasury Department and the IRS are of the view that the same treatment should apply to liquidating distributions to minority shareholders subject to section 331. *See* proposed § 58.4501–2(e)(4)(v)(A).

4. Distributions During Taxable Year of Complete Liquidation or Dissolution

The rule described in section 3.04(4)(b)(i)(B) of Notice 2023–2 provides that, if a covered corporation or a covered surrogate foreign corporation (as appropriate) completely liquidates and dissolves (within the meaning of § 1.331–1(d)(1)(ii)) during a taxable year, no distribution by that corporation during that taxable year is a repurchase. *See also* proposed § 58.4501–2(e)(5)(ii) (incorporating this provision into the proposed regulations). Stakeholders have requested clarification regarding how this provision interacts with the rule described in section 3.04(4)(a)(v) of Notice 2023–2, which (as previously discussed in part VI.A.3 of this Explanation of Provisions) provides that, in a complete liquidation to which sections 331 and 332 both apply, each distribution to which section 331 applies is subject to the stock repurchase excise tax. The proposed regulations would clarify the intent of Notice 2023–2 by providing that the rule in proposed § 58.4501–2(e)(5)(ii) does not apply if the complete liquidation or dissolution is a transaction to which sections 331 and 332 both apply.

B. Partial Liquidations

Section 302(b)(4) of the Code provides that a distribution in redemption of stock held by a shareholder who is not a corporation and in partial liquidation of the distributing corporation receives exchange treatment under section 302(a). For purposes of section 302(b)(4), a distribution will be treated as in partial liquidation of a corporation if the distribution (i) is not essentially equivalent to a dividend (determined at the corporate level rather than at the shareholder level), and (ii) is pursuant to a plan and occurs within the taxable year in which the plan was adopted or within the succeeding taxable year. *See* section 302(e)(1). A partial liquidation may involve a redemption of stock under section 317(b) in which the shareholder actually, in-form surrenders stock of the corporation in exchange for property (redemptive partial liquidation). A partial liquidation also may involve a constructive redemption of stock in which the shareholder is deemed to surrender stock of the corporation in exchange for property, and that deemed surrender satisfies the redemption requirement of sections 302 and 317(b) (constructive partial liquidation). *See* H.R. Conf. Rep. No. 760, 97th Cong., 2nd Sess. 530 (1982) (''Under present law, a distribution in partial liquidation may take place without an actual surrender of stock by the shareholders . . . [and a] constructive redemption of stock is deemed to occur in such transactions. . . . The conferees intend that the treatment of partial liquidations under present law section 346(a)(2) and (b) is to continue for such transactions under new section 302(e).'').

1. Partial Liquidations Involving an Actual Redemption of Stock

Several stakeholders requested guidance on whether a redemptive partial liquidation is treated as a repurchase. One stakeholder recommended that a redemptive partial liquidation by a covered corporation should be subject to the stock repurchase excise tax because a non-pro rata redemptive partial liquidation could achieve consequences similar to those that the stakeholder hypothesized section 4501 was intended to counteract. For example, the stakeholder observed that, if a corporation distributes proceeds from the sale of one of its businesses to its shareholders, the corporation has chosen to make that distribution rather than reinvest the proceeds in its business. Another stakeholder agreed that non-pro rata redemptive partial liquidations should be treated as repurchases but contended that 100-percent pro rata redemptive partial liquidations should not be so treated.

The Treasury Department and the IRS are of the view that redemptive partial liquidations should be treated as repurchases because those transactions qualify as section 317(b) redemptions. Moreover, as discussed in part V.C of this Explanation of Provisions, the Treasury Department and the IRS are of the view that no special exception should be provided for 100-percent pro rata redemptions, particularly because section 4501 does not provide such an exception. In addition, such an exception would complicate the IRS's ability to administer and enforce the stock repurchase excise tax. Accordingly, the proposed regulations would not incorporate these stakeholder recommendations.

2. Partial Liquidations Involving a Constructive Redemption of Stock

Several stakeholders requested guidance on whether a constructive partial liquidation is treated as a repurchase. The stakeholders recommended that constructive partial liquidations should not be treated as repurchases because such transactions neither have the form of an actual redemption nor affect shareholders' proportionate interests. In addition, those stakeholders asserted that the treatment of constructive partial liquidations as constructive redemptions is imputed in revenue rulings to provide beneficial tax treatment to individual shareholders.

The stakeholders further contended that such redemptions are not motivated by, and do not produce, the economic effects that they contend the stock repurchase excise tax was designed to discourage.

The Treasury Department and the IRS decline to adopt the stakeholders' recommendation in the proposed regulations. Section 302(b)(4) applies to a distribution ''in redemption of stock,'' and section 317(b) defines a ''redemption'' for purposes of section 302. Regardless of whether a redemption is constructive rather than actual, the redemption comprises a section 317(b) redemption to which section 302(b)(4) may apply. Therefore, the Treasury Department and the IRS are of the view that a constructive partial liquidation is a repurchase subject to the stock repurchase excise tax, and the proposed regulations would not provide any special exceptions for such transactions.

3. Dividend Exception and Partial Liquidation Look-Through Rule

For a discussion of the dividend exception and the partial liquidation look-through rule in section 302(e)(5), *see* part X.F.3 of this Explanation of Provisions.

VII. Taxable Transactions

A. LBOs and Other Taxable ''Take Private'' Transactions

Under the approach described in Notice 2023–2, unless a statutory exception applies, the target-corporation-funded portion of the consideration in an LBO or other taxable acquisition of the stock of a target corporation would be treated as a repurchase for purposes of computing the target corporation's stock repurchase excise tax base. *See* section 3.09(3) and (4) of Notice 2023–2. This approach tracks longstanding Federal income tax treatment by the IRS of such transactions, particularly that cash received by the minority shareholders in such transactions is subject to the provisions and limitations of section 302. *See,* for example, Rev. Rul. 78–250, 1978–1 C.B. 83 (elimination of minority shareholders' interest in target corporation through the merger of a transitory subsidiary into target corporation treated as a redemption because target corporation was the source of the cash consideration).

Several stakeholders recommended that payments funded (or deemed funded) by the target corporation in a taxable acquisition of target corporation stock should not be treated as a repurchase. Another stakeholder recommended that any redemption that occurs as part of a transaction should be exempt from the definition of ''repurchase'' if, immediately after the transaction, the target corporation's stock no longer is traded on an established securities market. *See* part IV.A of this Explanation of Provisions (discussing the stakeholder's recommendation). Alternatively, the stakeholder recommended that a target corporation's status as a covered corporation be determined at the end of the repurchase transaction. Similarly, another stakeholder recommended that an exemption be created for redemptions undertaken in connection with fully taxable stock dispositions in which target corporation shareholders completely terminate their interest under section 302(b)(3), and as described in *Zenz* v. *Quinlivan,* 213 F.2d 914 (6th Cir. 1954).

According to the stakeholders, deemed redemptions by a target corporation that is a covered corporation in an LBO or other taxable ''take private'' transaction do not implicate their view of the congressional policies underlying the stock repurchase excise tax because the purpose of such a transaction is to cash out completely the target corporation's existing shareholders. For support, these stakeholders highlighted that taxable ''take private'' transactions do not present an opportunity to manipulate EPS or other financial metrics, which (i) become irrelevant after the target corporation ceases to be a publicly traded entity, and (ii) the stakeholders viewed as a practice that Congress intended to discourage through enactment of the stock repurchase excise tax.

Moreover, in the stakeholders' view, imposing the stock repurchase excise tax on a fully taxable stock acquisition based solely on the source of the consideration received by the target corporation's shareholders would create arbitrary distinctions driven by factors that may be commercially focused, such as the target corporation's desired capital structure and its ability to obtain third-party financing. The stakeholders further noted that, if the application of the stock repurchase excise tax to fully taxable stock acquisitions hinges solely on the actual or deemed source of consideration, then parties easily may avoid the tax by borrowing at the acquiring-entity level, buying the target corporation's shares, and then having the target corporation assume or satisfy the debt after the acquisition.

The Treasury Department and the IRS disagree with the stakeholders' recommendations. The treatment of such target corporation-funded payments as a redemption within the meaning of section 317(b) follows longstanding Federal income tax principles and guidance. The Treasury Department and the IRS are of the view that there is no compelling reason to deviate from such long-standing principles and guidance or from the express language of section 4501(c)(1), which defines a repurchase, in part, as ''a redemption within the meaning of section 317(b) with regard to the stock of a covered corporation.'' The Treasury Department and the IRS are of the view that integrating long-standing Federal income tax principles and guidance into the proposed regulations would facilitate taxpayer compliance, as well as the ability of the IRS to administer and enforce the stock repurchase excise tax. Accordingly, the proposed regulations would not adopt the stakeholders' recommendations regarding taxable stock acquisitions.

Several stakeholders offered alternative recommendations in the event the proposed regulations do not exclude taxable stock acquisitions from the stock repurchase excise tax. One stakeholder agreed with the approach described in Notice 2023–2, under which a taxable stock acquisition is treated as a section 317(b) redemption only to the extent of the consideration sourced from the target corporation. The stakeholder recommended that, for purposes of the stock repurchase excise tax, sourcing should be guided by the same principles that apply to determine the identity of the borrower for Federal income tax purposes. The proposed regulations would retain the approach described in Notice 2023–2.

Another stakeholder recommended that issuances by the target corporation in the same taxable year as the ''take private'' transaction, including issuances that occur after the ''take private'' transaction, should be taken into account for purposes of the netting rule. The Treasury Department and the IRS disagree with this recommendation. As previously discussed, the Treasury Department and the IRS are of the view that, to be consistent with the statutory language in section 4501, stock issued by a corporation after it ceases to be a covered corporation should not be taken into account under the netting rule. *See* part IV.A of this Explanation of Provisions. Accordingly, the proposed regulations would take into account stock issued by the target corporation in the same taxable year as the ''take private'' transaction only if that stock was issued during the period in which the target corporation was a covered corporation, as determined under these

proposed regulations. *See* proposed §§ 58.4501–2(d)(1) and 58.4501–4(b)(2).

B. Section 304 Transactions

1. Section 304(a)(1) Transactions

Section 304(a)(1) of the Code applies if one corporation purchases stock of another corporation from a shareholder or shareholders in control of both corporations in exchange for cash or other property (section 304(a)(1) transaction). If section 304(a)(1) applies, the cash or other property paid to the controlling shareholder or shareholders is treated as a distribution in redemption of the stock of the acquiring corporation. To the extent that the distribution is treated as a distribution to which section 301 applies, (i) the selling shareholder or shareholders are treated in the same manner as if they had transferred the acquired stock to the acquiring corporation in a transaction to which section 351(a) of the Code applies, and then (ii) the acquiring corporation is treated in the same manner as if it had redeemed the stock it was treated as issuing in the transaction.

The approach described in sections 3.04(3)(a) and 3.08(4)(e) of Notice 2023–2, respectively, provides that a deemed redemption resulting from the application of section 304(a)(1) is neither a repurchase nor an issuance for purposes of the stock repurchase excise tax. Stakeholders generally agreed with this approach, for several reasons.

First, stakeholders noted that section 304(a)(1) transactions involve no actual contraction in the number of shares of acquiring corporation stock. Second, stakeholders observed that, to the extent the deemed redemption is treated as a distribution to which section 301 applies, the section 304(a)(1) transaction would consist of an offsetting issuance and repurchase of acquiring corporation stock. However, those stakeholders correctly noted that the deemed redemption would be statutorily excluded from the computation of the acquiring corporation's stock repurchase excise tax base under section 4501(e)(6) to the extent that the deemed redemption is treated as a dividend under section 301(c)(1). As a result, the Federal income tax treatment mandated by section 304(a)(1), combined with the statutory exclusion for dividends under section 4501(e)(6), would manufacture an automatic net issuance.

Finally, one stakeholder claimed that it could be difficult for taxpayers to determine whether section 304(a)(1) applies to public company M&A transactions because publicly traded corporations do not know the identity of their shareholders. For that reason, the stakeholder also contended that it could be difficult for the IRS to administer and enforce the stock repurchase excise tax with respect to section 304(a)(1) transactions.

However, several stakeholders expressed concern that an exemption for all section 304(a)(1) transactions may exclude transactions that (i) satisfy the statutory requirements for section 304 qualification, and (ii) are economically similar to a conventional stock repurchase. As an illustration, the stakeholders presented the following fact pattern. Individual A owns 50 percent of the stock of two public corporations. Individual A sells a portion of its stock in one corporation (that is, the target corporation) to the other corporation (that is, the acquiring corporation). The stakeholders explained that section 304(a)(1) would apply to the sale, but individual A may qualify for sale or exchange treatment under section 302(a) depending on individual A's actual and constructive ownership of the target corporation following the transaction. According to the stakeholder, applying the stock repurchase excise tax may be appropriate in this situation and in other situations in which control of the target and acquiring corporations is not widely dispersed and both corporations remain publicly traded after the transaction.

The Treasury Department and the IRS are of the view that the complexity of regulations applying the stock repurchase excise tax with regard to section 304(a)(1) transactions would outweigh significantly any benefit of applying this tax to those transactions. In addition, the Treasury Department and the IRS are of the view that applying the stock repurchase excise tax to section 304(a)(1) transactions would create significant difficulty for the IRS to administer and enforce the tax, as well as for taxpayers to calculate and report their tax with certainty. Accordingly, the Treasury Department and the IRS are of the view that the stock repurchase excise tax should not apply to a redemption that is deemed to occur by virtue of section 304(a)(1). *See* proposed §§ 58.4501–2(e)(3)(i) and 58.4501–4(f)(4).

2. Section 304(a)(2) Transactions

Section 304(a)(2) applies if one corporation (that is, the acquiring corporation) purchases stock of another corporation (that is, the target corporation) from a shareholder of the target corporation in exchange for cash or other property and that target corporation controls the acquiring corporation (section 304(a)(2) transaction). If section 304(a)(2) applies, that property is treated as a distribution in redemption of the stock of the target corporation. The approach described in Notice 2023–2 does not exempt section 304(a)(2) transactions from the application of the stock repurchase excise tax. *See generally* section 3.04(3) of Notice 2023–2 (excepting solely section 304(a)(1) transactions).

One stakeholder noted that the application of the stock repurchase excise tax to section 304(a)(2) transactions generally is clear and is analogous to the rule treating an acquisition of stock of a covered corporation by a specified affiliate as a repurchase to which the stock repurchase excise tax applies. The Treasury Department and the IRS agree with the stakeholder. Accordingly, the proposed regulations would not exempt section 304(a)(2) transactions from the application of the stock repurchase excise tax.

VIII. Reorganizations

A. Acquisitive Reorganizations

1. Overview

The approach described in Notice 2023–2 treats an exchange of target corporation stock by the target corporation's shareholders in an acquisitive reorganization as an economically similar transaction. *See* section 3.04(4)(a)(i) of Notice 2023–2. The notice defines an ''acquisitive reorganization'' as a transaction that qualifies as a reorganization under section 368(a)(1)(A) of the Code (including by reason of section 368(a)(2)(D) or (E)), section 368(a)(1)(C), or section 368(a)(1)(D) (D reorganization) (if the reorganization satisfies the requirements of section 354(b)(1) of the Code). *See* section 3.02(1) of Notice 2023–2.

Under the approach described in Notice 2023–2, the effect of an acquisitive reorganization on a target corporation's stock repurchase excise tax base is computed by first including in that tax base the fair market value of *all* target corporation stock exchanged in the transaction, regardless of the type of consideration for which the stock is exchanged. The stock repurchase excise tax base then is reduced under the statutory exception in section 4501(e)(1) (reorganization exception) by the fair market value of the target corporation stock exchanged for property permitted to be received by the target corporation shareholders without recognition of gain or loss under section 354 (that is, qualifying property). Thus, under the approach described in Notice 2023–2,

the target corporation generally is subject to the stock repurchase excise tax only to the extent of the fair market value of target corporation stock exchanged for property that is non-qualifying property.

For purposes of this preamble, the term ''acquisitive reorganization'' includes each transaction described as an acquisitive reorganization in Notice 2023–2 as well as a transaction that qualifies as a reorganization under section 368(a)(1)(G) (if the reorganization satisfies the requirements of section 354(b)(1)).

Under Federal income tax principles, acquisitive reorganizations involve the following two elements. First, the target corporation transfers all or a portion of its assets to the acquiring corporation in exchange for consideration from the acquiring corporation. Second, the target corporation distributes the consideration received from the acquiring corporation to the target corporation's shareholders in exchange for their target corporation stock in an actual or deemed liquidation of the target corporation (target redemptive distribution). *See,* for example, section 361(a) and (c) of the Code (providing for nonrecognition of gain or loss for the target corporation's transfer of assets in exchange for stock or securities of a party to the reorganization and the target corporation's distribution of that stock or securities pursuant to a plan of reorganization); section 368(a)(1)(C) and (a)(2)(G) (to similar effect).

2. Feedback Received

a. In General

Several stakeholders recommended that acquisitive reorganizations should not be subject to the stock repurchase excise tax, to any extent. These stakeholders contended that, although a target redemptive distribution in an acquisitive reorganization resembles a section 317(b) redemption, such a transaction should not be subject to the stock repurchase excise tax even if non-qualifying property is provided. *See* parts VIII.A.2.b and c of this Explanation of Provisions.

b. Stakeholders Contend Acquisitive Reorganizations Are Not Economically Similar Transactions

Some stakeholders asserted that acquisitive reorganizations are economically distinguishable from a section 317(b) redemption and therefore should not be treated as economically similar transactions. According to these stakeholders, the basic economic nature of an acquisitive reorganization (at least in situations in which the parties to the transaction are unrelated) is a two-company acquisitive transaction in which the target corporation shareholders sell the target corporation to the acquiring corporation. In contrast, a section 317(b) redemption is a transaction in which a single corporation acquires its own stock from its shareholders.

Several stakeholders stated that an acquisitive reorganization between unrelated parties is motivated primarily by bona fide investment and strategic business purposes and does not give rise to any abuse that the stakeholders hypothesized Congress may have intended to discourage through enactment of the stock repurchase excise tax. These stakeholders acknowledged that the exchange of target corporation stock for non-qualifying property in a target redemptive distribution either constitutes or resembles a section 317(b) redemption. However, the stakeholders questioned whether this exchange under Federal income tax principles provides an adequate basis for designating the transaction as ''economically similar.'' The stakeholders further questioned why a distribution in complete liquidation as part of a reorganization (that is, the target redemptive distribution) should give rise to an economically similar transaction under the approach described in Notice 2023–2 even though a distribution in complete liquidation subject to either section 331 or 332 (but not both) would not.

With regard to the latter point, several stakeholders noted that the exchange between the target corporation and its shareholders in a forward merger that failed to qualify as a reorganization would not be subject to the stock repurchase excise tax. *See* Rev. Rul. 69–6, 1969–1 C.B. 104 (treating such an exchange as a distribution in complete liquidation to which section 331 applies). One stakeholder suggested that the application of this tax should be based upon the substantive Federal income tax characterization of the steps of the transaction, rather than upon the overall Federal income tax characterization of the transaction as a reorganization. For support, the stakeholder contended that their recommendation would mitigate the potential for a more onerous result under the stock repurchase excise tax if the components of such a transaction qualify for reorganization treatment.

Several stakeholders also recommended that transactions that qualify as a reorganization described in either section 368(a)(1)(B) (B reorganization) or 368(a)(1)(A) by reason of section 368(a)(2)(E) (reverse triangular merger) should not be subject to the stock repurchase excise tax. The stakeholders contended that those types of reorganizations should not be subject to the stock repurchase excise tax based on their view that such transactions, both in substance and in form, involve an acquisition of stock by a third party rather than a repurchase or redemption of target corporation stock.

c. Effect of the Statutory Exception in Section 4501(e)(1)

Stakeholders acknowledged that the inclusion of the statutory exception in section 4501(e)(1) (that is, the reorganization exception) is subject to several interpretations. Several stakeholders acknowledged that the inclusion of this exception in section 4501 could be construed as reflecting congressional intent that all stock exchanged for non-qualifying property in a reorganization should be treated as economically similar to a section 317(b) redemption. However, the stakeholders recommended that the Treasury Department and the IRS not adopt that interpretation.

In contrast, one stakeholder contended that the inclusion of the reorganization exception does not necessarily indicate that Congress intended all non-qualifying property received in any acquisitive reorganization to be subject to the stock repurchase excise tax. Rather, the stakeholder asserted that the application of this statutory exception requires (i) identifying a transaction as a section 317(b) redemption or an economically similar transaction that occurs as part of a reorganization, (ii) applying this statutory exception to exempt the target corporation stock exchanged for qualifying property, and then (iii) subjecting the target corporation stock exchanged for non-qualifying property to the stock repurchase excise tax to the extent gain or loss is recognized. Similarly, several stakeholders contended that the reorganization exception could be given effect by applying this exception only to reorganizations that most closely resemble section 317(b) redemptions, such as split-offs (as defined in part IX of this Explanation of Provisions) with non-qualifying property, or E reorganizations involving an exchange of the recapitalizing corporation's stock for newly issued stock and non-qualifying property.

d. Response to Stakeholder Feedback

The Treasury Department and the IRS are of the view that the recommendations of the stakeholders

would be contrary to the statutory language of section 4501. The reorganization exception provides that section 4501(a) does not apply ''to the extent that the repurchase is part of a reorganization (within the meaning of section 368(a)) and no gain or loss is recognized on such repurchase by the shareholder under chapter 1 by reason of such reorganization.'' Section 4501(e)(1). The Treasury Department and the IRS are of the view that the presence of the reorganization exception in section 4501(e)(1) indicates that exchanges of target corporation stock occurring as part of an acquisitive reorganization are subject to the stock repurchase excise tax. Indeed, this statutory exception would have no effect if the exchange of target corporation stock for non-qualifying property in reorganizations were exempt from the stock repurchase excise tax. Moreover, the Treasury Department and the IRS are of the view that the proposed regulations should not reduce the statutorily mandated scope of the reorganization exception, but rather should give full effect to its language mandating that the reorganization exception applies to all reorganizations ''within the meaning of section 368(a).''

The Treasury Department and the IRS also are of the view that implementation of the reorganization exception by reliance on sections 354 and 356 of the Code would provide bright-line rules that taxpayers could apply and the IRS could administer and enforce with certainty. Specifically, every acquisitive reorganization involves a target redemptive distribution to a target corporation shareholder to which section 354 or 356 is applied.

Accordingly, the proposed regulations would treat acquisitive reorganizations as economically similar transactions. *See* proposed § 58.4501–2(e)(4)(i); *see also* proposed § 58.4501–3(c) (reorganization exception); part X.A of this Explanation of Provisions (discussion of reorganization exception). However, the proposed regulations would not subject B reorganizations to the stock repurchase excise tax. *See* proposed §§ 58.4501–1(b)(1) and 58.4501–2(e)(4)(i).

Lastly, the Treasury Department and the IRS view the distinction between taxable forward mergers and forward mergers qualifying as reorganizations as appropriate because there is a successor to the target corporation in an acquisitive asset reorganization (*see* section 381(a)). In contrast, the target corporation in a complete liquidation subject to section 331 ceases to exist for Federal income tax purposes.

B. Sourcing Approach to Acquisitive Reorganizations

Several stakeholders recommended that, if the proposed regulations do not wholly exempt acquisitive reorganizations from the stock repurchase excise tax, this tax should apply to acquisitive transactions solely to the extent that any non-qualifying property is sourced from the target corporation (sourcing approach). According to the stakeholders, to the extent that the consideration used to repurchase target corporation stock is attributable to the acquiring corporation or another third party, the transaction does not represent the target corporation's redemption of its own stock and therefore should not be subject to the stock repurchase excise tax.

However, another stakeholder contended that the approach in Notice 2023–2 arguably facilitates the administration of the stock repurchase excise tax by treating all exchanges of target corporation stock in a reorganization as a repurchase, irrespective of the type of reorganization, and regardless of the source of consideration. Nonetheless, for the reasons previously discussed in this part VIII.B, the stakeholder contended that a sourcing approach strikes a better balance with the statutory language and with the stakeholder's opinion that Congress enacted the stock repurchase excise tax to curtail single-entity corporate contractions.

Another stakeholder acknowledged that a sourcing approach could raise issues of administrability, particularly due to the fungible nature of cash and the fact that the operations of the target corporation and the acquiring corporation often are integrated following an acquisition. The stakeholder noted that these difficulties arguably would be compounded in situations in which a target operating corporation is merged directly into an acquiring operating corporation, although other forms of post-merger integration could present similar challenges.

Notwithstanding these administrative difficulties, these stakeholders contended that a sourcing approach could be administered effectively. One stakeholder stated that the challenges presented by a sourcing approach are not meaningfully different from other issues that have been addressed by longstanding authorities concerning reorganizations. For instance, a sourcing approach is used to determine whether funds distributed to the target corporation's shareholders prior to a B reorganization are properly treated as non-qualifying property. *See,* for example, Rev. Rul. 70–172, 1970–1 C.B. 77 (dividend distribution of property sourced from the target corporation treated as separate and distinct from an immediately subsequent B reorganization). With regard to reverse triangular mergers, these stakeholders noted that funds sourced from the target corporation are taken into account for purposes of the ''substantially all'' test in section 368(a)(2)(E)(i), but not for purposes of measuring the acquisition of ''control'' under section 368(a)(2)(E)(ii). *See* § 1.368–2(j)(3)(i) and (iii).

The stakeholders also questioned the different treatment under Notice 2023–2 of acquisitive reorganizations and taxable stock acquisitions. These stakeholders observed that, under Notice 2023–2, the stock repurchase excise tax would apply to all consideration consisting of non-qualifying property in an acquisitive reorganization. In contrast, the rules described in Notice 2023–2 provides that the stock repurchase excise tax is imposed in a taxable stock acquisition only to the extent of the consideration sourced from the target corporation. In the stakeholders' view, this inconsistent treatment is difficult to justify as a policy matter because taxable and tax-free transactions may be economically similar.

The Treasury Department and the IRS are of the view that the stakeholders' recommendation is not supported by the statutory language of the reorganization exception. The plain language of the reorganization exception contains no reference to the source of the consideration for which the target corporation shareholders exchange their stock in a target redemptive distribution. Instead, the application of the reorganization exception to a target redemptive distribution in an acquisitive reorganization depends only on whether ''gain or loss is recognized on such repurchase by the shareholder under chapter 1 by reason of such reorganization.'' In other words, under the reorganization exception, the source of the consideration for which the target corporation shareholders exchange their stock in a target redemptive distribution is irrelevant in determining the application of the stock repurchase excise tax to acquisitive reorganizations. Lastly, the Treasury Department and the IRS are of the view that an extra-statutory sourcing rule recommended by the stakeholders would be neither necessary nor appropriate to carry out the purposes of the stock repurchase excise tax.

For the foregoing reasons, the proposed regulations would not incorporate a sourcing approach to determine the application of the stock repurchase excise tax to acquisitive reorganizations. Rather, under the proposed regulations, the stock repurchase excise tax would apply to a repurchase that is part of a reorganization to the extent a shareholder exchanges their stock for non-qualifying property.

C. Commissioner v. Clark

One stakeholder recommended that the stock repurchase excise tax should not apply to any hypothetical deemed issuance and redemption under *Clark* v. *Commissioner,* 489 U.S. 726 (1989), because such a transaction either (i) is a fictional transaction that is not within the scope of the tax, or (ii) results in a net zero adjustment pursuant to the netting rule in the case of domestic covered corporations. Another stakeholder also noted that the deemed issuance under *Clark* would offset the deemed redemption.

The Treasury Department and the IRS are of the view that *Clark* should not apply in determining the applicability of the stock repurchase excise tax to non-qualifying property furnished in a reorganization, other than to determine the applicability of the dividend exception (*see* the discussion in part VIII.F of this Explanation of Provisions). This view was incorporated into Notice 2023–2, and the proposed regulations likewise would not provide any special rules based on an analogical application of *Clark.*

D. E Reorganizations

1. Treatment of E Reorganizations Under Notice 2023–2

Under the approach described in Notice 2023–2, E reorganizations are treated as economically similar transactions in the same manner as other reorganizations for purposes of the stock repurchase excise tax. Accordingly, a recapitalizing corporation has a repurchase to the extent of the fair market value of the shares exchanged by its shareholders in the transaction. *See* section 3.04(4)(a)(ii) of Notice 2023–2. However, the fair market value of the repurchased shares that are exchanged for qualifying property reduces the corporation's stock repurchase excise tax base. *See* section 3.07(2)(b) of Notice 2023–2 (applying the statutory exception in section 4501(e)(1) to E reorganizations). As a result, the recapitalizing corporation is subject to the stock repurchase excise tax only to the extent of the fair market value of its shares that are repurchased with non-qualifying property (if any).

Additionally, the stock issued by the recapitalizing corporation in the transaction is disregarded for purposes of the netting rule under the ''no double benefit rule.'' *See* section 3.08(4)(d) of Notice 2023–2; *see also* part XI.C.2 of this Explanation of Provisions for a discussion of the no double benefit rule.

2. Feedback Received

Several stakeholders recommended that an exchange of stock for qualifying property in an E reorganization should not be subject to the stock repurchase excise tax. However, the stakeholders recommended that shares that are repurchased with non-qualifying property in an E reorganization should be subject to the stock repurchase excise tax because the exchange is substantially similar to the redemption of stock for cash, unless the receipt of non-qualifying property is treated as a separate transaction under § 1.301–1(j).

3. Exchange of Stock for Qualifying Property in an E Reorganization

The Treasury Department and the IRS disagree with the stakeholders' recommendation that an exchange of stock for qualifying property in an E reorganization should not be included in the recapitalizing corporation's stock repurchase excise tax base. As discussed in part VIII.A.2.d of this Explanation of Provisions, the Treasury Department and the IRS are of the view that the reorganization exception would be most appropriately implemented by (i) treating all exchanges of stock between a corporation and its shareholders occurring as part of a reorganization as an economically similar transaction, and then (ii) removing from the corporation's stock repurchase excise tax base the amount of target corporation stock for which the target corporation shareholders receive qualifying property. The Treasury Department and the IRS also are of the view that adopting uniform treatment for reorganizations would implement the reorganization exception in a manner most consistent with its statutory language (as set forth in section 4501(e)(1)). Lastly, the Treasury Department and the IRS are of the view that this approach would facilitate the IRS's ability to administer and enforce the stock repurchase excise tax and enable taxpayers to apply the tax with greater certainty.

Accordingly, the proposed regulations would include the stock-for-qualifying property portion of an exchange occurring as part of an E reorganization in the stock repurchase excise tax base, and then exclude that portion in a later step of the stock repurchase excise tax base computation. *See* proposed §§ 58.4501–2(e)(4)(ii) and 58.4501–3(c). The Treasury Department and the IRS request comments on the proposed treatment of E reorganizations.

E. F Reorganizations

1. Treatment of F Reorganizations Under Notice 2023–2

Under the approach described in Notice 2023–2, F reorganizations are treated as economically similar transactions in the same manner as other reorganizations for purposes of the stock repurchase excise tax. Accordingly, the transferor corporation has a repurchase to the extent of the fair market value of the shares exchanged by its shareholders in the transaction. *See* section 3.04(4)(a)(iii) of Notice 2023–2. However, the fair market value of the repurchased shares that are exchanged for qualifying property reduces the corporation's stock repurchase excise tax base. *See* section 3.07(2)(c) of Notice 2023–2 (applying the statutory exception in section 4501(e)(1) to F reorganizations). As a result, the transferor corporation is subject to the stock repurchase excise tax only to the extent of the fair market value of its shares that are repurchased with non-qualifying property (if any).

A distribution of non-qualifying property by the transferor corporation in an F reorganization is treated as a separate transaction (for example, under section 302). *See* § 1.368–2(m)(1)(iii) (providing that any distribution of money or other property from either the transferor corporation or the resulting corporation, including any money or other property exchanged for shares, in an F reorganization is treated as an unrelated, separate transaction from the reorganization).

2. Feedback Received

Several stakeholders recommended that F reorganizations should not be subject to the stock repurchase excise tax because the stock issued in an F reorganization does not qualify as ''property'' within the meaning of section 317(a). These stakeholders contended that no ''redemption'' could occur within the meaning of section 317(b), and therefore the stock repurchase excise tax should not apply.

For the same rationale as other reorganizations, the Treasury Department and the IRS continue to be of the view that F reorganizations should be treated as economically similar transactions for purposes of the stock repurchase excise tax. *See* parts

VIII.A and D of this Explanation of Provisions (discussing acquisitive reorganizations and E reorganizations). Moreover, the Treasury Department and the IRS are of the view that adopting uniform treatment for reorganizations would reduce complexity for taxpayers and facilitate the IRS's ability to administer and enforce the stock repurchase excise tax. The proposed regulations reflect this view. *See* proposed §§ 58.4501–2(e)(4)(iii) and 58.4501–3(c). The Treasury Department and the IRS request comments on the proposed treatment of F reorganizations.

F. Downstream Reorganizations and Other Related-Party Reorganizations

Several stakeholders recommended that, if reorganizations generally are not subject to the stock repurchase excise tax under the proposed regulations, related-party reorganizations (such as an acquisition of a publicly traded parent corporation's stock by a specified affiliate, or a reorganization between two covered corporations under common control) nonetheless should be subject to the stock repurchase excise tax to the extent of the non-qualifying property received by shareholders. One stakeholder suggested that the receipt of non-qualifying property in such transactions is economically identical to a conventional stock repurchase.

The Treasury Department and the IRS agree with stakeholders that such transactions should be subject to the stock repurchase excise tax. However, because reorganizations generally would be subject to the stock repurchase excise tax under the proposed regulations, no special rules are needed to address related-party reorganizations. Accordingly, the proposed regulations would not adopt the stakeholders' recommendation.

G. Reverse Acquisitions Involving Investment Companies

One stakeholder suggested that, if the proposed regulations generally do not apply the stock repurchase excise tax to acquisitive reorganizations, the proposed regulations should apply this tax to certain reverse acquisitions involving a publicly traded acquiring corporation. According to the stakeholder, if the historical business of a publicly traded acquiring corporation has declined in value to the point that the corporation's stock is trading based on the net value of its cash and other investment assets, and if the target corporation shareholders as a group will obtain more than 50 percent of the fair market value of the acquiring corporation's stock in an acquisitive reorganization, then any non-qualifying property received by the target corporation shareholders in the reorganization may resemble a repurchase. Although the stakeholder noted that such transactions are rare, the stakeholder recommended that the Treasury Department and the IRS consider designating such transactions as economically similar.

The Treasury Department and the IRS are of the view that no special rules are required to address these types of transactions because the proposed regulations would not exclude acquisitive reorganizations from the stock repurchase excise tax. Accordingly, the proposed regulations do not incorporate the stakeholder's suggested provision.

IX. Section 355 Transactions

Under the approach described in Notice 2023–2, a section 355 transaction in which a distributing corporation (within the meaning of section 355(a)(1)(A) of the Code) distributes stock of a controlled corporation (within the meaning of section 355(a)(1)(A)) and, if applicable, other property or money to the distributing corporation's shareholders in exchange for a portion of the shareholders' stock in the distributing corporation (split-off) is treated as an economically similar transaction. Accordingly, the distributing corporation has made a repurchase to the extent of the fair market value of the distributing corporation shares exchanged by its shareholders in the transaction. *See* section 3.04(4)(a)(iv) of Notice 2023–2.

However, the fair market value of the repurchased shares that are exchanged for qualifying property reduces the distributing corporation's stock repurchase excise tax base, regardless of whether the distribution was carried out as part of a D reorganization. *See* section 3.07(2) of Notice 2023–2. As a result, the distributing corporation is subject to the stock repurchase excise tax only to the extent of the fair market value of its shares that are repurchased with non-qualifying property (if any). A distribution by a distributing corporation of stock of a controlled corporation qualifying under section 355 that is not a split-off is not a repurchase subject to the stock repurchase excise tax. *See* section 3.04(4)(b)(ii) of Notice 2023–2.

A. In General

Several stakeholders recommended that a spin-off (that is, a distribution of stock of a controlled corporation (Controlled) by the distributing corporation (Distributing) to Distributing's shareholders) to which section 355 applies should not be treated as a repurchase because spin-offs do not involve an exchange of Controlled stock for Distributing stock. The stakeholders also recommended that a split-up (that is, a liquidating distribution in which Distributing distributes the stock of more than one Controlled) or split-off to which section 355 applies, and in which only Controlled stock (and no non-qualifying property) is distributed, should not be treated as a repurchase. For example, one stakeholder found it significant that a split-off without non-qualifying property generally would not reduce the number of shares outstanding or enhance the EPS of Distributing.

In contrast, stakeholders recommended that any non-qualifying property distributed in a split-off to which section 355 applies should be treated as a repurchase to the same extent as if that non-qualifying property were distributed in a redemption under section 302(a), because the source of the cash and the form of the transaction frequently are the same as in a conventional stock buyback. One stakeholder also recommended treating a split-up with non-qualifying property as a repurchase in the same manner.

The Treasury Department and the IRS are of the view that spin-offs and split-ups should not be subject to the stock repurchase excise tax. *See* proposed § 58.4501–2(e)(5)(iii)(A). With regard to a spin-off, the Treasury Department and the IRS are of this view because Distributing does not provide consideration to Distributing's shareholders in exchange for their Distributing stock (that is, no repurchase could be treated as having occurred). With regard to a split-up, the Treasury Department and the IRS are of this view because Distributing completely liquidates as a result of Distributing's distribution of consideration to its shareholders in exchange for their Distributing stock. The proposed treatment of spin-offs and split-ups is consistent with the proposed treatment of non-redemptive distributions under section 301 and distributions in complete liquidation, which are analogous to spin-offs and split-ups, respectively. *Cf.* proposed §§ 58.4501–2(e)(5)(iv) (exempting certain non-redemptive distributions under section 301 from the stock repurchase excise tax); 58.4501–2(e)(5)(i) (exempting distributions in complete liquidation that are exclusively under section 331 or 332 from the stock repurchase excise tax).

However, the proposed regulations would clarify that a distribution by Distributing of non-qualifying property

in exchange for Distributing stock in pursuance of a spin-off or a split-up would be a repurchase. *See* proposed § 58.4501–2(e)(5)(iii)(B).

The Treasury Department and the IRS also continue to be of the view that split-offs should be subject to the stock repurchase excise tax. *See* proposed § 58.4501–2(e)(4)(iv). Accordingly, Distributing would have a repurchase to the extent of the fair market value of the Distributing stock exchanged by Distributing's shareholders in the transaction. However, the fair market value of the repurchased Distributing stock that is exchanged for qualifying property would be subject to the reorganization exception, regardless of whether the split-off occurred as part of a D reorganization. *See* proposed § 58.4501–3(c). As a result, Distributing would be subject to the stock repurchase excise tax only to the extent of the fair market value of its stock that is repurchased with non-qualifying property (if any).

B. Exchange of Controlled Securities in a Split-Off to Which Section 355 Applies

Notice 2023–2 does not explicitly address whether a distribution by Distributing of Controlled securities to Distributing shareholders in exchange for their Distributing stock in a split-off is treated as a repurchase. However, Controlled securities that are exchanged for Distributing stock would not constitute qualifying property under the rules described in Notice 2023–2. As a result, the exchange of Controlled securities for Distributing stock in a split-off would be subject to the stock repurchase excise tax under the rules described in Notice 2023–2.

A stakeholder recommended that, to the extent the Treasury Department and the IRS view a distribution of Controlled securities as a substitute for cash, the distribution of Controlled securities in exchange for Distributing stock in a split-off to which section 355 applies should be treated as a repurchase.

The Treasury Department and the IRS continue to be of the view that Controlled securities that are exchanged for Distributing stock should not constitute qualifying property for purposes of the stock repurchase excise tax. The Treasury Department and the IRS have reached this position based on the rationale that, unlike an exchange of Distributing stock for Controlled stock, an exchange of Distributing stock for Controlled securities generally would achieve an outcome more analogous to an exchange of Distributing stock for non-qualifying property. Accordingly, the Treasury Department and the IRS are of the view that no special rules are needed to address this issue.

C. Clarification of Examples 13 and 14 in Notice 2023–2

Section 3.09 of Notice 2023–2 contains *Examples 13* and *14.* These examples are based on *Example 11* of Notice 2023–2, in which Distributing distributes Controlled stock and cash to Distributing's shareholders in exchange for their Distributing stock. The facts in *Example 13* are the same as in *Example 11,* except that *Example 13* provides that ''Distributing distributes the Controlled stock to its shareholders pro rata without the shareholders exchanging any Distributing stock (Spin-Off).'' The facts in *Example 14* are the same as in *Example 13,* except that the ''Spin-Off is carried out as part of a transaction qualifying as a D reorganization.''

A stakeholder recommended that the proposed regulations incorporate revisions to *Examples 13* and *14* to clarify whether the cash distribution described in those examples constitutes a distribution in exchange for Distributing stock. The stakeholder interpreted *Examples 13* and *14* to provide clearly that no Distributing stock is surrendered by Distributing's shareholders in the ''Spin-Off'' in both examples, but nonetheless questioned whether any Distributing stock could have been surrendered for the cash distributed by Distributing with the Controlled stock. Therefore, the stakeholder recommended that *Examples 13* and *14* explicitly state whether or not Distributing stock is surrendered in exchange for the cash distributed as well as the stock distributed.

The Treasury Department and the IRS have revised *Example 13* to explicitly state that no stock of Distributing is exchanged in the ''Spin-Off'' for distributed cash or distributed Controlled stock. This clarification would confirm the interpretation of stakeholders and the intent of the Treasury Department and the IRS. *See* proposed § 58.4501–5(b)(13).

Additionally, the Treasury Department and the IRS have modified the facts of *Example 14* to clarify the treatment of an exchange of Distributing stock for non-qualifying property in pursuance of a spin-off. *See* proposed § 58.4501–5(b)(14). For the treatment of the exchange of Distributing stock in pursuance of a spin-off, *see* proposed § 58.4501–2(e)(5)(iii)(B) and the discussion in part IX.A of this Explanation of Provisions.

X. Statutory Exceptions

A. Repurchase as Part of a Reorganization

1. In General

Section 4501(e)(1) provides an exception (that is, the reorganization exception) to the application of the stock repurchase excise tax ''to the extent that the repurchase is part of a reorganization (within the meaning of section 368(a)) and no gain or loss is recognized on such repurchase by the shareholder . . . by reason of such reorganization.'' To facilitate the IRS's ability to administer and enforce the stock repurchase excise tax, and to enable taxpayers to apply the tax with greater certainty, Notice 2023–2 adopts a consideration-based approach to the reorganization exception. As described in section 3.07(2) of Notice 2023–2, the fair market value of stock repurchased by a covered corporation in transactions listed in that section is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base, to the extent that the repurchase is in exchange for property permitted by section 354 or 355 to be received without the recognition of gain or loss (that is, qualifying property). These transactions consist of a repurchase by: (i) a target corporation as part of an acquisitive reorganization; (ii) a recapitalizing corporation as part of an E reorganization; (iii) a transferor corporation as part of an F reorganization; and (iv) a distributing corporation as part of a split-off (whether or not part of a D reorganization).

Stakeholders have suggested three general approaches to implement the reorganization exception. Under the stakeholders' first approach, the reorganization exception would apply only if no gain or loss is recognized by a shareholder on a repurchase that occurs as part of a reorganization under section 368(a). As a result, if a shareholder receives both qualifying property and non-qualifying property in an actual or deemed redemption that occurs as part of a reorganization, the reorganization exception would not apply to *any* of the consideration received if the shareholder recognized *any* built-in gain or loss in the target corporation stock exchanged for that consideration.

Under the stakeholders' second approach, the reorganization exception would exclude an actual or deemed redemption that occurs as part of a reorganization under section 368(a) *to the extent* a shareholder does not recognize gain or loss. At least one

stakeholder recommended this approach because the stakeholder found it significant that a target corporation shareholder's non-taxable receipt of acquiring corporation stock (that is, qualifying property) does not result in the termination or ''cashing out'' of the target corporation shareholder's proprietary interest in the target corporation.

Another stakeholder provided a variation to this second approach that would incorporate a rebuttable presumption. Under this variation, the reorganization exception would apply to a repurchase solely to the extent that stock of the target corporation is exchanged by target corporation shareholders for qualifying property. In other words, all shareholders of the target corporation that receive non-qualifying property in exchange for target corporation stock would be presumed to recognize gain or loss to the full extent of the non-qualifying property received. The stakeholder recommended allowing a target corporation to rebut this presumption to the extent the target corporation could demonstrate that its shareholders did not recognize gain or loss in the reorganization. However, the stakeholder found it questionable as a policy matter that, under this variation of the second approach, a target corporation that provides solely non-qualifying property to the target corporation shareholders in exchange for target corporation stock would not be treated as repurchasing the target corporation shareholders' stock if the target corporation rebuts the presumption of gain or loss recognition.

Under the stakeholders' third approach, the reorganization exception would apply to a repurchase solely to the extent that stock of the target corporation is exchanged by target corporation shareholders for qualifying property, regardless of whether the target corporation shareholder recognizes any gain or loss. One stakeholder recommended this third approach based on the stakeholder's rationale that shareholder-level gain should not be taken into account for determining whether a repurchase occurred for purposes of the stock repurchase excise tax. In addition, the stakeholder contended that any approach that requires computation of each shareholder's gain or loss would be difficult for the IRS to administer, and for taxpayers to apply with certainty, because the shareholder-level data necessary to determine such gain or loss would be difficult to obtain.

The Treasury Department and the IRS continue to be of the view that the third approach recommended by stakeholders would strike the most appropriate balance between implementing the plain language of the reorganization exception and providing a rule that facilitates the ability of the IRS to administer and enforce the stock repurchase excise tax. Under this approach, the touchstone consideration of whether a target corporation shareholder receives qualifying or non-qualifying property in exchange for target corporation stock will enable target corporations to readily determine the extent to which the reorganization exception applies to the exchange. Moreover, the Treasury Department and the IRS are of the view that only in rare instances would such a shareholder not recognize gain or loss if the shareholder received non-qualifying property in exchange for target corporation stock. Accordingly, the proposed regulations would retain the approach described in Notice 2023–2. *See* proposed § 58.4501–3(c).

2. Section 355 Transactions That are Not Part of a D Reorganization

Stakeholders recommended applying the reorganization exception to split-offs and split-ups without regard to whether the section 355 transaction occurs as part of a D reorganization. According to the stakeholders, Congress intended to convey through the reorganization exception that transactions that qualify for non-recognition treatment should not be subject to the stock repurchase excise tax, and that the same treatment should extend to all section 355 transactions—regardless of whether carried out as part of a D reorganization.

The Treasury Department and the IRS continue to be of the view that the exception in section 4501(e)(1) should apply to split-offs to which section 355 applies without regard to whether such transactions occur as part of a D reorganization. *See* proposed § 58.4501–3(c). As previously discussed in part IX.A of this Explanation of Provisions, split-ups are not treated as repurchases. Consequently, the exception in section 4501(e)(1) is not relevant to split-ups.

B. Contributions to Employer-Sponsored Retirement Plans

In general, under section 3.07(3)(a) of Notice 2023–2, the fair market value of stock repurchased by a covered corporation is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base if the stock that is repurchased, or an amount of stock equal to the fair market value of the stock repurchased, is contributed to an employer-sponsored retirement plan.

1. Timing of Contributions Under Section 4501(e)(2)

Section 4501(e)(2) provides that the stock repurchase excise tax does not apply in any case in which the stock repurchased, or an amount of stock equal to the value of the stock repurchased, is contributed to an employer-sponsored retirement plan, ESOP, or similar plan (stock contribution exception).

Under section 3.07(3)(d) of Notice 2023–2, a covered corporation may treat stock contributions to an employer-sponsored retirement plan under the stock contribution exception as having been made in the prior taxable year if the stock is contributed by the filing deadline for the IRS Form 720, *Quarterly Federal Excise Tax Return,* that is due for the first full quarter after the close of the taxpayer's taxable year and on account of that taxable year within the meaning of section 404(a)(6) of the Code. The rule described in section 3.07(3)(d) of Notice 2023–2 also provides stock contributions that are treated as having been contributed in the taxable year to which the Form 720 applies may not be treated as having been contributed for any other taxable year.

One stakeholder indicated that the reference to the stock contribution being ''on account of'' the taxable year within the meaning of section 404(a)(6) raises questions about the timing of the offset for the stock repurchase excise tax and the income tax deduction under section 404(a). Specifically, the stakeholder requested clarification as to whether a covered corporation is required to deduct a stock contribution to a plan under section 404(a) in the same taxable year for which the contribution is taken into account for purposes of the stock contribution exception.

The Treasury Department and the IRS are of the view that a stock contribution is not required to be treated as ''on account of'' the preceding taxable year within the meaning of section 404(a)(6). Thus, for example, a covered corporation may claim the income tax deduction in the taxable year in which the stock is contributed to the employer-sponsored retirement plan but claim an offset for the stock contribution to the plan for purposes of the stock repurchase excise tax in the preceding taxable year (provided that the rules in these proposed regulations are satisfied).

Accordingly, these proposed regulations would provide that, for purposes of the reduction in the stock repurchase excise tax base, a covered corporation may treat stock

contributions to an employer-sponsored retirement plan made after the close of the covered corporation's taxable year as having been contributed during that taxable year if two conditions are satisfied. First, the stock must be contributed to the employer-sponsored retirement plan by the filing deadline for the form on which the stock repurchase excise tax must be reported that is due for the first full quarter after the close of the taxpayer's taxable year. Second, the stock must be treated by the employer-sponsored retirement plan in the same manner that the plan would treat a contribution received on the last day of the preceding taxable year. *See* proposed § 58.4501–3(d)(4)(ii).

2. Definition of ''Employer-Sponsored Retirement Plan''

For purposes of Notice 2023–2, the term ''employer-sponsored retirement plan'' means a retirement plan maintained by a covered corporation that is qualified under section 401(a) of the Code, including an ESOP (as defined in section 4975(e)(7) of the Code). *See* section 3.02(12) of Notice 2023–2. In section 6.01(4) of Notice 2023–2, the Treasury Department and the IRS requested comments regarding whether the definition of an ''employer-sponsored retirement plan'' should include plans other than plans that are qualified under section 401(a). In response, one stakeholder recommended expanding this definition to include foreign-based plans and plans funded through a secular trust. The stakeholder reasoned that the statutory language of section 4501(e)(2), along with the underlying policy considerations, support expanding the definition to these types of plans. However, the stakeholder did not specify which types of foreign-based plans or plans funded through a secular trust should be included in the definition of an ''employer-sponsored retirement plan.''

The Treasury Department and the IRS are of the view that certain broad-based foreign plans that are funded through a secular trust or another type of funded arrangement may be considered ''similar plans,'' and thus may be included in the definition of an ''employer-sponsored retirement plan'' for purposes of the stock contribution exception. However, the Treasury Department and the IRS have not yet determined which types of broad-based foreign plans should be included in this definition. Accordingly, the Treasury Department and the IRS request comments regarding the types of foreign-based plans that should be included in the definition of an ''employer-sponsored retirement plan.''

Another stakeholder expressed concern that the stock contribution exception could be used to encourage excessive executive compensation and requested that the definition of ''similar plan'' be defined to specifically exclude executive compensation arrangements. The Treasury Department and the IRS agree that the stock contribution exception should not be used to encourage executive compensation arrangements. The definition of an ''employer-sponsored retirement plan'' described in Notice 2023–2 is limited to plans that are qualified under section 401(a) (including ESOPs). The Treasury Department and IRS are of the view that this definition is sufficient to exclude executive compensation arrangements from the stock contribution exception. Thus, these proposed regulations similarly would limit the definition of ''employer-sponsored retirement plan'' to plans that are qualified under section 401(a).

However, these proposed regulations would expand the definition of ''employer-sponsored retirement plan'' described in Notice 2023–2 to include qualified plans under section 401(a) that are maintained by specified affiliates of covered corporations. Section 3.02(12) of Notice 2023–2 defined ''employer-sponsored retirement plan'' with regard to qualified plans maintained by covered corporations. These proposed regulations would provide that the definition of ''employer-sponsored retirement plan'' includes not only qualified plans maintained by covered corporations, but also qualified plans maintained by a specified affiliate of a covered corporation. *See* proposed § 58.4501–1(b)(11).

3. Valuation of Stock Contributions

As noted previously, the stock contribution exception in section 4501(e)(2) provides that the stock repurchase excise tax will not apply in any case in which (i) the stock repurchased (first clause), or (ii) an amount of stock equal to the value of the stock repurchased (second clause), is contributed to an employer-sponsored retirement plan, ESOP, or similar plan.

Section 3.07(3)(c)(i) of Notice 2023–2 addressed the first clause by providing that, if a covered corporation repurchases stock and contributes to an employer-sponsored retirement plan stock of the same class, then the amount of the reduction under the stock contribution exception is equal to the aggregate fair market value of the stock repurchased during the taxable year, divided by the number of shares repurchased, and multiplied by the number of shares contributed. However, the amount of the reduction may not exceed the aggregate fair market value of stock of the same class repurchased during the taxable year.

Section 3.07(3)(c)(ii) of Notice 2023–2 addressed the second clause by providing that, if a covered corporation contributes to an employer-sponsored retirement plan stock of a different class than the class of stock that was repurchased, then the amount of the reduction under the stock contribution exception is equal to the fair market value of the stock at the time the stock is contributed to the employer-sponsored retirement plan. However, the amount of the reduction may not exceed the aggregate fair market value of stock of a different class repurchased during the taxable year.

One stakeholder requested that the value of stock for purposes of the stock contribution exception be based on the greater of the value at the time of repurchase or at the time of contribution to an employer-sponsored retirement plan. The stakeholder stated that the word ''or'' between the first clause and the second clause offers statutory support for allowing covered corporations to choose between using the first clause or the second clause for any given year.

The Treasury Department and the IRS disagree with the stakeholder. With regard to the first clause, the focus of the language is on *the* stock repurchased. Because the stock repurchase excise tax does not apply to the repurchase of *the* stock that is contributed, the amount of the offset is the fair market value of the shares of stock at the time of the repurchase. Any change in value after the date of repurchase is irrelevant for purposes of determining the amount of the repurchase under section 4501(a) and, thus, the offset amount under the stock contribution exception.

Moreover, if covered corporations contribute stock of a different class than the stock repurchased, the contribution will not reflect a contribution of *the* stock repurchased. For this reason, it is inconsistent with the statutory language of section 4501(e)(2) to allow covered corporations to apply the first clause if contributing a different class of stock to an employer-sponsored retirement plan.

With regard to the second clause, because the statutory language focuses on an amount of stock *equal to the value of* the stock repurchased, and not on the shares of stock themselves, the value of the offset amount is determined by the value of the stock contributed to the retirement plan, instead of the value of the stock at the time of the repurchase.

Accordingly, these proposed regulations would incorporate the

valuation provisions described in section 3.07(3)(c) of Notice 2023–2, including the rule that the reduction cannot exceed the aggregate fair market value of the stock repurchased. Additionally, these proposed regulations would add language to coordinate the application of the stock contribution exception with the application of other statutory exceptions. *See* proposed § 58.4501–3(d)(3).

4. Special Rule for Leveraged ESOPs

As defined in section 4975(e)(7), an ESOP is a type of defined contribution plan that is qualified under section 401(a) and is designed to invest primarily in qualifying employer securities (within the meaning of section 409(l) of the Code). An ESOP also must meet other applicable requirements described in section 409.

An ESOP may be leveraged or non-leveraged. Leveraged ESOPs use the proceeds of an exempt loan (as defined in section 4975(d)(3)) from the sponsoring employer or another party (typically with the employer's guarantee) to purchase qualifying employer securities from the sponsoring employer or shareholders or on a securities market. The purchased securities are held in a suspense account (within the trust that forms a part of the plan) as collateral for the loan. The sponsoring employer makes cash contributions to the ESOP, which in turn uses the cash to make loan repayments. Dividends paid on shares held as collateral in the ESOP loan suspense account and on shares allocated to participants' accounts also may be used to repay an exempt loan. As loan repayments are made, securities are released from the suspense account and allocated to ESOP participants' accounts in accordance with the terms of the plan, which must comply with plan qualification and fiduciary requirements.

Non-leveraged ESOPs do not have a loan and, thus, do not have a suspense account that releases securities to ESOP participants' accounts as contributions of cash are used to repay a loan. Rather, employers contribute employer securities directly to the non-leveraged ESOP, and the contributed shares are allocated to ESOP participants' accounts as of the plan year to which the contribution applies.

Employer contributions to a non-leveraged ESOP fit squarely within the stock contribution exception because employer contributions to a non-leveraged ESOP are made in shares of stock. Although employer contributions of cash to a leveraged ESOP are not described in section 4501(e)(2), such contributions result in the allocation of shares of stock from a suspense account to ESOP participants' accounts. In other words, contributions of stock to a non-leveraged ESOP and contributions of cash to a leveraged ESOP that is used to repay an exempt loan produce a comparable result—namely, the allocation of employer stock to participants' accounts. Accordingly, the Treasury Department and the IRS are of the view that leveraged ESOPs and non-leveraged ESOPs should be treated similarly for purposes of the stock contribution exception.

Thus, these proposed regulations would provide that, if a covered corporation maintains a leveraged ESOP, stock that is released from a suspense account (as a result of cash contributions by the employer maintaining the plan) and allocated to ESOP participants' accounts is treated as a stock contribution for purposes of the stock contribution exception as of the date stock attributable to repayment of the exempt loan is released from the suspense account and allocated to participants' accounts. Because dividends on employer stock held in the ESOP and used to repay an exempt loan are not employer contributions, stock released from the suspense account that is attributable to repayment of the loan with dividends would not be treated as a stock contribution for purposes of the stock contribution exception. *See* proposed § 58.4501–3(d)(1)(ii).

C. De Minimis Exception

Section 4501(e)(3) provides an exception (that is, the de minimis exception) to the application of the stock repurchase excise tax with regard to a taxable year ''in any case in which the total value of the stock repurchased during the taxable year does not exceed $1,000,000.'' *See* section 4501(e)(3); *see also* section 3.03(2)(a) of Notice 2023–2. Under section 3.03(2)(b) of Notice 2023–2, the determination of whether the de minimis exception applies with regard to a taxable year is made before applying any other statutory exception or any adjustments under the netting rule. As discussed in part XIV.A.3 of this Explanation of Provisions, the Treasury Department and the IRS are of the view that applying the de minimis exception before the other statutory exceptions is consistent with the statutory language and structure of section 4501.

The proposed regulations would retain the approach described in Notice 2023–2. *See* proposed § 58.4501–2(c)(3). Additionally, for the same rationale underlying the approach described in Notice 2023–2, the proposed regulations would clarify that repurchases prior to January 1, 2023, are not taken into account for purposes of the stock repurchase excise tax (including for purposes of applying the de minimis exception). *See* proposed § 58.4501–2(c)(4); *see also* part I.A of this Explanation of Provisions (discussion of repurchases by a fiscal-year taxpayer prior to the effective date).

D. Repurchases by Dealers in Securities

Section 4501(e)(4) provides an exception to the application of the stock repurchase excise tax ''under regulations prescribed by the Secretary, in cases in which the repurchase is by a dealer in securities in the ordinary course of business.'' Pursuant to the authority granted in section 4501(e)(4), section 3.07(4) of Notice 2023–2 describes an exception to the application of the stock repurchase excise tax for certain repurchases by a dealer in securities in the ordinary course of the dealer's business of dealing in securities.

More specifically, section 3.07(4)(a) of Notice 2023–2 describes, in part, that the fair market value of stock repurchased by a covered corporation that is a dealer in securities (within the meaning of section 475(c)(1) of the Code) is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base to the extent the stock is acquired in the ordinary course of the dealer's business of dealing in securities. However, under section 3.07(4)(b) of Notice 2023–2, this reduction applies solely to the extent that: (i) the dealer accounts for the stock as securities held primarily for sale to customers in the dealer's ordinary course of business; (ii) the dealer disposes of the stock within a period of time that is consistent with the holding of the stock for sale to customers in the dealer's ordinary course of business, taking into account the terms of the stock and the conditions and practices prevailing in the markets for similar stock during the period in which the stock is held; and (iii) the dealer does not sell or otherwise transfer the stock to certain specified persons other than in a sale or transfer to a dealer that also satisfies the requirements of section 3.07(4) of Notice 2023–2.

No feedback was received on this exception in Notice 2023–2. The proposed regulations would retain the approach described in Notice 2023–2. *See* proposed § 58.4501–3(e).

E. Repurchases by RICs and REITs

Section 4501(e)(5) provides an exception to the application of the stock

repurchase excise tax for ''repurchases by a regulated investment company (as defined in section 851) or a real estate investment trust.'' Under section 3.07(5) of Notice 2023–2, a repurchase by a covered corporation that is a RIC or a REIT is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base. The proposed regulations would retain the approach described in Notice 2023–2.

A stakeholder recommended that the exception for RICs be extended to all funds registered under the Investment Company Act of 1940, even if those funds do not qualify as RICs for tax purposes. The stakeholder suggested that the organizational structure, operations, applicable securities laws, and accounting standards are the same for those funds as for funds that are RICs for tax purposes.

The Treasury Department and the IRS disagree with the stakeholder's recommendation. Section 4501(e)(5) provides a specific and limited exception for RICs as defined in section 851, and nothing in the statutory language of section 4501 suggests that entities that do not qualify as RICs are intended to be exempt from the stock repurchase excise tax. Accordingly, the proposed regulations would not adopt this recommendation.

F. Dividend Exception

Section 4501(e)(6) provides an exception (dividend exception) to the application of the stock repurchase excise tax ''to the extent that the repurchase is treated as a dividend for purposes of [the Code].'' To implement section 4501(e)(6), the rule described in section 3.07(6)(a) of Notice 2023–2 generally provides that the fair market value of stock repurchased by a covered corporation is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base to the extent the repurchase is treated as a distribution of a dividend under section 301(c)(1) or 356(a)(2). Under the notice, there is a rebuttable presumption that a repurchase to which section 302 or 356(a) applies is subject to section 302(a) or 356(a)(1), respectively (and, therefore, is ineligible for the foregoing exception). *See* section 3.07(6)(b)(i) of Notice 2023–2. A covered corporation may rebut this presumption with regard to a specific shareholder solely by establishing with sufficient evidence that the shareholder treats the repurchase as a dividend on the shareholder's Federal income tax return. *See* section 3.07(6)(b)(ii) of Notice 2023–2.

1. Substantiation for Dividend Exception

Stakeholders provided several recommendations regarding substantiation for the dividend exception in section 4501(e)(6).

a. Reliance on Filings With the U.S. Securities and Exchange Commission

One stakeholder requested guidance as to how corporations should apply the constructive ownership rules of section 318(a) of the Code in determining the extent to which redemptions are treated as in part or full payment in exchange for stock under section 302(a) or as distributions to which section 301 applies. The stakeholder recommended that such guidance: (i) should permit corporations to rely on filings with the U.S. Securities and Exchange Commission (SEC) and similar filings to determine ownership (as in the case of determining whether an ownership change has occurred for purposes of section 382 of the Code (*see* § 1.382–2T(k)(1)(i))); (ii) should clarify the requisite level of due diligence to determine the constructive ownership of any shareholders not required to report their ownership in SEC filings; and (iii) should address whether any safe harbors or presumptions are available.

The Treasury Department and the IRS are of the view that the rebuttable presumption approach described in Notice 2023–2 would provide a more accurate determination of whether a covered corporation qualifies for the dividend exception. In addition, the Treasury Department and the IRS are of the view that the rebuttable presumption approach would better facilitate the IRS's ability to administer and enforce the stock repurchase excise tax and enable taxpayers to apply the tax with greater certainty. Therefore, the proposed regulations would not permit covered corporations to rely on filings with the SEC and similar filings to determine the extent to which redemptions may be treated as qualifying for the dividend exception.

b. Rebuttable Presumption and Substantiation Requirements

Another stakeholder contended that a covered corporation generally would not have access to information to determine with certainty whether a section 317(b) redemption should be treated as a dividend with respect to a particular shareholder. For support, the stakeholder asserted that a covered corporation may not possess information specifying the identity of its shareholders, which complicates the ability of the covered corporation to determine whether a repurchase is properly treated as a sale or exchange under section 302(a) or as a section 301 distribution under section 302(d) (which depends on shareholder-specific facts). As a result, the stakeholder recommended a safe harbor under which the dividend exception would apply if the covered corporation: (i) provides information reporting to the redeemed shareholder providing that the repurchase constitutes a dividend; (ii) obtains certification from the shareholder that the repurchase constitutes a section 302(d) redemption; (iii) has no knowledge of facts that would indicate that the certification is incorrect; and (iv) demonstrates that the corporation has sufficient earnings and profits (E&P) to treat the deemed section 301 distribution as a dividend.

As reflected in section 3.07(6) of Notice 2023–2, the Treasury Department and the IRS are of the view that repurchases should be presumed not to be dividend-equivalent (that is, the dividend exception is presumed to be inapplicable), but that taxpayers should be permitted to rebut this presumption by providing sufficient evidence. The substantiation requirements described in section 3.07(6)(b)(iii) of Notice 2023–2 are substantially similar to the stakeholder's recommended safe harbor, with the additional requirement that the shareholder must provide evidence that applicable withholding occurred, if required.

Coupled with the shareholder certification requirement, the Treasury Department and the IRS provided the information reporting requirement to ensure that covered corporations and their shareholders treat repurchases consistently for purposes of the dividend exception. However, it is the understanding of the Treasury Department and the IRS that publicly traded stock typically is held by shareholders through a broker, and the broker (rather than the issuer of the stock) provides any information reporting to the shareholder. Under current law, brokers are not required to inform the issuer of the stock what information reporting the brokers have provided to shareholders, and the Treasury Department and the IRS understand that brokers generally do not provide such information to issuers. Consequently, in such cases, there is no assurance that the information reporting provided to the shareholder would be consistent with the covered corporation's treatment of a repurchase. Therefore, the proposed regulations would replace the information reporting requirement with a requirement that the covered corporation treat the repurchase

consistent with the shareholder certification.

c. Coordination With Withholding Tax Rules

In section 6.01(7) of Notice 2023–2, the Treasury Department and the IRS requested comments on whether there should be modifications to the method described in section 3.07(6) of Notice 2023–2, or whether additional methods to rebut the presumption should be permitted.

In response, one stakeholder observed that, although Notice 2023–2 includes a rebuttable presumption that a share repurchase by a covered corporation constitutes a sale or exchange, the withholding tax rules generally presume that such share repurchases from foreign persons are dividends subject to withholding tax. *See* § 1.1441–3(c)(1). In the absence of coordination, the stakeholder contended that each of these presumptions might apply to the same transaction, and therefore would require (i) the repurchasing corporation to pay the stock repurchase excise tax as if the payment gave rise to a sale or exchange, and (ii) a withholding agent to withhold as if the payment gave rise to a dividend. Accordingly, the stakeholder requested that the proposed regulations provide rules to coordinate these differing presumptions.

The Treasury Department and the IRS are of the view that no special rules are needed to coordinate the foregoing presumptions, particularly because these presumptions serve different purposes. In addition, if the proposed regulations were to provide rules to coordinate these presumptions, then the following would result: (i) covered corporations making repurchases would not have any stock repurchase excise tax liability (if the presumption were that all repurchases are dividends); or (ii) corporations making section 302 distributions to foreign persons would not have any withholding tax liability (if the presumption were that all repurchases are sales or exchanges).

However, the proposed regulations would include rules to coordinate the proposed shareholder certification requirements under the dividend exception with the proposed section 302 payment certification requirements under proposed § 1.1441–3(c)(5)(iii)(D). *See* proposed § 58.4501–3(g)(3).

d. Certification From Foreign Shareholders

Another stakeholder contended that the requirement that U.S. companies obtain certification from a foreign shareholder who does not file a U.S. tax return, and who does not otherwise have a U.S. tax connection, is excessively burdensome. The stakeholder recommended replacing the certification requirement with the requirement that a U.S. company provide a Form 1042–S showing payment of a dividend.

The Treasury Department and the IRS are of the view that reliance solely on the Form 1042–S is not an appropriate replacement for the shareholder certification requirement, because the Form 1042–S is based on the presumption that share repurchases are dividends subject to withholding tax. Consequently, reliance solely on the Form 1042–S for purposes of substantiating the dividend exception could overstate the amount of repurchases that qualify for this exception. Accordingly, the proposed regulations would not adopt this recommendation.

2. Substantiation of Dividend Exception for E Reorganizations

As discussed in part VIII.D of this Explanation of Provisions, the proposed regulations would provide that a covered corporation's acquisition of its stock as part of an E reorganization would constitute a repurchase, subject to the reorganization exception. Stakeholders have asked whether a covered corporation may establish its eligibility for the dividend exception by demonstrating that (i) § 1.301–1(j) applies to the non-qualifying property in the transaction, and (ii) the corporation has sufficient E&P for dividend treatment.

Section 1.301–1(j) provides, in relevant part, that a distribution to shareholders with respect to their stock is a section 301 distribution, even if the distribution occurs at the same time as another transaction, if the distribution is in substance a separate transaction (whether or not connected in a formal sense). Section 1.301–1(j) further provides that this situation is most likely to occur in the case of a recapitalization and certain other corporate reorganizations. For example, if a corporation with only common stock outstanding exchanges one share of newly issued common stock and one bond for each share of outstanding common stock, the distribution of the bond is a distribution of property (to the extent of its fair market value) to which section 301 applies even if the stock-for-stock exchange is pursuant to an E reorganization.

Notice 2023–2 does not expressly address the interaction of § 1.301–1(j) and the dividend exception. However, the presumption that a repurchase by a covered corporation constitutes a sale or exchange applies only to a repurchase to which section 302 or 356(a) applies. *See* section 3.07(6)(b)(i) of Notice 2023–2.

The Treasury Department and the IRS are of the view that no special rules are needed in response to the stakeholders' query. In other words, because a distribution of non-qualifying property that is treated as a section 301 distribution pursuant to § 1.301–1(j) is not subject to section 302 or 356(a), the Treasury Department and the IRS are of the view that such a distribution should qualify for the dividend exception (if the covered corporation has sufficient E&P) without the need for the covered corporation to rebut the presumption that the repurchase is a sale or exchange. The proposed regulations would reflect this position. *See* proposed § 58.4501–3(g)(2).

3. Dividend Exception and Partial Liquidation Look-Through Rule

A stakeholder requested that the proposed regulations provide the manner in which covered corporations should apply the look-through rule of section 302(e)(5) in determining the extent to which redemptions in partial liquidation are made to corporate shareholders (and, therefore, are potentially eligible for the dividend exception). Under section 302(b)(4), a redemption in partial liquidation to noncorporate shareholders is treated as a sale or exchange rather than as a section 301 distribution. However, section 302(b)(4) does not apply to shareholders that are not corporations. As a result, such shareholders potentially are eligible for exclusion under the dividend exception.

Section 302(e)(5) provides that, for purposes of determining under section 302(b)(4) whether any stock is held by a shareholder that is not a corporation, any stock held by a partnership, estate, or trust is treated as if it were held proportionately by its partners or beneficiaries. For purposes of applying this rule, the stakeholder recommended that the proposed regulations permit covered corporations to rely on SEC filings and similar filings. For support, the stakeholder contended that covered corporations generally cannot ascertain the identity of their shareholders unless the shareholders are required to disclose their ownership under applicable securities law.

For the reasons previously discussed in part X.F.1 of this Explanation of Provisions, the Treasury Department and the IRS are of the view that corporations should not be permitted to rely solely on SEC filings or similar filings for purposes of determining whether the dividend exception in

section 4501(e)(6) applies. Accordingly, the proposed regulations would not adopt this recommendation. Instead, the proposed regulations would provide that covered corporations must obtain certifications from their shareholders, which must take section 302(e)(5) into account for purposes of making the certification. *See* proposed § 58.4501–3(g)(2)(ii).

XI. Netting Rule

A. Overview

Section 4501(c)(3) allows an adjustment for stock issued by a covered corporation, including stock issued or provided to employees of a covered corporation or its specified affiliate. Section 3.08 of Notice 2023–2 describes rules regarding the adjustment under section 4501(c)(3) (that is, the netting rule).

In general, under section 3.08(1) of Notice 2023–2, the stock repurchase excise tax base with regard to a taxable year of a covered corporation is reduced by the aggregate fair market value of stock of the covered corporation (i) issued or provided to employees of the covered corporation or employees of a specified affiliate during the covered corporation's taxable year, and (ii) issued by the covered corporation to other persons during the covered corporation's taxable year. For these purposes, stock is treated as issued or provided by a covered corporation at the time at which, for Federal income tax purposes, ownership of the stock transfers to the recipient. *See* section 3.08(2) of Notice 2023–2.

Section 3.08(3) of Notice 2023–2 describes additional rules regarding stock issued or provided to an employee of a covered corporation or specified affiliate as compensation for services performed as an employee. Such arrangements include transfers of stock in connection with the performance of services described in section 83, including pursuant to a nonqualified stock option, or pursuant to a stock option described in section 421 of the Code.

B. Treasury Stock

A stakeholder requested confirmation that the transfer of treasury stock is treated as an issuance for purposes of the netting rule to the same extent as the transfer of newly issued stock. The stakeholder contended that treasury stock generally is treated in the same manner as the issuance of new stock for Federal income tax purposes, and that there is no countervailing policy reason for treating treasury stock differently than newly issued stock for purposes of the netting rule. Notice 2023–2 does not expressly address the treatment of treasury stock because the Treasury Department and the IRS are of the view that treasury stock constitutes stock for Federal income tax purposes.

The Treasury Department and the IRS continue to be of the view that treasury stock constitutes stock for Federal income tax purposes. For the avoidance of doubt, the proposed regulations would provide explicitly that transfers of treasury stock (within the meaning of section 317(b)) are taken into account for purposes of the netting rule to the same extent as transfers of newly issued stock. *See* proposed § 58.4501–1(b)(29).

C. Transactions Not Treated as Issuances for Purposes of the Netting Rule

Under section 3.08(4) of Notice 2023–2, the following stock is not treated as issued for purposes of the netting rule: (i) stock of a covered corporation distributed by the covered corporation to its shareholders with respect to its stock; (ii) stock issued by a covered corporation to a specified affiliate of the covered corporation; (iii) stock treated as issued by the acquiring corporation by reason of the application of section 304(a)(1) to a transaction; (iv) certain fractional shares (*see* the discussion in part XIV.B of this Explanation of Provisions); (v) stock issued by a covered corporation that is a dealer in securities (to the extent the stock is issued, or otherwise is used to satisfy obligations to customers arising, in the ordinary course of the dealer's (or an applicable acquiror's) business of dealing in securities); and (vi) stock issued by the target corporation to the merged corporation in exchange for consideration that includes the stock of the controlling corporation in a reverse triangular merger. *See* sections 3.08(4)(b), (c), (e), (f), (g), and (h), respectively, of Notice 2023–2.

Additionally, under section 3.08(4)(d) of Notice 2023–2, stock issued as part of a transaction qualifying as a reorganization under section 368(a) or a distribution under section 355 is not treated as issued by the issuing corporation if (i) the stock constitutes qualifying property, (ii) the stock is used by a covered corporation to repurchase its stock in a transaction that is a repurchase under section 3.04(4)(a)(i), (ii), (iii), or (iv) of Notice 2023–2 (*see* the discussion in parts VIII.A, D, and E and IX of this Explanation of Provisions), and (iii) the repurchase is not included in the covered corporation's stock repurchase excise tax base because that repurchase is a qualifying property repurchase (within the meaning of section 3.07(2) of Notice 2023–2).

Under section 3.07(3)(e) of Notice 2023–2, stock contributions to an employer-sponsored retirement plan under the stock contribution exception are not treated as issued or provided to employees of the covered corporation or a specified affiliate under the netting rule.

1. Issuances to Specified Affiliates

Stakeholders generally recommended that issuances of stock to a specified affiliate should not be taken into account for purposes of the netting rule, for several reasons. First, respecting such issuances might lead to double counting if the stock is treated as ''issued'' to a specified affiliate and subsequently ''provided'' to that specified affiliate's employees. *See* section 4501(c)(3). Second, because section 4501(c)(2) treats the acquisition of stock of a covered corporation by a specified affiliate (from a person who is not the covered corporation or a specified affiliate of such covered corporation) as a repurchase of stock of the covered corporation, allowing such a repurchase to be offset by acquisitions of the covered corporation's stock by the specified affiliate from the covered corporation itself would be incongruous. Third, issuances of stock to a specified affiliate do not promote what the stakeholder considered to be the congressional policies underlying section 4501 (for example, promoting investment in productive capital or labor).

Under section 3.08(4)(c) of Notice 2023–2, stock issued by a covered corporation to a specified affiliate is not treated as issued. Stakeholders found this exception to the netting rule to be sensible insofar as it prevents covered corporations from eroding their stock repurchase excise tax base by creating ''hook stock'' (that is, issuing corporation stock held by an entity that is owned, directly or indirectly, by the issuing corporation).

However, stakeholders also suggested that the scope of this exception is overbroad. Under a strict reading, this exception would permanently prevent the issued stock from being taken into account under the netting rule (for example, if provided to an employee of the specified affiliate), because any subsequent transfer by the specified affiliate would not technically constitute an ''issuance.'' Stakeholders recommended that issuances of stock by a covered corporation to its specified affiliate be disregarded only to the extent the covered corporation stock is not subsequently transferred to a party

other than the covered corporation or another specified affiliate.

The Treasury Department and the IRS agree with the stakeholders. Accordingly, the proposed regulations would clarify that stock issued by a covered corporation to a specified affiliate is treated as issued for purposes of the netting rule if and when that stock is transferred by the specified affiliate during the same taxable year to a person who is not the covered corporation or a specified affiliate of that corporation, so long as (1) the covered corporation does not otherwise reduce its stock repurchase excise tax base for the issuing year with respect to the stock, and (2) the subsequent transfer by the specified affiliate is not in connection with the performance of services provided to the specified affiliate. *See* proposed § 58.4501–4(f)(2). The first requirement is intended to ensure that the stock is not double counted if, for example, the stock is ''issued'' to the specified affiliate and subsequently ''provided'' to the specified affiliate's employees. The second requirement is intended to ensure that stock transferred to a non-employee service provider of a specified affiliate would not qualify under this rule. *See* part XI.G of this Explanation of Provisions (explaining the interpretation in the proposed regulations of section 4501(c)(3)'s ''issued or provided'' language). Unless specifically identified, the shares of stock of the covered corporation treated as subsequently transferred by the specified affiliate are the earliest shares issued by the covered corporation to the specified affiliate. *See* proposed § 58.4501–4(f)(2)(iii).

Under the proposed regulations, stock issued by a covered corporation in connection with the performance of services for a specified affiliate would not be treated as ''issued'' for purposes of the netting rule. However, a transfer of stock of a covered corporation described in § 1.83–6(d) by a specified affiliate to an employee (but not a non-employee service provider) of the specified affiliate would be treated as ''provided'' by the specified affiliate. *See* proposed § 58.4501–4(f)(2)(iv).

Thus, under the proposed regulations, stock issued by a covered corporation to its specified affiliate (or stock that is treated as so issued under § 1.83–6(d)) would be counted for purposes of the netting rule under two different provisions depending on whether the subsequent transfer by the specified affiliate is in connection with the performance of services. First, if the subsequent transfer is not in connection with the performance of services, then the stock transferred would be counted as stock ''issued'' by the covered corporation if and when the stock is transferred, during the same taxable year as the original issuance, to a person who is not the covered corporation or a specified affiliate of the corporation. Second, if the subsequent transfer (or deemed transfer under § 1.83–6(d)) is in connection with the performance of services, then the stock transferred would be counted as stock ''provided'' by the specified affiliate, but only if the stock is transferred to an employee of the specified affiliate. Stock transferred to a non-employee service provider of a specified affiliate would not be counted for purposes of the netting rule. *See* part XI.G.2 of this Explanation of Provisions.

2. Issuances in Acquisitive Reorganizations and Split-Offs (No Double Benefit Rule)

The Treasury Department and the IRS are of the view that stock issued by the acquiring corporation to the target corporation as part of an acquisitive reorganization should not be treated as an issuance for purposes of the netting rule. *See* section 3.08(4)(d) of Notice 2023–2. It is the position of the Treasury Department and the IRS that allowing such an issuance to be taken into account for purposes of the netting rule would create a ''double benefit'' (that is, two reductions to the stock repurchase excise tax base with respect to the same stock). In other words, (i) one reduction would be provided to the target corporation under the reorganization exception (*see* section 3.07(2) of Notice 2023–2) for the use of acquiring corporation stock to repurchase target corporation stock, and (ii) a second reduction would be provided to the acquiring corporation for the issuance of that acquiring corporation stock under the netting rule. The Treasury Department and the IRS observe that the identical concern arises with regard to stock issued by Controlled to Distributing in a D reorganization occurring as part of a split-off under section 355.

One stakeholder asserted that, if the proposed regulations adopt the stakeholders' recommendation to exclude acquisitive reorganizations from the stock repurchase excise tax, no ''double benefit'' would occur because the issuance of qualifying property by the acquiring corporation would not be offset against the target corporation's stock repurchase excise tax base. However, the proposed regulations would not adopt the recommendation to exclude acquisitive reorganizations from the stock repurchase excise tax. *See* part VIII.A.2 of this Explanation of Provisions.

Based on the foregoing, the proposed regulations would provide that stock issued as part of a transaction qualifying as a reorganization under section 368(a) or as a distribution under section 355 is disregarded for purposes of the netting rule if (i) the stock constitutes qualifying property, (ii) the stock is used by a covered corporation to repurchase its stock in a transaction qualifying as a reorganization under section 368(a) or a split-off under section 355 (whether or not the split-off is part of a D reorganization), and (iii) that repurchase is not included in that corporation's stock repurchase excise tax base because the repurchase is a qualifying property repurchase. *See* proposed § 58.4501–4(f)(3).

3. Issuances in Spin-Offs and Split-Ups

A stakeholder also recommended that issuances by Controlled to Distributing in a D reorganization occurring as part of a section 355 distribution should not be treated as issuances for purposes of the netting rule if the section 355 distribution is either a split-off or a spin-off. The stakeholder noted that, under Notice 2023–2, the no double benefit rule does not disregard the Controlled stock issued to Distributing in a D reorganization occurring as part of a spin-off because, unlike in a split-off, Distributing does not use the Controlled stock to repurchase its own stock. However, the stakeholder found no policy justification for the disparate treatment of spin-offs and split-offs that qualify under section 355 with respect to the netting rule. The stakeholder also questioned the propriety of allowing a recently distributed Controlled to begin its life as a covered corporation with a positive ''reserve'' of issuances equal to its net value for purposes of the netting rule.

The Treasury Department and the IRS agree with the stakeholder and are of the view that Controlled stock issued to Distributing in a section 355 transaction should be disregarded for purposes of the netting rule. Thus, the proposed regulations would provide that any stock issued by Controlled in a distribution qualifying under section 355 (or so much of section 356 as relates to section 355) is not treated as an issuance for purposes of the netting rule. *See* proposed § 58.4501–4(f)(9).

4. Section 305 Distributions

Under section 3.08(4)(b) of Notice 2023–2, stock of a covered corporation distributed by the covered corporation to its shareholders with respect to its stock is not treated as issued for

purposes of the netting rule. Several stakeholders recommended that stock issued by a covered corporation in a distribution to which section 305(a) of the Code applies (for example, a pro rata stock distribution) should not be taken into account for purposes of the netting rule. These stakeholders reasoned that, if their recommendation were not adopted, a covered corporation could avoid the stock repurchase excise tax by engaging in transactions that create share issuances for the netting rule but have no meaningful dilutive effect on the covered corporation's equity capital. In support of this recommendation, one stakeholder analogized a section 305(a) distribution to a circular flow of cash (that is, the distribution of cash by a corporation to its shareholders, followed by the reinvestment of all the distributed cash in the corporation) that is disregarded for Federal income tax purposes. The stakeholder contended that such a transaction should not be treated as creating a stock issuance for purposes of the netting rule.

With regard to distributions by a covered corporation that are described in section 305(b), stakeholders recommended that issuances of stock by the covered corporation *should* be taken into account for purposes of the netting rule if the receipt of that stock is taxable to the shareholder under section 305(b). As one example, stakeholders suggested that such distributions should be treated as share issuances for purposes of the netting rule if any distributee shareholder can elect to be paid either in stock or in property under section 305(b)(1). The stakeholders asserted that the ability of distributee shareholders to elect to receive stock or cash (or other property) in a section 305(b)(1) distribution should be viewed as economically equivalent to (i) the distribution of cash or other property to the distributee shareholders, followed by (ii) the use of that cash or other property by some distributee shareholders to purchase stock from the covered corporation.

According to the stakeholders, the use of cash or other property by some distributee shareholders to purchase stock from the covered corporation in a section 305(b)(1) distribution presumably would be treated as an issuance for purposes of the netting rule. Therefore, the stakeholders concluded that stock issued in a section 305(b)(1) distribution should not be disregarded solely because the covered corporation does not receive money or services in exchange for that stock.

As reflected in section 3.08(4)(b) of Notice 2023–2, the Treasury Department and the IRS are of the view that distributions by a covered corporation of its own stock should not be taken into account for purposes of the netting rule, regardless of whether the distributions are taxable to the covered corporation's shareholders under section 305(b). Although the recipients of stock distributions under section 305(a) and (b) are subject to different Federal income tax consequences, the Treasury Department and the IRS are of the view that this distinction should not affect the application of the stock repurchase excise tax because the statutory language of section 4501(c)(3) does not focus on treatment of shareholders. Therefore, the Treasury Department and IRS are of the view that disparate treatment should not be provided under the netting rule for different types of section 305 distributions.

For the foregoing reasons, and to facilitate the ability for the IRS to administer and enforce the stock repurchase excise tax, the proposed regulations would not accept the stakeholders' recommendation. Instead, distributions by a covered corporation of its own stock would not be taken into account for purposes of the netting rule. *See* proposed § 58.4501–4(f)(1).

5. Stock-for-Stock Exchanges

A stakeholder recommended that stock issued in an E reorganization should not be treated as an issuance for purposes of the netting rule. For support, the stakeholder contended that the proposed regulations should preclude covered corporations from avoiding the stock repurchase excise tax by engaging in transactions with no meaningful dilutive effect on the corporation's equity capital. In other words, the stakeholder presented the same rationale as the stakeholder's rationale for recommending that stock issued in a distribution to which section 305(a) applies should not be treated as an issuance for purposes of the netting rule. For similar reasons, the stakeholder also recommended that stock issued in an exchange under section 1036 of the Code should not be treated as an issuance for purposes of the netting rule.

The Treasury Department and the IRS continue to be of the view that stock issued in an E reorganization should not be treated as an issuance for purposes of the netting rule because such stock already is taken into account under the reorganization exception. Under that exception (*see* section 3.07(2) of Notice 2023–2 and the discussion in part X.A of this Explanation of Provisions), the fair market value of stock repurchased by the covered corporation in an E reorganization using qualifying property is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base. Therefore, if the issuance of such qualifying property were treated as an issuance for purposes of the netting rule, the covered corporation's stock repurchase excise tax base would be reduced twice as a result of a single stock issuance. The proposed regulations reflect this view. *See* proposed § 58.4501–4(f)(3); *see also* part XI.C.2 of this Explanation of Provisions (discussion of no double benefit rule).

Similarly, the Treasury Department and the IRS agree with the stakeholder that stock issued in a section 1036 exchange should not be treated as an issuance for purposes of the netting rule. Accordingly, the proposed regulations would provide that stock issued in a section 1036 exchange is not treated as an issuance for purposes of the netting rule. *See* proposed § 58.4501–4(f)(8).

6. Issuances in F Reorganizations

A stakeholder recommended that stock issued in an F reorganization should not be treated as an issuance for purposes of the netting rule. The Treasury Department and the IRS continue to be of the view that stock issued in an F reorganization should not be treated as an issuance for purposes of the netting rule because that stock already is taken into account to reduce the covered corporation's stock repurchase excise tax base under the reorganization exception. Therefore, if the issuance of such qualifying property were treated as an issuance for purposes of the netting rule, the covered corporation's stock repurchase excise tax base would be reduced twice as a result of a single stock issuance. The proposed regulations reflect this view. *See* proposed § 58.4501–4(f)(3); *see also* part XI.C.2 of this Explanation of Provisions (discussion of no double benefit rule).

In addition, the proposed regulations would articulate explicitly the view of the Treasury Department and the IRS that F reorganizations should be treated for stock repurchase excise tax purposes in the same manner in which they are treated under the Code and Treasury regulations. In particular, the proposed regulations would reflect the view of the Treasury Department and the IRS that, for purposes of the netting rule, the transferor corporation and the resulting corporation in an F reorganization should be treated as the same corporation. *See* § 1.381(b)–1(a)(2) (providing that, in the case of a transaction qualifying as an F reorganization, the acquiring

corporation is treated just as the transferor corporation would have been treated had there been no reorganization). As a result, the transferor corporation's issuances in the portion of the taxable year preceding an F reorganization may offset the resulting corporation's repurchases in the portion of the taxable year following the F reorganization. Likewise, the resulting corporation's issuances in the portion of the taxable year following an F reorganization may offset the transferor corporation's repurchases in the portion of the taxable year preceding the F reorganization. *See* proposed § 58.4501–4(b)(4).

7. Issuances by a Dealer in Securities

Under section 3.08(4)(g) of Notice 2023–2, any stock issued by a covered corporation that is a dealer in securities is not treated as issued to the extent the stock is issued, or otherwise is used to satisfy obligations to customers arising, in the ordinary course of the dealer's business of dealing in securities. No feedback was received on the treatment described in Notice 2023–2 of issuances by a dealer in securities, and the proposed regulations would retain the approach described in Notice 2023–2. *See* proposed § 58.4501–4(f)(6).

8. Amounts Excluded Under the Stock Contribution Exception

Covered corporation stock contributed to or purchased by an employer-sponsored retirement plan is not treated as issued or provided for purposes of the netting rule. *See* part XI.G.3 of this Explanation of Provisions for further discussion.

9. Instruments Not in the Legal Form of Stock

Because taxpayers generally can choose the form of the instruments that they issue, the Treasury Department and the IRS are concerned that allowing taxpayers to immediately offset their current repurchases by issuing instruments not in the legal form of stock that are treated as stock for Federal income tax purposes at issuance (non-stock instruments) may create the potential for abuse. For example, a taxpayer seeking to avoid the application of the stock repurchase excise tax might issue deep-in-the-money call options, which the taxpayer takes the position are treated as stock for Federal income tax purposes, to accommodation parties with the mutual understanding that such options would never be exercised. While a taxpayer could in principle similarly issue stock to an accommodation party in order to reduce its stock repurchase excise tax base, the issuance of stock by a publicly traded corporation is subject to legal, regulatory, and practical restrictions that do not or may not apply to an instrument that is not in the legal form of stock. In such a case, respecting the issuance of the option as an issuance of stock at the time of issuance for purposes of the netting rule could allow taxpayers to unduly reduce their stock repurchase excise tax liability.

Accordingly, pursuant to section 4501(f), the proposed regulations provide an anti-avoidance rule to address this concern. Under proposed § 58.4501–4(f)(13), the issuance of a non-stock instrument, including certain deep-in-the money options, would not be treated as an issuance of stock for purposes of the netting rule until the instrument is repurchased, and that the amount of the issuance under the netting rule would be limited to the lesser of the fair market value of the non-stock instrument at the time of its issuance or repurchase. The taxpayer would be entitled to regard the issuance for purposes of the netting rule for the repurchased non-stock instrument only if it timely reports the repurchase as a repurchase of a non-stock instrument. In order to prevent taxpayers from taking inconsistent positions with respect to comparable non-stock instruments, a taxpayer that fails to timely report a repurchase of a non-stock instrument as such will not be entitled to regard any issuances for purposes of the netting rule for comparable non-stock instruments repurchased within the five taxable years ending on the last day of the repurchase year, unless the failure to timely report the earlier repurchase was due to reasonable cause. *See* proposed § 58.4501–4(f)(13)(ii)(D). Under the proposed regulations, a comparable non-stock instrument is a non-stock instrument that has substantially similar economic terms as the repurchased non-stock instrument, regardless of whether the comparable non-stock instrument and the repurchased non-stock instrument have the same legal form. *See id.*

Notwithstanding the rules described above for issuances, the Treasury Department and IRS are of the view that the repurchase of an instrument that meets the definition of stock at issuance should be treated as a repurchase, regardless of the legal form of such instrument. Given the potential for abuses of the netting rule involving non-stock instruments, the Treasury Department and the IRS are of the view that the different treatment for non-stock instruments under the netting rule as compared to the rule for repurchases is justified because a taxpayer generally can control whether to issue a particular instrument in the form of stock.

D. Carryovers and Carrybacks of Issuances of Preferred Stock

Several stakeholders raised concerns regarding regulated financial institutions that issue additional tier 1 preferred stock to comply with regulatory requirements. In particular, stakeholders noted that, although regulated financial institutions often must replace redeemed additional tier 1 preferred stock with new additional tier 1 preferred stock, timing considerations and the regulatory approval process often prevents such issuances from occurring during the same taxable year as the repurchases. As a result, regulated financial institutions may not be able to match their redemptions of additional tier 1 preferred stock with their issuances of replacement additional tier 1 preferred stock under the netting rule.

The stakeholders recommended that the proposed regulations permit covered corporations to carry forward or carry back for one taxable year the aggregate amount of issuances by the covered corporation of additional tier 1 preferred stock that exceed the aggregate amount of repurchases of additional tier 1 preferred stock by that covered corporation for a taxable year. One stakeholder suggested that the proposed regulations incorporate such a carryforward and carryback rule for all types of preferred stock.

The Treasury Department and the IRS are of the view that the stakeholder's recommended carryforward and carryback provision is inconsistent with the plain language of the statute. Section 4501 provides clearly that the stock repurchase excise tax must be determined for a covered corporation on a taxable-year-by-taxable-year basis, and the amount of repurchases for a taxable year may be adjusted solely to take into account issuances by the covered corporation during that same taxable year. *See* section 4501(a) (imposing the stock repurchase excise tax on ''stock of the corporation which is repurchased by such corporation during the taxable year''); section 4501(c)(3) (reducing the amount of repurchases for a taxable year ''by the fair market value of any stock issued by the covered corporation during the taxable year''). In this regard, under section 3.03(3)(c) of Notice 2023–2, any reductions in the stock repurchase excise tax base under the statutory exceptions or the netting rule in excess of the aggregate fair market value of all repurchases during the taxable year are not carried forward or backward to preceding or succeeding

taxable years of the covered corporation. Accordingly, the proposed regulations would not adopt this recommendation.

E. Fair Market Value of Shares Issued Pursuant to the Conversion of a Convertible Debt Instrument

A stakeholder recommended that, for purposes of the netting rule, the fair market value of shares issued pursuant to the conversion of a convertible debt instrument should be the market price of the shares on the date of issuance, rather than the consideration actually paid by the holder to acquire the instrument. The stakeholder recommended this approach based in part on the plain language of section 4501(c)(3), which refers to ''the *fair market value* of any stock issued by the covered corporation during the taxable year'' (*emphasis added*).

The Treasury Department and the IRS agree with the stakeholder. Consistent with section 3.08(5) of Notice 2023–2, the Treasury Department and the IRS are of the view that, for purposes of the netting rule, the fair market value of stock issued generally should be the market price of the stock on the date the stock is issued. *See* proposed § 58.4501–4(e)(1). Although the proposed regulations do not expressly address stock issued upon the conversion of a convertible debt instrument, such stock would fall within the scope of this general rule. For special rules for valuing stock issued or provided to an employee or other service provider in connection with the performance of services, *see* proposed § 58.4501–4(e)(5) and part XI.G.7 of this Explanation of Provisions.

F. Net Share Settlement

A stakeholder noted that, if stock is transferred in connection with the performance of services, an employer may withhold some of the stock to cover the exercise price, tax withholding obligations, or other withholding obligations. The stakeholder noted that the stock withheld could be viewed either as transferred to the service provider and then repurchased by the covered corporation, or as never having been issued.

Under section 3.08(3)(a)(ii) of Notice 2023–2, stock withheld by a covered corporation or a specified affiliate to satisfy an employer's income tax withholding obligation described in section 3402 of the Code, or an employer's employment tax withholding obligation described in section 3102 of the Code, is not treated as stock issued or provided to an employee by the covered corporation or specified affiliate. Under section 3.08(3)(a)(iii) of Notice 2023–2, stock withheld by a covered corporation or a specified affiliate to satisfy the exercise price of a stock option also is not treated as stock issued or provided by the covered corporation or specified affiliate to an employee.

As reflected in section 3.08(3)(a)(ii) and (iii) of Notice 2023–2, the Treasury Department and IRS are of the view that stock withheld to satisfy an employer's withholding obligation under section 3102 or 3402, or to satisfy the exercise price of a stock option, is not issued or provided by the covered corporation or a specified affiliate. This position is consistent with the section 83 rules.

Stakeholders noted that stock is withheld in other situations (such as State or foreign tax withholding) and requested clarification on whether those situations also would not result in the issuance or provision of stock. To provide greater clarity regarding the treatment of net share settlements, these proposed regulations would expand Notice 2023–2 to cover all situations involving net share settlements. Accordingly, the proposed regulations would provide that stock withheld by the covered corporation or specified affiliate to satisfy the exercise price of a stock option or to cover any withholding obligation is not treated as issued or provided under the netting rule. *See* proposed § 58.4501–4(f)(11).

A similar result would apply to the delivery of stock under an option not issued in connection with the performance of services, including pursuant to an option embedded in a convertible bond. *See* part XIV.B of this Explanation of Provisions (discussion of the treatment of cash paid in lieu of a fractional share).

G. Special Rules for Stock Issued or Provided to Service Providers

1. Issuances to Service Providers Other Than Employees

Stakeholders requested clarification that the netting rule applies to a covered corporation's issuances of its stock to service providers other than employees. The Treasury Department and the IRS agree that the same rules for determining whether covered corporation stock is issued, the amount of stock issued, and the timing of an issuance should apply to both employee and non-employee service providers of a covered corporation for purposes of the netting rule. The Treasury Department and the IRS are of the view that applying the same rules to all compensatory stock transfers by a covered corporation would improve administrability of the stock repurchase excise tax because the timing and value of stock issued or provided in connection with the performance of services is determined under section 83 for both employee and non-employee service providers.

Accordingly, these proposed regulations would clarify that the netting rule applies to issuances by a covered corporation to both employee and non-employee service providers of the covered corporation. *See* proposed § 58.4501–4(b)(1)(i). However, as discussed in part XI.G.2 of this Explanation of Provisions, covered corporation stock provided by a specified affiliate in connection with the performance of services by a non-employee of the specified affiliate would not qualify for the netting rule.

2. Meaning of Stock ''Issued or Provided'' in Section 4501(c)(3)

A stakeholder noted that section 4501 neither defines the term ''provided'' nor explains the distinction between the terms ''issued'' and ''provided'' in section 4501(c)(3). The stakeholder suggested that one way the distinction between these terms could be explained is by construing stock ''issued'' to mean a transfer of newly issued stock, and stock ''provided'' to mean a transfer of treasury shares. However, the stakeholder recommended against this interpretation because there is no policy reason for treating newly issued shares and treasury shares differently. As discussed in part XI.B of this Explanation of Provisions, the Treasury Department and IRS are of the view that newly issued shares and treasury shares should be treated the same way for purposes of the netting rule. *See* proposed § 58.4501–1(b)(29).

Instead, the stakeholder recommended that stock ''issued'' should be interpreted to mean covered corporation stock issued directly by the covered corporation to its employees or other service providers. In contrast, stock ''provided'' should be interpreted to mean covered corporation stock transferred by a specified affiliate (which cannot issue covered corporation stock) to its employees.

The Treasury Department and IRS agree with the foregoing interpretation. A specified affiliate may provide stock in the covered corporation, rather than the specified affiliate's own stock, as compensation for services provided by the specified affiliate's employees. Thus, this interpretation would not interfere with existing stock-based compensation arrangements. Moreover, because section 4501(c)(3) applies to transfers by a specified affiliate to its employees, stock provided by the

specified affiliate in connection with the performance of services by its employees (but not by its non-employee service providers) would qualify for the netting rule under these proposed regulations.

Under § 1.83–6(d), if a covered corporation transfers its stock in connection with the performance of services for a specified affiliate, then (i) the covered corporation is treated as having contributed the stock to the capital of the specified affiliate, and (ii) the specified affiliate is treated as immediately transferring the covered corporation stock to the service provider. Thus, under the proposed regulations, if the transfer is to an employee of the specified affiliate in connection with the performance of services for the specified affiliate, the specified affiliate would be treated as transferring the stock to an employee in connection with the performance of services for the specified affiliate and the transfer would be regarded for purposes of the netting rule. *See* proposed § 58.4501–4(f)(2)(iv).

3. Amounts Excluded Under the Stock Contribution Exception

A stakeholder noted that section 4501 does not explicitly preclude a covered corporation from reducing the amount of its stock repurchase excise tax under the netting rule using repurchased stock that was excluded from the stock repurchase excise tax under the statutory exception for contributions to employer-sponsored retirement plans. *See* section 4501(e)(2) and the discussion in part X.B of this Explanation of Provisions. The stakeholder requested clarification that stock that is excluded from the stock repurchase excise tax under the stock contribution exception may not then be used to reduce the stock repurchase excise tax base under the netting rule.

The Treasury Department and the IRS agree that permitting an offset against the stock repurchase excise tax base under both the stock contribution exception and the netting rule would be inconsistent with the statute. Further, stock contributed to or purchased by an employer-sponsored retirement plan is issued or provided to the plan, not a service provider. Thus, consistent with section 3.07(3)(e) of Notice 2023–2, these proposed regulations would provide that stock contributed to or purchased by an employer-sponsored retirement plan does not reduce the stock repurchase excise tax base under the netting rule. *See* proposed § 58.4501–4(f)(10).

4. Net Share Settlement of Options Issued in Connection With the Performance of Services

A stakeholder requested guidance explaining how to determine the amount of the offset under the netting rule for options settled in stock. The stakeholder recommended that, if an option is ''in the money'' (that is, if the exercise price is less than the fair market value of the stock on the date of exercise), then the stock repurchase excise tax base should be reduced by the full fair market value of the stock, and not merely the exercise price.

The Treasury Department and the IRS agree with the stakeholder. The Treasury Department and the IRS are of the view that, for purposes of the stock repurchase excise tax, the net share settlement of options issued in connection with the performance of services should be treated in the same manner as the settlement of other options issued in connection with the performance of services. *See* proposed § 58.4501–4(e)(5) and (f)(11).

5. ''Sell to Cover'' Arrangements

A stakeholder described a ''sell to cover'' arrangement for stock-based compensation as a transaction in which a third party (usually a broker) facilitates the issuance of stock-based compensation by providing amounts necessary to cover a withholding obligation (for example, to cover Federal income taxes that must be withheld on the transferred shares). The stakeholder suggested that this transaction should be treated as an issuance or provision of stock for purposes of the netting rule.

The Treasury Department and the IRS agree with the stakeholder. In these arrangements, stock is issued or provided to the service provider, or to a third party on behalf of the service provider, and then immediately sold to cover a withholding obligation, and the fair market value of the amounts necessary to cover the withholding obligation is included in the service provider's gross income under section 83. Therefore, as reflected in section 3.08(3)(a)(iv) of Notice 2023–2, these proposed regulations would provide that stock transferred in these arrangements is treated as issued or provided for purposes of the netting rule. *See* proposed § 58.4501–4(c)(2).

6. Time When Stock Is Considered Issued or Provided to an Employee or Other Service Provider

a. In General

Consistent with section 3.08(3)(b)(i) of Notice 2023–2, these proposed regulations would provide that stock is treated as issued or provided to an employee or other service provider when beneficial ownership transfers for tax purposes. *See* proposed § 58.4501–4(d)(2). Beneficial ownership ordinarily transfers when the service recipient initiates the transfer or when the stock is vested. However, if the service provider makes a valid election under section 83(b), beneficial ownership transfers on the date the property was transferred. *See* section 83. Stock transferred to a grantor trust (for example, a Rabbi trust) is not treated as issued or provided until beneficial ownership transfers to the service provider for tax purposes.

b. Restricted Stock

Several stakeholders requested clarification as to when restricted stock is treated as issued for purposes of the netting rule. The stakeholders recommended treating restricted stock as issued when the stock is treated as beneficially owned under the section 83 rules. Thus, such stock would be treated as issued only if and when the shares become substantially vested, unless the recipient makes a section 83(b) election with respect to the shares.

The Treasury Department and the IRS agree that restricted stock should be treated as issued for purposes of the netting rule when the service provider recipient of the stock is treated as the beneficial owner for Federal income tax purposes under the section 83 rules. Under section 3.08(3)(b)(i) of Notice 2023–2, stock is issued or provided by a covered corporation or a specified affiliate to an employee as of the date the employee is treated as the beneficial owner of the stock for Federal income tax purposes, and that an employee generally is treated as the beneficial owner of the stock when the stock is transferred by the covered corporation (or the specified affiliate) to the employee and the stock is substantially vested within the meaning of § 1.83–1(b). Thus, stock transferred pursuant to a vested stock award or restricted stock unit is issued or provided when the covered corporation or specified affiliate initiates payment of the stock. *See* section 3.08(3)(b)(i) of Notice 2023–2.

Stock that is not substantially vested within the meaning of § 1.83–3(b) generally is not issued or provided to the employee until the employee vests in the stock, unless the employee makes a valid election under section 83(b), in which case the stock is treated as issued or provided to the employee as of the transfer date. *See* sections 3.08(3)(b)(i) and (iii) of Notice 2023–2. Stock transferred to an employee pursuant to an option described in § 1.83–7 or

section 421 or a stock appreciation right is issued or provided to the employee as of the date the employee exercises the option or stock appreciation right. *See* section 3.08(3)(b)(ii) of Notice 2023–2.

Consistent with section 3.08(3)(b)(i) of Notice 2023–2, the proposed regulations would provide that stock that is not substantially vested within the meaning of § 1.83–3(b) generally is not treated as issued or provided to the employee until the stock vests. *See* proposed § 58.4501–4(d)(2)(i). However, if the employee makes a valid election under section 83(b), the stock would be treated as issued or provided to the employee as of the transfer date. *See* proposed § 58.4501–4(d)(2)(iii).

Alternatively, one stakeholder recommended treating restricted stock as issued at the time the award is granted (that is, when the stock is treated as outstanding for securities law purposes). However, the Treasury Department and the IRS are of the view that applying the section 83 rules to determine when restricted stock is treated as issued is appropriate, and that applying the section 83 rules consistently would decrease the compliance burden on taxpayers and the administrative burdens on the IRS. Accordingly, the proposed regulations would not adopt this alternative recommendation.

7. Valuing Stock Issued or Provided to an Employee or Other Service Provider

A stakeholder requested guidance on how to determine the fair market value of stock issued or provided to an employee for purposes of the netting rule. The stakeholder recommended using the market price on the date of the issuance or provision, with specific rules to determine fair market value for certain kinds of stock.

The Treasury Department and IRS generally agree with the stakeholder. Consistent with section 3.08(3)(c) of Notice 2023–2, these proposed regulations would cross-reference the section 83 rules to determine the fair market value of stock issued or provided to an employee or other service provider under the netting rule. *See* proposed § 58.4501–4(e)(5). Under the section 83 rules, the fair market value of the stock is determined as of the date that beneficial ownership transfers to the service provider.

The Treasury Department and the IRS are of the view that applying the section 83 valuation rules should reduce the compliance burden on taxpayers and the administrative burden on the IRS, as taxpayers also apply the section 83 rules for other tax purposes. Under the proposed regulations, the section 83 valuation rules also would apply if the covered corporation or specified affiliate issues or provides stock pursuant to the service provider exercising an option (including an option described in section 421) or making a valid section 83(b) election on restricted stock. *See* proposed § 58.4501–4(e)(5).

A stakeholder also requested clarification on valuing stock that is not included in United States income, such as stock issued to a non-resident employee who provides services outside the United States. The proposed regulations would provide that, under the netting rule, the fair market value of stock is determined under the section 83 rules, regardless of whether the income inclusion is governed by section 83. Thus, for example, the fair market value of stock issued pursuant to a stock option described in section 421 and stock issued to a non-resident alien for services performed outside the United States is determined using the section 83 rules. *See* proposed § 58.4501–4(e)(5).

XII. Mergers and Acquisitions With Post-Closing Price Adjustments

A. Overview

A stakeholder provided recommendations regarding post-closing price adjustments in M&A transactions. This stakeholder explained that adjustments may include additional payments to the target corporation's shareholders based on achievement by the target corporation's business of certain milestones or fluctuations in value of the acquiring corporation's stock (earnout), or the forfeiture of consideration by the target corporation's shareholders to compensate the acquiring corporation for breaches of representations and warranties or for other indemnification obligations (indemnification payment).

This stakeholder also noted that consideration provided at closing in a tax-free reorganization may include shares that are issued as part of an earnout (earnout shares) or that are subject to forfeiture to satisfy indemnification obligations. Alternatively, the acquiring corporation may have a right to repurchase certain shares for a price that is below the stock's fair market value (below-market repurchase). Despite being subject to forfeiture or a below-market repurchase, the stakeholder explained that such shares potentially could be treated as owned by the former target corporation shareholders for Federal income tax purposes at the time of issuance.

B. When Shares Issued as Part of an Earnout or Potentially Subject to an Indemnification Payment Are Treated as Issued

The stakeholder recommended that shares issued by an acquiring corporation should be treated as issued for purposes of the netting rule regardless of whether those shares are subject to forfeiture or a below-market repurchase. Essentially, the stakeholder recommended that the proposed regulations should permit an acquiring corporation to offset the fair market value of that corporation's repurchases during the taxable year by the fair market value of all shares issued by that corporation in an M&A transaction during that taxable year if those shares are treated as issued for Federal income tax purposes.

The Treasury Department continue to be of the view that stock should be treated as issued when ownership of the stock transfers to the recipient for Federal income tax purposes. *See* section 3.08(2) of Notice 2023–2. This treatment is consistent with the stakeholder's recommendation, and therefore the Treasury Department and the IRS have provided no special rule in the proposed regulations. *See* proposed § 58.4501–4(d)(1); *see also* part III.B.1 of this Explanation of Provisions (discussion of timing of issuances and repurchases).

C. Fair Market Value of Shares Issued as Part of an Earnout or Potentially Subject to an Indemnification Payment

A stakeholder recommended that, for purposes of the netting rule, the fair market value of shares that potentially are subject to forfeiture or a below-market repurchase should be the trading price of such shares on the date of issuance (rather than on the date of forfeiture or repurchase). For support, the stakeholder contended that (i) the parties generally do not expect the acquiring corporation to make significant claims for indemnification payments, and (ii) discounting the fair market value to reflect the likelihood of forfeiture or a below-market repurchase would be administratively cumbersome for the IRS and taxpayers.

Although Notice 2023–2 does not expressly address this issue, it does reflect the stakeholder's recommendation. Under Notice 2023–2, if the shares were not disregarded under the no double benefit rule, the fair market value of the shares would be determined using their market price on the date of issuance, consistent with the stakeholder's recommendation regarding the treatment of shares

potentially subject to an indemnification payment. The proposed regulations would maintain this treatment and would not include special rules to determine the fair market value of such shares.

In contrast, the stakeholder also recommended that the fair market value of earnout shares should be discounted to reflect the present value and likelihood of payment. The Treasury Department and the IRS are of the view that incorporation of the stakeholder's recommendation into the proposed regulations would introduce uncertainty and complexity into stock valuation for purposes of the netting rule. Furthermore, the stakeholder's recommendation would be inconsistent with the statutory language of section 4501(c)(3), which simply references the ''fair market value'' of stock issued or provided. As a result, the proposed regulations would not include special rules to determine the fair market value of earnout shares.

D. Forfeiture of Shares Received as Part of an Earnout or Potentially Subject to an Indemnification Payment

One stakeholder generally recommended that the forfeiture of earnout shares should not be treated as a repurchase. The stakeholder asserted that such a forfeiture would not constitute a section 317(b) redemption because the corporation would have exchanged no property for the earnout shares. Similarly, the stakeholder also contended that the forfeiture should not be treated as an economically similar transaction because no capital would have left the corporation.

In contrast, the stakeholder recommended that the forfeiture of earnout shares as part of an indemnification payment should be treated as a repurchase of those shares, because the target corporation's former shareholders would have economically benefited from the forfeiture by not needing to use cash or other property to make the indemnification payment. Therefore, in the stakeholder's view, the acquiring corporation should be treated as repurchasing the shares in an amount equal to the value of the indemnification claim, as determined based on the documents governing the transaction.

Under Notice 2023–2, a forfeiture of shares would not be treated as a repurchase, because the forfeiture is neither a section 317(b) redemption nor treated as an economically similar transaction. However, there would be an issuance for purposes of the netting rule when ownership of those shares transfers to the recipient for Federal income tax purposes, even though those shares potentially are still subject to forfeiture.

For the same reasons discussed in part II.D of this Explanation of Provisions, the Treasury Department and the IRS are of the view that a forfeiture of shares should count as a repurchase if an issuance of such shares would be counted under the netting rule (in other words, those shares should be treated consistently for purposes of repurchases and issuances). Consequently, because the issuance of earnout shares or shares subject to an indemnification payment would be taken into account for purposes of the netting rule when those shares transfer to the recipient for Federal income tax purposes, the proposed regulations would treat the forfeiture of those shares as a repurchase at the time of forfeiture. *See* proposed § 58.4501–2(e)(4)(vi). To facilitate the ability for the IRS to administer and enforce the stock repurchase excise tax, the amount of the repurchase would equal the market price of the forfeited stock on the date of forfeiture under the general rule in proposed § 58.4501–2(h)(1) and would not be determined by the underlying transaction documents.

E. Below-Market Repurchase of Shares Received as Part of an Earnout or Potentially Subject to an Indemnification Payment

A stakeholder recommended that, if the acquiring corporation repurchases earnout shares in a below-market repurchase, only the amount paid should be reflected in the acquiring corporation's stock repurchase excise tax base. According to the stakeholder, proposed regulations adopting that approach would be appropriate because the negotiated price of the earnout shares would reflect the restrictions applicable to those shares and the circumstances in which that stock is repurchased. In contrast, the market price of those earnout shares would reflect an inaccurate price—that is, the market price would fail to reflect the same restrictions to which the earnout shares would be subject.

The Treasury Department and the IRS continue to be of the view that the fair market value of stock issued by a covered corporation should be the market price on the date of issuance. *See* section 3.08(5) of Notice 2023–2. The Treasury Department and the IRS incorporated this position in Notice 2023–2 to reduce unnecessary complexity for taxpayers and facilitate the ability for the IRS to administer and enforce the stock repurchase excise tax. In addition, the Treasury Department and the IRS observe that the approach described in Notice 2023–2 ensures that repurchases and issuances would be valued based on identical methodologies, thereby ensuring symmetrical treatment. Accordingly, the proposed regulations would adopt the approach described in Notice 2023–2, including with regard to stock that is subject to a below-market repurchase.

XIII. Troubled Companies

In section 6.02(3) of Notice 2023–2, the Treasury Department and the IRS requested comments on whether special rules should be provided for bankrupt or troubled companies. For example, the Treasury Department and the IRS asked whether a section 317(b) redemption occurring as part of a restructuring of a bankrupt or troubled company should be excluded from the definition of ''repurchase.''

One stakeholder recommended that troubled companies generally should not be subject to the stock repurchase excise tax. According to the stakeholder, application of the stock repurchase excise tax would further burden troubled companies and would provide troubled companies with an incremental incentive to reject otherwise equitable restructuring plans to the extent those plans would implicate the stock repurchase excise tax. The stakeholder recommended that an exemption apply to exchanges of equity for other property by a corporation that either is in a title 11 case or is insolvent (within the meaning of section 108(d)(3) of the Code) immediately prior to the exchange. The stakeholder further recommended that the proposed regulations confirm that the stock repurchase excise tax does not apply to acquisitive reorganizations under section 368(a)(1)(G) (acquisitive G reorganizations) and exchanges of distressed debt.

In contrast, another stakeholder recommended that no special rules be provided for troubled companies, other than a modification of the valuation rule for repurchases occurring as part of a restructuring. The stakeholder also recommended that the definition of ''acquisitive reorganization'' include acquisitive G reorganizations. According to the stakeholder, if a troubled company distributes value to existing shareholders, there is no reason to exempt such a distribution from the stock repurchase excise tax if the distribution otherwise is a repurchase within the scope of the stock repurchase excise tax. The stakeholder also stated that, in most situations, the value of stock issued to creditors in exchange for their claims will significantly exceed

the value of any recovery received by existing shareholders, such that the netting rule would prevent any stock repurchase excise tax from being owed.

With respect to the valuation rule for repurchases, the stakeholder stated that the general rule for valuing repurchased stock (by reference to the ''market price'' of repurchased stock) could lead to inappropriate outcomes for troubled companies undergoing a restructuring. According to the stakeholder, the recovery amount received by a shareholder in exchange for its stock may be significantly less than the market price of the stock determined immediately after such repurchase. For support, the stakeholder asserted that the recovery amount will be determined when the stock is worth very little, but the market price (if determined immediately after the restructuring) may be much higher.

The Treasury Department and the IRS are of the view that special rules for troubled companies are neither necessary nor appropriate to carry out the purposes of the stock repurchase excise tax. In reaching this view, the Treasury Department and the IRS observe that a troubled company generally would not be treated as repurchasing its stock in either a title 11 restructuring or an out-of-court debt restructuring. In each type of transaction, it is the understanding of the Treasury Department and the IRS that the troubled company's stock typically would be cancelled solely as a result of the title 11 restructuring or the out-of-court debt restructuring, rather than as any redemption or repurchase. Accordingly, such cancellation would not constitute a redemption within the meaning of section 317(b). *See* section 317(b) (defining a redemption as a corporation's acquisition of its stock from a shareholder in exchange for ''property'' (within the meaning of section 317(a))). For the same reason, the Treasury Department and the IRS are of the view that such a transaction should not constitute an economically similar transaction under the proposed regulations. *See* proposed § 58.4501–2(e)(4).

The Treasury Department and the IRS agree that the definition of an ''acquisitive reorganization'' should include acquisitive G reorganizations. *See* part VIII.A of this Explanation of Provisions (discussion of acquisitive reorganizations). The Treasury Department and the IRS are of the view that an exchange between a target corporation and its shareholders pursuant to an acquisitive G reorganization should be subject to the stock repurchase excise tax to the same extent as in other acquisitive reorganizations. That is, a stock repurchase excise tax liability should arise from an exchange in an acquisitive G reorganization to the extent the target corporation shareholders exchange their target corporation stock for non-qualifying property. Accordingly, the proposed regulations would include acquisitive G reorganizations in the definition of ''acquisitive reorganization.'' *See* proposed § 58.4501–1(b)(1).

XIV. Additional Miscellaneous Issues

A. Ordering Rule for Statutory Exceptions and Netting Rule

1. Overview

Stakeholders requested a rule to clarify the order in which taxpayers should apply the de minimis exception, the other statutory exceptions, the netting rule, and any other exceptions set forth in regulations. Under Notice 2023–2, a covered corporation computes its stock repurchase excise tax base for a taxable year by (i) determining the aggregate fair market value of all repurchases, (ii) reducing that amount to the extent any statutory exceptions apply, and then (iii) reducing that amount under the netting rule. The determination whether the de minimis exception applies is made before applying any statutory exceptions or adjustments under the netting rule (that is, after step (i)).

One stakeholder recommended an approach involving the following steps. First, a taxpayer should compute its gross repurchases for the taxable year, taking into account any exclusions from the definitions of ''stock'' and ''repurchase.'' Second, the taxpayer should determine whether the de minimis exception applies. (If so, no further computations would be necessary.) Third, the taxpayer should apply the other statutory exceptions to reduce the amount computed in the first step. Finally, the taxpayer should apply the netting rule to the amount computed in the third step, thereby arriving at the net repurchase amount subject to the stock repurchase excise tax.

The stakeholder's recommendation generally is consistent with section 3.03(3)(a) of Notice 2023–2. The proposed regulations would maintain the ordering rules described in Notice 2023–2. *See* proposed § 58.4501–2(c)(1).

2. Section 4501(e)

One stakeholder contended that the plain meaning of the lead-in language in section 4501(e)—which states that ''Subsection (a) shall not apply'' in the situations described in section 4501(e)(1) through (6)—is that an amount excluded under one of these statutory exceptions should not first be treated as part of a share repurchase. In other words, the stakeholder interpreted that lead-in language to provide that taxpayers should not be required to include all repurchases in the stock repurchase excise tax base and then reduce the amount of that base by the amount of those repurchases that qualify for a statutory exception.

The Treasury Department and the IRS are of the view that the lead-in language in section 4501(e) does not affect the definition of ''repurchase'' under section 4501(c) (in other words, that lead-in language applies solely to section 4501(a)). The lead-in language in section 4501(e) states that section 4501(a), which imposes a one percent excise tax on repurchases, does not apply in certain specified situations. The lead-in language in section 4501(e) does not state that those specified situations are not ''repurchases'' within the meaning of section 4501(c). Indeed, each of the statutory exceptions in section 4501(e) expressly involves a repurchase. *See,* for example, section 4501(e)(1) (''to the extent that *the repurchase* is part of a reorganization. . .'') and (6) (''to the extent that *the repurchase* is treated as a dividend. . .'') (*emphasis added*). Therefore, the Treasury Department and the IRS are of the view that Notice 2023–2 properly implements the lead-in language in section 4501(e), and the proposed regulations would not incorporate the stakeholder's recommendation.

3. De Minimis Rule

Several stakeholders objected to the approach described in Notice 2023–2 that the determination of whether the de minimis exception applies be made before the application of any other statutory exceptions or adjustments under the netting rule. One stakeholder contended that this approach imposes a compliance burden by requiring taxpayers to consider the application of the stock repurchase excise tax whenever taxpayers engage in a transaction that may involve a deemed exchange of stock. Stakeholders also contended that this approach would have the effect of eliminating the de minimis exception or rendering its application arbitrary in certain circumstances.

For example, one stakeholder noted that, if a covered corporation repurchases $2 million of its stock and contributes $1.5 million of that stock to an ESOP, the incidence of the stock repurchase excise tax would depend on

the order in which the statutory exceptions are applied. If the de minimis exception were to be applied before the stock contribution exception, the stock repurchase excise tax would be imposed on $0.5 million. Conversely, if the de minimis exception were to be applied after the stock contribution exception, then the stock repurchase excise tax would not apply at all because the corporation's $0.5 million of repurchases would not exceed the $1 million de minimis threshold.

As another example, the stakeholder assumed that a covered corporation changes the par value of its stock with a fair market value of $1 billion. For Federal income tax purposes, the change in par value would be treated as an E reorganization in which the corporation's shareholders are deemed to exchange their old stock for newly issued stock. The stakeholder noted that, under the approach described in Notice 2023–2, (i) this exchange would be included in the stock repurchase excise tax base computation as a $1 billion repurchase, and (ii) although this amount wholly would be offset under the reorganization exception, the inclusion of the transaction in the stock repurchase excise tax base would completely exhaust the allowance under the de minimis exception.

The Treasury Department and the IRS are of the view that applying the de minimis exception before the other statutory exceptions is consistent with the statutory language and structure of section 4501. By its terms, the de minimis exception applies ''in any case in which the total value of the stock *repurchased* during the taxable year does not exceed $1,000,000 . . .'' (*emphasis added*). The determination of whether a transaction is a repurchase under section 4501(c) is independent of the statutory exceptions in section 4501(e). Therefore, the Treasury Department and the IRS are of the view that the de minimis exception should be measured against a covered corporation's gross repurchases (that is, a covered corporation's repurchases before reduction under another statutory exception or the netting rule).

The proposed regulations would provide that a covered corporation would compute its stock repurchase excise tax base for a taxable year by (i) determining the aggregate fair market value of all repurchases, (ii) reducing that amount to the extent any statutory exceptions apply, and then (iii) reducing that amount under the netting rule. *See* proposed § 58.4501–2(c)(1). The determination of whether the de minimis exception applies would be made before applying any other statutory exceptions or adjustments under the netting rule (that is, after step (i)). *See* proposed § 58.4501–2(b)(2).

4. Reporting Requirements

The Treasury Department and the IRS also are of the view that any covered corporation that makes a repurchase must comply with the applicable reporting requirements for the stock repurchase excise tax, even if all the covered corporation's repurchases are eligible for a statutory exception or are offset by issuances. *See* proposed § 58.6011–1 as proposed elsewhere in this issue of the **Federal Register**; *see also* part XVII of this Explanation of Provisions.

B. Fractional Shares

If cash is paid to shareholders in lieu of fractional shares in connection with a reorganization under section 368(a), the payment of cash could be treated as an issuance of stock immediately followed by an offsetting repurchase of a fractional share. *See,* for example, Rev. Rul. 66–35, 1966–2 C.B. 116 (applying this ''deemed issuance and repurchase'' treatment to cash paid in lieu of a fractional share to conclude that the receipt of such cash does not violate the ''solely for voting stock'' requirement of section 368(a)(1)(B) and (C)); Rev. Rul. 69–34, 1969–1 C.B. 105 (applying such treatment to cash paid in lieu of a fractional share in an E reorganization); Rev. Rul. 74–46, 1974–1 C.B. 85 (same, for an F reorganization).

Under section 3.04(3)(b) of Notice 2023–2, a payment by a covered corporation of cash in lieu of a fractional share is not a repurchase if (i) the payment is carried out as part of a transaction that qualifies as a reorganization under section 368(a) or as a distribution to which section 355 applies, or pursuant to the settlement of an option or similar financial instrument (for example, a convertible debt instrument or convertible preferred share), (ii) the cash is not separately bargained-for consideration, (iii) the payment is carried out solely for administrative convenience, and (iv) the amount of cash paid to the shareholder in lieu of a fractional share does not exceed the value of one full share of the stock of the covered corporation.

Several stakeholders recommended that the stock repurchase excise tax should not apply to any such payments, so long as the cash paid represents solely a mechanical rounding-off of fractional shares that otherwise would be issued and is not separately bargained-for consideration.

The Treasury Department and the IRS continue to be of the view that the deemed issuance and repurchase of fractional shares pursuant to a section 368(a) reorganization, section 355 distribution, or settlement of an option or similar financial instrument should be disregarded for purposes of section 4501, so long as the general criteria described in Notice 2023–2 are satisfied. Accordingly, the proposed regulations would retain this rule with the clarification that the value of one share of stock is determined on a class-by-class basis. *See* proposed § 58.4501–2(e)(3)(ii).

C. Cash Paid to Dissenting Shareholders

If a target corporation shareholder exercises dissenters' rights with respect to a reorganization, the shareholder's shares typically are cancelled as a matter of corporate law. Upon the ultimate resolution of the shareholder's claim, those shares typically are deemed to have been acquired for cash in connection with the reorganization.

The Federal income tax treatment of payments to dissenting shareholders generally depends upon the source of the cash. If the cash is sourced from the target corporation, the acquisition generally is treated as occurring as part of a redemption separate from the reorganization. *See,* for example, Rev. Rul. 68–285 (holding that the acquisition of target corporation stock for acquiring corporation voting stock is a B reorganization notwithstanding the creation of an escrow account to pay dissenting shareholders for their stock). In contrast, if the cash is sourced from the acquiring corporation, the acquisition of the dissenting shareholders' stock may be treated as acquired by the acquiring corporation in connection with the reorganization. *See,* for example, Rev. Rul. 73–102, 1973–1 C.B. 186 (holding that the ''solely for voting stock'' requirement of section 368(a)(1)(C) is satisfied even though the acquiring corporation makes cash payments to dissenting shareholders for their target corporation stock).

A stakeholder recommended that cash paid to dissenting shareholders should not be treated as a repurchase, regardless of the source of the cash, and regardless of whether the dissenting shareholders' rights are exercised in the context of a taxable or tax-free transaction. According to the stakeholder, a shareholder's decision to exercise dissenters' rights is outside the control of the target corporation, which has no influence over how much cash ultimately may be paid to dissenters.

Notice 2023–2 does not expressly address the treatment of payments to dissenting shareholders. Thus, under Notice 2023–2, whether cash paid to

dissenting shareholders is treated as a repurchase depends on whether the transaction is treated as a section 317(b) redemption under Federal income tax principles (namely, whether the target corporation is treated as the source of the cash). The Treasury Department and the IRS continue to be of the view that the determination of whether cash paid to dissenting shareholders is treated as a repurchase should be made based upon Federal income tax principles. Accordingly, the proposed regulations would not adopt the stakeholder's recommendation.

D. Constructive Specified Affiliate Acquisition

The Treasury Department and the IRS have considered whether the acquisition by a covered corporation of a corporation or partnership that owns stock in the covered corporation should be treated as a repurchase. For example, assume that an acquiring corporation (which is a covered corporation) enters into an agreement to purchase all the stock of a privately held target corporation. Prior to the acquisition, the target corporation uses cash on hand to purchase stock of the acquiring corporation on an established securities market. After the acquisition, the target corporation becomes a specified affiliate of the acquiring corporation.

The foregoing transaction is not a section 317(b) redemption by the acquiring corporation, which does not directly acquire its stock for ''property'' within the meaning of section 317(a). The transaction also is not an acquisition of the acquiring corporation's stock by an entity that is a specified affiliate at the time of the acquisition. *See* part IV.B of this Explanation of Provisions (discussion of the determination of specified affiliate status). However, if the target corporation had purchased the acquiring corporation's stock after becoming a specified affiliate of the acquiring corporation, that purchase would have been treated as a repurchase by the acquiring corporation under section 4501(c)(2) (regarding the treatment of purchases by specified affiliates). Therefore, by purchasing the stock of the target corporation, the acquiring corporation has gained the economic benefits of repurchasing its stock without incurring a stock repurchase excise tax liability.

The Treasury Department and the IRS are of the view that the foregoing transaction should be treated as a repurchase. Accordingly, the proposed regulations would provide that a constructive specified affiliate acquisition of stock by a covered corporation is treated as a repurchase to the extent that: (i) the target corporation or partnership becomes a specified affiliate of the covered corporation; (ii) at the time the target corporation or partnership becomes a specified affiliate, it owns stock of the covered corporation that represents more than one percent of the fair market value of the target corporation or partnership as determined at such time; and (iii) the target corporation or partnership acquired such stock after December 31, 2022 (constructive specified affiliate acquisition rule). *See* proposed § 58.4501–2(f)(3)(i). Stock that is treated as repurchased in a constructive specified affiliate acquisition is treated as being repurchased at the time the corporation or partnership becomes a specified affiliate of the covered corporation. *See* proposed § 58.4501–2(g)(4).

However, the constructive specified affiliate acquisition rule would not apply to shares of covered corporation stock identified as previously having been treated as repurchased by the covered corporation under the constructive specified affiliate acquisition rule. *See* proposed § 58.4501–2(f)(3)(ii).

If the corporation or partnership is unable to specifically identify which shares of stock of the covered corporation the corporation or partnership is treated as holding at the time it becomes a specified affiliate, the covered corporation must treat the corporation or partnership as holding the most recently acquired shares of the stock of the covered corporation. *See* proposed § 58.4501–2(f)(3)(iii).

The constructive specified affiliate acquisition rule would apply regardless of whether the acquisition is a taxable transaction or a tax-free acquisition. Additionally, a transaction in which a target corporation's redemption of its shares causes the target corporation to become a specified affiliate of the covered corporation would be treated as an acquisition of the target corporation by the covered corporation for purposes of the constructive specified affiliate acquisition rule.

E. Carryover of Stock Repurchase Excise Tax Base

A stakeholder requested clarification as to whether a positive or negative balance in a target corporation's stock repurchase excise tax base (that is, an excess of issuances over repurchases, or vice-versa) may carry over to the acquiring corporation following an acquisitive reorganization for purposes of determining the acquiring corporation's stock repurchase excise tax base for the taxable year that includes the acquisition. The stakeholder recommended against applying a carryover approach if the Treasury Department and the IRS exempt acquisitive reorganizations from the stock repurchase excise tax or limit its application to non-qualifying property sourced from the target corporation. *See* parts VIII.A.2 and VIII.B of this Explanation of Provisions (discussion of acquisitive reorganizations and the sourcing approach to such reorganizations). The stakeholder also contended that a non-carryover approach may be more consistent with the taxable year determination described in section 3.03(c) of Notice 2023–2.

However, the stakeholder expressed a view that if, under the proposed regulations, the stock repurchase excise tax continues to apply to non-qualifying property sourced from the acquiring corporation, then permitting the balance in a target corporation's stock repurchase excise tax base to carry over to the acquiring corporation may be reasonable, at least to the extent of any positive balance created in connection with the transaction. The stakeholder also contended that a carryover approach may be appropriate for complete liquidations to which both sections 331 and 332 apply, if the subsidiary and parent corporations are both publicly traded at the time of the liquidation.

For the reasons discussed in part XI.D of this Explanation of Provisions (discussion of carryovers and carrybacks of issuances of preferred stock), the Treasury Department and the IRS are of the view that a carryover approach is not appropriate for purposes of the stock repurchase excise tax. Accordingly, the proposed regulations would not adopt a carryover approach.

F. Exclusive List of Economically Similar Transactions

One stakeholder recommended that the Treasury Department and the IRS incorporate into the proposed regulations the approach described in Notice 2023–2, which provided an exclusive list of economically similar transactions. The stakeholder further recommended that any transactions added to this list in future guidance should be subject to the stock repurchase excise tax only on a prospective basis. Another stakeholder also recommended that guidance classifying instruments or transactions as economically similar should apply prospectively, except for any transactions deemed abusive that may warrant retroactive application.

The Treasury Department and the IRS continue to be of the view that economically similar transactions should be clearly identified in an exclusive list on which taxpayers may rely. Accordingly, the proposed regulations would retain the exclusive list described in Notice 2023–2, as modified to account for other changes in these proposed regulations. *See* proposed § 58.4501–2(e)(4).

The Treasury Department and the IRS also are of the view that additional transactions added to the list of economically similar transactions should not be required to be apply solely on a prospective basis. Although the Treasury Department and the IRS anticipate that most transactions treated as economically similar transactions would be treated as such only on a prospective basis, there may be transactions that warrant retroactive application, as noted by the other stakeholder. Accordingly, the proposed regulations would not adopt this recommendation.

G. SPACs

1. Overview

SPACs are companies that raise equity in an IPO in order to seek out and acquire an operating business in a business combination (de-SPAC transaction). A SPAC typically will issue stock to the public in the IPO and deposit the cash received in a trust. The stock is redeemable at the option of the holder, including in connection with a de-SPAC transaction. If a business combination is not completed within a specified period of time (typically, two years), the SPAC liquidates and the cash is returned to the public shareholders.

2. SPAC Redemptions and Economically Similar Transactions

Several stakeholders requested clarification regarding the application of the stock repurchase excise tax to SPAC-related section 317(b) redemptions and economically similar transactions. For example, stakeholders recommended that non-liquidating redemptions of stock by a SPAC should be wholly excepted from the stock repurchase excise tax. According to one stakeholder, a redemption of stock by a SPAC pursuant to the terms of the stock differs from a conventional stock buyback, in that the SPAC redemption effectively amounts to a return of a shareholder's capital and does not result in either stock price manipulation or accretion to other shareholders (considerations that the stakeholder hypothesized to be relevant to Congress in enacting the stock repurchase excise tax). According to another stakeholder, an exemption for non-liquidating redemptions by SPACs could be implemented by either (i) an exception to the stock repurchase excise tax for redemptions pursuant to a mandatory redemption right or a unilateral holder put option, or (ii) a broad-based exception for SPAC-related redemptions.

The Treasury Department and the IRS are of the view that adopting special rules for SPACs in the proposed regulations would not be necessary or appropriate to carry out the stock repurchase excise tax. As discussed in part II.A.1 of this Explanation of Provisions, the proposed regulations would not exempt redemptions of stock pursuant to a mandatory redemption right or a unilateral holder put option. These proposed rules would apply to SPACs as well as other taxpayers.

Several stakeholders also recommended that distributions in complete liquidation of a SPAC should not be subject to the stock repurchase excise tax, even if there is not a distribution in cancellation or redemption of all classes of stock. The stakeholders stated that this issue arises because a SPAC sponsor typically waives with respect to their shares any redemption rights in connection with a de-SPAC transaction and any rights to liquidating distributions. Consequently, when a SPAC winds up and liquidates, the shares owned by the SPAC sponsor typically will not receive a liquidating distribution.

As discussed in part VI.A.2 of this Explanation of Provisions, the proposed regulations would clarify that a distribution pursuant to a plan of complete liquidation or dissolution of a covered corporation (or an applicable foreign corporation or a covered surrogate foreign corporation) generally is not a repurchase and, thus, generally is not subject to the stock repurchase excise tax. *See* proposed § 58.4501–2(e)(5)(i).

3. Netting Rule

In certain de-SPAC transactions, the SPAC is not the acquiring corporation. Therefore, the SPAC does not issue any stock in the transaction. Stakeholders recommended that, in such transactions, the SPAC should be allowed to offset its repurchases against (i) issuances by the post-combination entity (which could be viewed as a successor to the SPAC), or (ii) issuances of exchange rights to acquire covered corporation stock issued to the owners of target partnership interests (if the de-SPAC transaction is executed through a transaction commonly referred to as an ''Up-SPAC'' transaction).

According to stakeholders, such issuances are functionally equivalent to issuances by the SPAC. Stakeholders also recommended similar expansions of the netting rule for acquisitions other than de-SPAC transactions. Alternatively, a stakeholder recommended that SPACs be permitted a one-year carryback or carryforward of excess issuances.

Notice 2023–2 addresses the foregoing issues but does not provide SPAC-specific rules. For example, if a de-SPAC transaction were to qualify as a reorganization under section 368(a), the no double benefit rule would disallow any netting rule offset for stock issued by the acquiring corporation. *See* section 3.08(4)(d) of Notice 2023–2. However, the Treasury Department and the IRS are of the view that the netting rule should not be expanded in the manner recommended by stakeholders. By its terms, the netting rule adjusts the amount of a covered corporation's stock repurchases solely by the fair market value of covered corporation stock issued or provided during the taxable year. Accordingly, the proposed regulations would not adopt these recommendations. *See also* parts XI.D (regarding a request for a one-year carryback and carryforward period for issuances of preferred stock) and XIV.F (discussion of a recommendation for a carryover approach in the context of acquisitive reorganizations and complete liquidations) of this Explanation of Provisions.

H. Treatment of Disregarded Entities

Section 301.7701–2(c)(2)(i) provides that, for Federal tax purposes, a business entity that has a single owner and that is not a corporation under § 301.7701–2(b) is disregarded as an entity separate from its owner (disregarded entity). Section 301.7701–2(c)(2)(v) provides that § 301.7701–2(c)(2)(i) does not apply for purposes of certain excise taxes set forth in § 301.7701–2(c)(2)(v)(A). Section 4501 is not included among the excise taxes set forth in § 301.7701–2(c)(2)(v)(A). Thus, the treatment of an entity as a disregarded entity under § 301.7701–2(c)(2)(i) is respected for purposes of section 4501. *See* proposed § 58.4501–5(b)(18).

I. Form 7208

In connection with the publication of Notice 2023–2, the IRS released a proposed draft of Form 7208, which it is intended that a covered corporation would use to calculate the amount of its stock repurchase excise tax. In

connection with the publication of these proposed regulations, the IRS will release an updated draft Form 7208 along with draft instructions to the Form 7208.

XV. Applicability Dates for Proposed §§ 58.4501–1 Through 58.4501–5

Proposed § 58.4501–6(a) generally would provide that proposed §§ 58.4501–1 through 58.4501–5 apply to repurchases of stock of a covered corporation occurring after December 31, 2022, and during taxable years ending after December 31, 2022, and to issuances and provisions of stock of a covered corporation occurring during taxable years ending after December 31, 2022. *See* section 7805(b)(1)(C). However, certain rules in proposed §§ 58.4501–1 through 58.4501–5 that were not described in Notice 2023–2 would apply to repurchases, issuances, or provisions of stock of a covered corporation occurring after April 12, 2024, and during taxable years ending April 12, 2024 *See* proposed § 58.4501–6(b)(1).

Except as described in the following paragraph, so long as a covered corporation consistently follows the provisions of proposed §§ 58.4501–1 through 58.4501–5, the covered corporation may rely on these proposed regulations with respect to (1) repurchases of stock of the covered corporation occurring after December 31, 2022, and on or before the date of publication of final regulations in the **Federal Register**, and (2) issuances and provisions of stock of the covered corporation occurring during taxable years ending after December 31, 2022, and on or before the date of publication of final regulations in the **Federal Register**.

In addition, so long as a covered corporation consistently follows the provisions of Notice 2023–2 corresponding to the rules in proposed §§ 58.4501–1 through 58.4501–5, the covered corporation may choose to rely on Notice 2023–2 with respect to (1) repurchases of stock of a covered corporation occurring after December 31, 2022, and on or before April 12, 2024, and (2) issuances and provisions of stock of a covered corporation occurring during taxable years ending after December 31, 2022, and on or before April 12, 2024.

A covered corporation that relies on the provisions of Notice 2023–2 corresponding to the rules in proposed §§ 58.4501–1 through 58.4501–5 with respect to (1) repurchases occurring after December 31, 2022, and on or before April 12, 2024, and (2) issuances and provisions of stock of a covered corporation occurring during taxable years ending after December 31, 2022, and on or before April 12, 2024, may also choose to rely on the provisions of proposed §§ 58.4501–1 through 58.4501–5 with respect to (1) repurchases occurring after April 12, 2024, and on or before the date of publication of final regulations in the **Federal Register**, and (2) issuances and provisions of stock of a covered corporation occurring after April 12, 2024, and on or before the date of publication of final regulations in the **Federal Register**.

XVI. Section 4501(d)

A. In General

As noted in part I.D of the Background section of this preamble, section 4501(d) provides rules for the application of the stock repurchase excise tax to acquisitions of stock of applicable foreign corporations and repurchases and acquisitions of stock of covered surrogate foreign corporations (section 4501(d) excise tax). Section 4501(f) authorizes the Secretary to prescribe regulations and other guidance as are necessary or appropriate to carry out, and to prevent the avoidance of, the purposes of section 4501, including rules for the application of section 4501(d).

Proposed § 58.4501–7 would provide rules specifically relating to the application of section 4501(d) (section 4501(d) proposed regulations). The section 4501(d) proposed regulations generally follow related rules in proposed §§ 58.4501–2 through 58.4501–4, with modifications as appropriate solely to reflect differences in the operation of section 4501(d). *See* part I.D of the Background section of this preamble. Among other differences, the section 4501(d) excise tax is imposed on an applicable specified affiliate treated as a covered corporation under section 4501(d)(1)(A) or an expatriated entity treated as a covered corporation under section 4501(d)(2)(A) (each, a section 4501(d) covered corporation). In addition, the netting rule applies only to stock issued or provided by the applicable specified affiliate or expatriated entity, as applicable, to its employees under section 4501(d)(1)(C) and (d)(2)(C), respectively.

Terms used in the section 4501(d) proposed regulations but not defined therein have the meaning provided in proposed § 58.4501–1, except that: (i) references to a ''covered corporation'' are treated as references to a ''section 4501(d) covered corporation,'' an ''applicable foreign corporation,'' or a ''covered surrogate foreign corporation,'' as the context may require; and (ii) references to a ''covered corporation'' or ''specified affiliate'' in respect of the definitions of ''employee'' and ''employer-sponsored retirement plan'' are treated solely as references to a ''section 4501(d) covered corporation.'' *See* proposed § 58.4501–7(b)(1).

Terms specifically defined in the section 4501(d) proposed regulations are solely applicable for purposes of those regulations. *See* proposed § 58.4501–7(b)(2). In particular, the section 4501(d) proposed regulations would provide definitions relevant to the section 4501(d) excise tax computation, the funding rule of proposed § 58.4501–7(e), and the application of the statutory exceptions in section 4501(e) to section 4501(d) covered corporations. *See* part XVI.D of this Explanation of Provisions (discussion of proposed funding rule).

B. Computation of Section 4501(d) Excise Tax Liability of a Section 4501(d) Covered Corporation

1. Basic Computational Rules

The section 4501(d) excise tax liability of a section 4501(d) covered corporation would be computed under rules based on the computational rules for computing the stock repurchase excise tax liability of a covered corporation, as set forth in proposed § 58.4501–2(c)(1), with certain modifications to reflect the differences relating to, among other items: (i) the application of the section 4501(d) excise tax at the level of the section 4501(d) covered corporation; (ii) the application of certain statutory exceptions in section 4501(e); and (iii) the application of the netting rule solely to stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, issued or provided by the section 4501(d) covered corporation to its employees.

The section 4501(d) proposed regulations would provide that the amount of section 4501(d) excise tax imposed on a section 4501(d) covered corporation equals the product obtained by multiplying the applicable percentage by the section 4501(d) excise tax base. *See* proposed § 58.4501–7(c)(1). The ''section 4501(d) excise tax base'' would be equal to the aggregate fair market value of all section 4501(d)(1) repurchases (as defined in proposed § 58.4501–7(b)(2)(xxii)) or section 4501(d)(2) repurchases (as defined in proposed § 58.4501–7(b)(2)(xxiii)), as applicable, during the section 4501(d) covered corporation's taxable year, reduced by (i) the fair market value of stock repurchased or

acquired during the taxable year to the extent any statutory exceptions in section 4501(e) apply, and (ii) the aggregate fair market value of stock of the applicable foreign corporation or stock of the covered surrogate foreign corporation, as applicable, to the extent the netting rule applies under section 4501(d)(1)(C) or (d)(2)(C), respectively. *See* proposed § 58.4501–7(c)(3) (section 4501(d) excise tax base), (m) (section 4501(d) statutory exceptions), and (n) (section 4501(d) netting rule).

For purposes of the section 4501(d) excise tax base, the fair market value of a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, as applicable, during the section 4501(d) covered corporation's taxable year generally would be determined in the same manner as in proposed § 58.4501–2(h). However, the section 4501(d) covered corporation, rather than the covered corporation, would be required to determine the value of the stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, by applying one of the acceptable methods of valuation set forth in proposed § 58.4501–7(l)(2)(ii), for stock traded on an established securities market, or under the principles of § 1.409A–1(b)(5)(iv)(B)(*1*), for stock not so traded.

In either case, the section 4501(d) covered corporation must be consistent in its application of the valuation methodology. For example, the market price of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is traded on an established securities market must be determined by consistently applying one, but not more than one, of the acceptable methods to all section 4501(d)(1) repurchases with respect to an applicable foreign corporation or all section 4501(d)(2) repurchases with respect to a covered surrogate foreign corporation, in the same taxable year of the applicable foreign corporation or covered surrogate foreign corporation, as applicable. *See* proposed § 58.4501–7(l)(2)(iv). If an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, does not have a taxable year for Federal income tax purposes, the calendar year would be treated as the taxable year for this purpose.

2. Section 4501(d) De Minimis Exception

The section 4501(d) proposed regulations would provide that a section 4501(d) covered corporation is not subject to the section 4501(d) excise tax with regard to a taxable year of the section 4501(d) covered corporation if, during that taxable year, the aggregate fair market value of all section 4501(d)(1) repurchases with respect to all applicable specified affiliates or all section 4501(d)(2) repurchases with respect to an expatriated entity, as applicable, does not exceed $1,000,000 (section 4501(d) de minimis exception). *See* proposed § 58.4501–7(c)(2)(i). The determination of whether the section 4501(d) de minimis exception applies is made before applying any section 4501(d) statutory exception or the section 4501(d) netting rule, which are discussed in parts XVI.I and J of this Explanation of Provisions, respectively.

In applying the section 4501(d) de minimis exception to applicable specified affiliates of an applicable foreign corporation in cases in which the applicable specified affiliates have different taxable years, each applicable specified affiliate (tested affiliate) would be required to aggregate section 4501(d)(1) repurchases that occur during its taxable year (tested taxable year), including section 4501(d)(1) repurchases by other applicable specified affiliates of the same applicable foreign corporation that occur during the tested affiliate's taxable year, regardless of the taxable year ends of the other applicable specified affiliates. In other words, the section 4501(d) de minimis exception would be applied to the overlapping portion of the taxable years of all applicable specified affiliates of an applicable foreign corporation.

The Treasury Department and the IRS are of the view that applying the section 4501(d) de minimis exception to the overlapping portion of the taxable years of all applicable specified affiliates is consistent with the statute, which applies the de minimis exception to the total value of the stock repurchased during the taxable year without regard to the identity of the person effecting the repurchase, and also precludes the use or formation of multiple applicable specified affiliates for the purpose of improperly manipulating the application of the de minimis exception.

For example, assume that an applicable foreign corporation, FX, has a taxable year end of June 30 and owns the stock of two domestic corporations, US1 and US2, that are applicable specified affiliates. US1 has a taxable year end of June 30, and US2 has a taxable year end of December 31. In applying the section 4501(d) de minimis exception to US1 in its taxable year ending June 30, 2026, the aggregate fair market value of all section 4501(d)(1) repurchases with respect to all applicable specified affiliates during its taxable year ending June 30, 2026, is taken into account. Consequently, any acquisition of stock of FX that occurs from July 1, 2025, through June 30, 2026, whether by US1 or US2, would be included in applying the section 4501(d) de minimis exception to US1's taxable year ending June 30, 2026.

C. Certain Rules for Section 4501(d)(2) Repurchases

1. Coordination Rules for Section 4501(d)(2) Repurchases

The section 4501(d) proposed regulations would provide certain coordination rules relating to section 4501(d)(2) repurchases. In particular, the section 4501(d) proposed regulations would provide a priority rule for a transaction that is otherwise both a section 4501(d)(1) repurchase and a section 4501(d)(2) repurchase, and a coordination rule for multiple expatriated entities with respect to a covered surrogate foreign corporation.

With respect to the priority rule, one stakeholder recommended that, if both section 4501(d)(1) and (2) could apply to a transaction, only section 4501(d)(1) should be applied. The Treasury Department and the IRS recognize that, in certain limited situations, acquisitions of stock of a covered surrogate foreign corporation could be subject to the section 4501(d) excise tax under both section 4501(d)(1) and (2). The Treasury Department and the IRS agree that a coordination rule is appropriate but are of the view that section 4501(d)(2) should take priority over section 4501(d)(1). Section 4501(d)(2) is specifically targeted to the repurchase of stock of a covered surrogate foreign corporation by the covered surrogate foreign corporation or the acquisition of the stock of a covered surrogate foreign corporation by a specified affiliate of such corporation. Accordingly, it is appropriate to give primacy to section 4501(d)(2) in that context.

Further, the proposed approach accords with the statutory regime that bifurcates between the operation of section 4501(d)(1) and (2) because this approach would apply section 4501(d)(2) consistently to such repurchases or acquisitions instead of applying a mix of section 4501(d)(1) or (d)(2) depending on the circumstances of a particular acquisition. This mixed application of section 4501(d)(1) and (d)(2) could also present difficulties from a computational perspective. Accordingly, to the extent any repurchase or acquisition of stock of a covered surrogate foreign corporation would be both a section 4501(d)(1) repurchase and a section 4501(d)(2)

repurchase, the repurchase or acquisition would be only a section 4501(d)(2) repurchase. *See* proposed § 58.4501–7(d)(1).

With respect to the coordination rule, section 6.02(5) of Notice 2023–2 requested comments on how the section 4501(d) excise tax liability should be allocated in circumstances in which there are multiple expatriated entities, each of which is treated as a covered corporation with respect to a covered surrogate foreign corporation. A stakeholder recommended that the parties be permitted to contractually allocate liability for the section 4501(d) excise tax in this circumstance. The stakeholder stated that permitting the parties to determine their own allocation of section 4501(d) excise tax liability, rather than mandating an allocation scheme, would allow taxpayers to consider a number of ancillary factors relevant to the allocation, such as the cash flow needs of particular entities. The stakeholder suggested that the government's interest in the payment and collection of the section 4501(d) excise tax could be protected through imposing joint and several liability for the tax liability with respect to each relevant expatriated entity, notwithstanding the privately contracted liability allocation, and through coordination of the reporting of the stock repurchase excise tax on Form 720.

The Treasury Department and the IRS are of the view that, under the plain language of section 4501(d)(2), if there are multiple expatriated entities with respect to a covered surrogate foreign corporation, each expatriated entity is separately liable for the section 4501(d) excise tax with respect to all section 4501(d)(2) repurchases with respect to the covered surrogate foreign corporation's stock. In particular, under the language of the statute, each expatriated entity is liable for the section 4501(d) excise tax on the full amount of stock repurchases by a covered surrogate foreign corporation and its specified affiliates, and the statute does not provide any method of allocation among multiple expatriated entities. For example, if there are two expatriated entities with respect to the same covered surrogate foreign corporation, and the covered surrogate foreign corporation repurchases $100x of stock during the year, then under the statute's plain language, both expatriated entities would be liable for any section 4501(d) excise tax with respect to the $100x repurchase.

Accordingly, the section 4501(d) proposed regulations would follow the statute by providing the default rule that multiple expatriated entities are each liable for the full amount of section 4501(d) excise tax with respect to the covered surrogate foreign corporation. However, the section 4501(d) proposed regulations would provide procedures to allow one of those multiple expatriated entities to report and pay its full excise tax obligation and thereby relieve the remaining expatriated entities of their obligations to report and pay the same amount of section 4501(d) excise tax with respect to the section 4501(d)(2) repurchases during the paying expatriated entity's taxable year. *See* proposed § 58.4501–7(d)(2)(ii); *see also* proposed § 58.4501–7(q)(3) (*Example 3*) for an illustration of this rule.

The Treasury Department and the IRS are of the view that allowing multiple expatriated entities to pay different portions of the section 4501(d) excise tax liability would be too complex and that the most straightforward and administrable approach would be to require one expatriated entity to pay its full section 4501(d) excise tax liability for the taxable year and thereby relieve each other expatriated entity's liability for the section 4501(d) excise tax. Further, as relevant to the stakeholders' recommendations, multiple expatriated entities still could choose the expatriated entity that fully reports and pays its section 4501(d) excise tax liability, and they could provide for payments or reimbursements among themselves by private contract.

2. Example for Entity Subject to Section 7874(b)

One stakeholder requested that the proposed regulations clarify that an entity described in section 7874(b) is treated as a domestic corporation for purposes of applying section 4501, and so is subject to section 4501(a) as a covered corporation (and is not a covered surrogate foreign corporation under section 4501(d)(2)). The Treasury Department and the IRS agree with this request because this result follows from the plain language of sections 4501(d) and 7874. *See* proposed § 58.4501–5(b)(40) (*Example 40*) for an illustration of this result.

3. Transfers Among the Covered Surrogate Foreign Corporation and Its Specified Affiliates

One stakeholder requested clarification of whether section 4501(d)(2) applies to transfers of stock of a covered surrogate foreign corporation among related entities (in particular, among a covered surrogate foreign corporation and its specified affiliates). Those transactions are section 4501(d)(2) repurchases because, unlike section 4501(d)(1), section 4501(d)(2) is not limited to repurchases or acquisitions of stock from persons who are not the covered surrogate foreign corporation or a specified affiliate of the covered surrogate foreign corporation. *See* proposed § 58.4501–7(q)(2) (*Example 2*) for an illustration of this result.

D. The Proposed Funding Rule

1. The Notice Funding Rule

Section 3.05(2)(a)(ii) of Notice 2023–2 provides that an applicable specified affiliate is treated as acquiring stock of an applicable foreign corporation if (i) the applicable specified affiliate funds by any means (including through distributions, debt, or capital contributions) the repurchase or acquisition of stock of the applicable foreign corporation by the applicable foreign corporation or a specified affiliate that is not also an applicable specified affiliate, and (ii) such funding is undertaken with a principal purpose of avoiding the stock repurchase excise tax (Notice funding rule). The Notice funding rule also provides that such a principal purpose is deemed to exist if the funding (other than through distributions) occurs within two years of the funded entity's repurchase or acquisition of stock of the applicable foreign corporation (per se rule).

Numerous stakeholders provided feedback on the Notice funding rule. Stakeholders generally asserted that the Notice funding rule and, in particular, the per se rule were overbroad for various reasons. This feedback was considered in drafting and revising the version of the funding rule in the section 4501(d) proposed regulations (proposed funding rule) and is discussed in part XVI.D.2 of this Explanation of Provisions.

2. The Proposed Funding Rule

a. General Structure and the Rebuttable Presumption

The proposed funding rule would retain the general structure of the Notice funding rule, but with substantial modifications that include replacing the per se rule with a rebuttable presumption that applies in limited circumstances. Under the proposed funding rule, an applicable specified affiliate of an applicable foreign corporation would be treated as acquiring stock of the applicable foreign corporation to the extent the applicable specified affiliate (i) funds by any means (including through distributions, debt, or capital contributions), directly or indirectly, an AFC repurchase or an

acquisition of stock of an applicable foreign corporation by a specified affiliate of an applicable foreign corporation that is not an applicable specified affiliate of the applicable foreign corporation (such entity, a relevant entity, and such repurchase or acquisition, a covered purchase) (ii) with a principal purpose of avoiding the section 4501(d) excise tax (a funding with such a principal purpose, a covered funding). If a principal purpose of a funding is to fund, directly or indirectly, a covered purchase, then with respect to that funding, there is a principal purpose of avoiding the section 4501(d) excise tax. *See* proposed § 58.4501–7(e)(1); *see also* proposed § 58.4501–7(j) (definition of ''AFC repurchase''). Proposed § 58.4501–7(p)(3) (*Example 3*), (p)(4) (*Example 4*), and (p)(7) (*Example 7*) would illustrate the application of the proposed funding rule.

The section 4501(d) proposed regulations would not include the per se rule. Instead, a principal purpose described in proposed § 58.4501–7(e)(1) would be presumed to exist if the applicable specified affiliate funds by any means, directly or indirectly, a downstream relevant entity, and the funding occurs within two years of a covered purchase by or on behalf of the downstream relevant entity (rebuttable presumption). A covered purchase ''on behalf of'' a downstream relevant entity would include an acquisition by an agent or nominee of the downstream relevant entity for the downstream relevant entity's account. The term ''downstream relevant entity'' would be defined as a relevant entity (i) 25 percent or more of the stock of which is owned (by vote or by value), directly or indirectly, by, individually or in aggregate, one or more applicable specified affiliates of an applicable foreign corporation, or (ii) 25 percent or more of the capital or profits interests in which are held, directly or indirectly, by, individually or in aggregate, one or more applicable specified affiliates of an applicable foreign corporation. The rebuttable presumption may be rebutted only if facts and circumstances clearly establish that there was not a principal purpose described in proposed § 58.4501–7(e)(1).

Thus, the rebuttable presumption would apply only to ''downstream'' fundings (that is, fundings of, and covered purchases by or on behalf of, relevant entities in which one or more applicable specified affiliates have a material direct or indirect ownership interest). The rebuttable presumption would not otherwise apply. Proposed § 58.4501–7(p)(5) (*Example 5*) and (p)(6) (*Example 6*) would illustrate the application of the rebuttable presumption.

b. Timing and Allocation Rules

The proposed funding rule would provide rules for determining the date that an applicable specified affiliate is treated, by reason of a covered funding, as acquiring stock of an applicable foreign corporation. More specifically, the proposed funding rule would provide that stock of an applicable foreign corporation that is treated as acquired by an applicable specified affiliate by reason of a covered funding is treated as acquired on the later of the date of the covered funding or the covered purchase to which the covered funding is allocated.

The proposed funding rule also would provide specific rules allocating covered fundings to covered purchases to determine the amount of a deemed acquisition pursuant to the proposed funding rule. The proposed funding rule would provide that the amount of stock of an applicable foreign corporation acquired in a covered purchase that is treated as acquired by an applicable specified affiliate is equal to the amount of the applicable specified affiliate's covered fundings that are allocated to a covered purchase. To the extent covered fundings are allocated to a covered purchase, those fundings would not be allocated to any other covered purchases.

The proposed funding rule would provide that a covered purchase is treated as made first from covered fundings such that, to the extent there is both a covered funding and a covered purchase subject to the proposed funding rule, such covered purchase is treated as funded by the covered funding before fundings received from other sources.

The proposed funding rule would further provide that, if there is a single covered funding, the covered funding is allocated to a covered purchase to the extent of the lesser of the amount of the covered funding or the amount of the covered purchase. If there are multiple covered fundings, and if the aggregate amount of those fundings exceeds the amount of the covered purchase, then covered fundings would be allocated to the covered purchase in the order in which the covered fundings occur (a ''first in, first out'' approach). If multiple covered fundings occur simultaneously, those covered fundings would be allocated to the covered purchase on a pro rata basis.

If there are multiple covered purchases, then covered fundings would be allocated to the covered purchases in the order in which the covered purchases occur. If multiple covered purchases occur simultaneously, then covered fundings would be allocated to those simultaneous covered purchases on a pro rata basis.

3. Response to Feedback on the Notice Funding Rule

a. Authority for the Notice Funding Rule

Stakeholders requested that the Notice funding rule be withdrawn for various reasons, including that, in the stakeholders' view, the Notice funding rule is not supported by the statutory language and is contrary to congressional intent.

Stakeholders asserted that the Notice funding rule is contrary to the statutory language in section 4501(d)(1) because that language requires the applicable specified affiliate to acquire the stock of the applicable foreign corporation, as opposed to merely funding a separate entity's acquisition of such stock. Several stakeholders also alleged that section 4501(f) does not provide sufficient authority for the Notice funding rule because the Notice funding rule does not appropriately target the avoidance of section 4501(d)(1) and does not carry out, or prevent the avoidance of, the purposes of section 4501.

Stakeholders also asserted that the Notice funding rule and the per se rule are otherwise overbroad, particularly given that section 4501(d)(1) only applies to a set of transactions—certain acquisitions by applicable specified affiliates of stock of an applicable foreign corporation—that stakeholders alleged occur rarely, if ever (for example, because foreign law prohibits a subsidiary from owning stock of its ultimate parent entity).

As a threshold matter, the Treasury Department and the IRS continue to be of the view that, for several reasons, a version of the funding rule is necessary to carry out the purposes of, and to prevent avoidance of, the section 4501(d) excise tax. As acknowledged by stakeholders, an applicable specified affiliate potentially could avoid the section 4501(d) excise tax with relative ease absent a funding rule. Accordingly, the Treasury Department and the IRS are of the view that a version of the funding rule is necessary to prevent such avoidance of the section 4501(d) excise tax.

The Treasury Department and the IRS are also of the view that the proposed funding rule is an appropriate and permissible exercise of the broad grant of authority in section 4501(f) to prescribe regulations and other

guidance as necessary or appropriate to carry out, and to prevent the avoidance of, the purposes of the stock repurchase excise tax, including guidance for the application of the rules of section 4501(d). As one stakeholder noted, statutory grants of regulatory authority like section 4501(f) generally are understood to be broad. For example, *see* H.R. Rep. No. 100–795, at 54 (1988) (stating that the Treasury Department has, under section 382(m) of the Code, ''broad regulatory authority to prescribe any regulations necessary or appropriate to carry out the purposes of the loss limitation provisions''). Further, longstanding rules in other Treasury regulations provide that, if a taxpayer funds an acquisition of property by a relevant related party rather than acquiring the property itself, the taxpayer can be treated in appropriate circumstances as acquiring the property for certain Federal income tax purposes if the funding satisfies a principal purpose requirement. *See* §§ 1.304–4(b)(1); 1.956–1(b)(1)(iii). The Treasury Department and the IRS therefore are of the view that the statutory language of section 4501, including section 4501(f), authorizes the proposed funding rule.

The Treasury Department and the IRS also are of the view that the alleged rarity of relevant acquisitions by applicable specified affiliates does not address the concern that an applicable specified affiliate potentially could, with relative ease, fund another entity's repurchase or acquisition of the stock of an applicable foreign corporation. One stakeholder noted survey results indicating that some respondents do have acquisitions of parent stock by subsidiaries in their multinational groups. The enactment of section 4501(d)(1) indicates congressional intent to address acquisitions of stock of an applicable foreign corporation by applicable specified affiliates. In addition, other provisions in the Code and Treasury regulations recognize and address the Federal income tax consequences of a subsidiary's acquisition of a parent entity's stock. For example, Treasury regulations specifically address certain transactions undertaken by taxpayers involving a subsidiary's acquisition of parent stock. *See* § 1.367(b)–10 (providing treatment of certain transactions in which a foreign subsidiary acquires stock of a parent corporation).

In addition, as discussed in part XVI.D.2.a of this Explanation of Provisions, the proposed funding rule would not include the per se rule. Instead, the proposed funding rule would provide a more targeted rebuttable presumption that applies only with respect to downstream relevant entities. The rebuttable presumption would apply over the same timeframe as the per se rule; however, unlike the per se rule, the rebuttable presumption would apply only to a limited category of fundings and could be rebutted. This replacement of the per se rule with the rebuttable presumption would materially narrow the scope of the proposed funding rule relative to the Notice funding rule. The Treasury Department and the IRS are of the view that this narrower scope of the proposed funding rule further addresses concerns raised by stakeholders related to the Notice funding rule and the per se rule.

b. Principal Purpose Standard

Certain stakeholders questioned how to determine whether a taxpayer has a principal purpose of avoiding the stock repurchase excise tax under the Notice funding rule. The proposed funding rule would clarify that, if a principal purpose of the covered funding is to fund, directly or indirectly, a covered purchase, then there is a principal purpose of avoiding the section 4501(d) excise tax.

In addition, one stakeholder recommended that the Notice funding rule provide specific factors to be considered in determining whether a taxpayer has a principal purpose of avoiding the stock repurchase excise tax. The proposed funding rule would not add such specific factors because the relevant factors may vary depending on the particular facts and circumstances in each case. The Treasury Department and the IRS are of the view that this approach is in accordance with other statutory and regulatory rules involving or requiring a principal purpose, as those rules typically do not provide specific factors for determining whether a principal purpose is present. However, the proposed funding rule would clarify that whether a covered funding is described in proposed § 58.4501–7(e)(1) is determined based on all the facts and circumstances.

Further, another stakeholder recommended that the principal purpose standard be changed from requiring ''a'' principal purpose of avoidance to requiring ''the'' principal purpose of avoidance (akin to the standard in section 269 of the Code). The proposed funding rule would not change its principal purpose standard in this manner. The Treasury Department and the IRS are of the view that requiring ''a'' principal purpose is common in existing rules analogous to the proposed funding rule. The Treasury Department and the IRS are of the view that, if the other requirements to apply the proposed funding rule are met, then it would be appropriate for the proposed funding rule to apply if ''a'' principal purpose of the funding is described in proposed § 58.4501–7(e)(1).

c. Limitation to Certain Relevant Entities

Several stakeholders recommended that the per se rule be limited to acquisitions by certain persons other than the applicable foreign corporation, such as subsidiaries of an applicable specified affiliate. Another stakeholder similarly recommended limiting the application of the Notice funding rule to subsidiaries of the applicable specified affiliate by interpreting the term ''acquisition'' to include indirect acquisitions by applicable specified affiliates through domestic subsidiaries, domestic and foreign partnerships, and controlled foreign corporations (CFCs) owned (within the meaning of section 958(a) of the Code) by applicable specified affiliates. (Note that such intermediate domestic entities also would be applicable specified affiliates, so their acquisitions would separately be subject to section 4501(d)(1)).

The Treasury Department and the IRS are of the view that the application of the proposed funding rule should not be limited in this manner. This type of limitation on the scope of the funding rule potentially would allow the rule to be avoided with relative ease through funding to whichever related entities are excluded from the scope of the proposed funding rule. Accordingly, the proposed funding rule could apply regardless of whether the funded entity is an applicable foreign corporation, brother-sister entity, or subsidiary of the applicable specified affiliate.

However, the Treasury Department and the IRS are of the view that applying the rebuttable presumption solely to fundings of downstream relevant entities is appropriate. In line with observations from certain stakeholders, these ''downstream'' fundings—in which one or more applicable specified affiliates have a material ownership stake in the relevant entity that receives a funding and by or on behalf of whom the covered purchase is made—strongly implicate the anti-avoidance concerns that motivate the proposed funding rule. Accordingly, the Treasury Department and the IRS are of the view that the rebuttable presumption would appropriately be applied in that context.

d. Recommended Exclusions From the Notice Funding Rule

Stakeholders suggested that, if the Notice funding rule is retained, then certain ordinary-course fundings should be excluded from the meaning of a ''funding,'' such as arm's-length payments (including payments for inventory, services, or treasury functions) or payments of royalties or interest. In addition, one stakeholder requested that a ''funding'' should not include payments made pursuant to a so-called ''recharge agreement'' in which an applicable specified affiliate reimburses the applicable foreign corporation for providing stock to the applicable specified affiliate's employees.

Several stakeholders also requested that certain types of taxpayers, such as foreign banks or financial institutions, should be exempt from the Notice funding rule because they frequently engage in intercompany financing transactions as part of their ordinary course of business (and such intercompany activity should not be viewed as abusive or as avoidance of the section 4501(d) excise tax).

The section 4501(d) proposed regulations would not adopt exclusions from the rebuttable presumption or the proposed funding rule for specific types of fundings or for taxpayers in specific industries. The targeted scope of the rebuttable presumption means that only a limited category of fundings would be subject to the rebuttable presumption. The Treasury Department and the IRS are of the view that the elimination of the per se rule and the targeted nature of the rebuttable presumption appropriately address the concerns reflected in the feedback requesting these exclusions. Further, the Treasury Department and the IRS are of the view that exclusions for taxpayers in specific industries are not appropriate in this context as a general matter. The Treasury Department and the IRS also are of the view that the manner in which the exception for repurchases or acquisitions by a dealer in securities would apply with respect to covered purchases further addresses these concerns. *See* proposed § 58.4501–7(m)(4).

e. Treaty and Extraterritoriality Concerns

Stakeholders also asserted that the Notice funding rule, including the per se rule, overrides arm's-length transfer pricing principles, is contrary to bilateral income tax treaties and Organisation for Economic Co-operation and Development (OECD) efforts involving extraterritorial taxation, and creates the risk of other countries imposing an analogous rule with respect to fundings provided to a U.S. corporation to repurchase its own stock.

The Treasury Department and the IRS are of the view that the Notice funding rule generally does not implicate these concerns. The section 4501(d) excise tax is imposed on an applicable specified affiliate or expatriated entity, and not the applicable foreign corporation or covered surrogate foreign corporation, as applicable. The section 4501(d) excise tax is also an excise tax and not an income tax. In any event, the Treasury Department and the IRS also are of the view that the tailoring of the proposed funding rule—including the elimination of the per se rule and the other limits described previously—would appropriately address the concerns motivating this feedback.

f. Funding From Multiple Sources

Stakeholders also requested guidance on how to apply the funding rule if a funded entity receives funding from multiple sources. In those cases, different ordering rules or conventions could result in differences in the potential section 4501(d) excise tax liability after application of the funding rule.

The Treasury Department and the IRS agree that guidance on ordering rules or conventions would be helpful in applying the proposed funding rule. Accordingly, the proposed fund rule would include the allocation and timing rules previously described in part XVI.D.2.b of this Explanation of Provisions.

The Treasury Department and the IRS considered other timing and allocation rules in developing the proposed funding rule, such as allocation rules that allocate a specific funding amount to a covered purchase if the particular funds or assets can be ''traced'' to a covered purchase, or allocation rules that base the allocation on a proration of fundings received from all sources. The Treasury Department and the IRS are of the view that proposed ordering rules should: (i) recognize the typically fungible nature of liquid assets; (ii) take into account that transactions subject to the proposed funding rule have a principal purpose of funding a stock repurchase or acquisition; and (iii) be administrable.

The Treasury Department and the IRS are of the view that the allocation method in the proposed funding rule is both reasonable and administrable. As previously described, the proposed funding rule would provide that a covered purchase is treated as made first from covered fundings such that, to the extent there is both a covered funding and a covered purchase subject to the proposed funding rule, such covered purchase is treated as funded by the covered funding before fundings received from other sources. The Treasury Department and the IRS are of the view that treating a funding made with a relevant principal purpose as actually being used for that purpose is appropriate.

Further, the proposed allocation rules would be more administrable than other allocation rules (such as a pure ''tracing'' approach, or a proration of fundings from all sources) because the proposed rules would not require taxpayers to track or order fundings other than covered fundings. Additionally, a pure ''tracing'' rule potentially would permit avoidance of the funding rule with relative ease given the fungible nature of liquid assets that often may be most relevant to the proposed funding rule.

E. Status as an Applicable Foreign Corporation, Covered Surrogate Foreign Corporation, Applicable Specified Affiliate, Relevant Entity, Specified Affiliate

1. Status as an Applicable Foreign Corporation or a Covered Surrogate Foreign Corporation

The rules for determining when a corporation becomes or ceases to be an applicable foreign corporation or a covered surrogate foreign corporation are provided in proposed § 58.4501–7(f). These rules are based on the rules in proposed § 58.4501–2(d) (duration of covered corporation status) for determining when a corporation becomes or ceases to be a covered corporation. Under proposed § 58.4501–7(f)(2), in general, a corporation becomes an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, at the beginning of the initiation date (as defined in proposed § 58.4501–1(b)(15)), and a corporation ceases to be an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, at the end of the cessation date (as defined in proposed § 58.4501–1(b)(2)). Proposed § 58.4501–7(f)(2) and (3), respectively, would provide additional rules for when (i) a corporation transfers its assets in an inbound or outbound F reorganization, or (ii) a foreign corporation ceases to be an applicable foreign corporation or a covered surrogate foreign corporation as part of a transaction that includes a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, as applicable.

2. Status as an Applicable Specified Affiliate, Relevant Entity, or Specified Affiliate

The rules for determining whether a corporation or a partnership is an applicable specified affiliate or a relevant entity of an applicable foreign corporation or a specified affiliate of a covered surrogate foreign corporation, as applicable, are provided in proposed § 58.4501–7(g). These rules are based on the rules in proposed § 58.4501–2(f)(2) (determination of specified affiliate status). Under proposed § 58.4501–7(g)(1), the determination of whether a corporation or partnership is an applicable specified affiliate or a relevant entity of an applicable foreign corporation or a specified affiliate of a covered surrogate foreign corporation, as applicable, is made whenever such determination is relevant. In the case of tiered ownership structures, the rules for determining indirect ownership are consistent with the rules provided in § 58.4501–2(f)(2)(ii), except for a special rule (described in part XVI.F of this Explanation of Provisions) that applies for purposes of determining whether a domestic entity is a direct or indirect partner in a partnership. *See* proposed § 58.4501–7(g)(2).

Finally, similar to proposed § 58.4501–2(f)(3), proposed § 58.4501–7(g)(3) describes the tax consequences if a corporation or partnership becomes a specified affiliate and owns stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, that was acquired after December 31, 2022. In this case, for purposes of applying the section 4501(d) proposed regulations, the corporation or partnership is generally treated as acquiring such stock immediately after the corporation or partnership becomes a specified affiliate.

F. Foreign Partnerships That are Applicable Specified Affiliates

1. In General

Section 4501(d)(1) provides that, if a foreign partnership that is a specified affiliate of an applicable foreign corporation has a direct or indirect partner that is a domestic entity, then the foreign partnership is an applicable specified affiliate of the application foreign corporation. The rules for determining if a foreign partnership is an applicable specified affiliate are in proposed § 58.4501–7(h).

2. Direct and Indirect Partners

In section 6 of Notice 2023–2, the Treasury Department and the IRS requested comments regarding the factors that should be considered in determining whether a domestic entity is an indirect partner of a foreign partnership for purposes of section 4501(d)(1).

One stakeholder recommended that indirect domestic partners not be taken into account if they hold their interests in the foreign partnership through an intermediate foreign corporation or an intermediate domestic corporation or partnership. (In the latter case, the intermediate domestic corporation or partnership itself already would be a direct or indirect domestic partner.) The stakeholder argued that this recommendation is consistent with general Federal income tax principles and would simplify the determination of whether a domestic entity is an indirect partner of a foreign partnership. Another stakeholder recommended that the stock repurchase excise tax apply to acquisitions by a foreign partnership in which a domestic entity owns (within the meaning of section 958(a)) its interest directly or indirectly through a CFC.

The Treasury Department and the IRS do not agree with the first recommendation because the statute does not limit indirect ownership to indirect ownership solely through a foreign partnership. Moreover, limiting the scope of indirect ownership in this manner for purposes of determining whether a foreign partnership is an applicable specified affiliate could facilitate avoidance of the statute. For instance, a domestic entity could form a wholly owned foreign corporation to hold the domestic entity's interest in a foreign partnership in which the domestic entity otherwise would be a domestic entity partner for purposes of section 4501(d)(1). The Treasury Department and the IRS are of the view that this type of transaction should not alter whether a foreign partnership is an applicable specified affiliate for purposes of section 4501(d)(1). Accordingly, section 4501(d) proposed regulations would not follow this approach.

With respect to the second recommendation, although the stakeholder made this suggestion in the context of interpreting the term ''acquisition,'' the Treasury Department and the IRS agree that a domestic entity that owns its interest in a foreign partnership through a CFC generally should be an indirect partner for purposes of determining whether a foreign partnership is an applicable specified affiliate.

The section 4501(d) proposed regulations would, in part, follow a similar approach. Specifically, the section 4501(d) proposed regulations would provide that a domestic entity is an indirect partner with respect to a foreign partnership if the domestic entity owns an interest in the foreign partnership through: (i) one or more foreign partnerships; (ii) one or more foreign corporations controlled by one or more domestic entities (domestic control requirement), or (iii) an ownership chain with one or more entities described in the preceding clauses (i) and (ii). *See* proposed § 58.4501–7(h)(2)(ii).

For this purpose, a foreign corporation is controlled by one or more domestic entities if more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote or the total value of the stock of such corporation is owned, directly or indirectly, in aggregate by one or more domestic entities. *See* proposed § 58.4501–7(h)(3). These domestic entities do not need to be related to each other.

However, the section 4501(d) proposed regulations would provide that a domestic entity is not treated as indirectly owning stock in a foreign corporation or an interest in a foreign partnership solely by reason of owning, directly or indirectly, stock of the applicable foreign corporation. *See* proposed § 58.4501–7(h)(4). For example, assume that a U.S. corporation (USX) directly owns stock of an applicable foreign corporation (FP), which directly owns 100 percent of the stock of two foreign corporations, FS1 and FS2. FS1 and FS2, in aggregate, own all the interests in a foreign partnership (FPS). Under these facts, USX would not be treated as indirectly owning stock of FS1 or FS2 or an interest in FPS.

The Treasury Department and the IRS are of the view that, absent the domestic control requirement, look-through for indirect ownership for this purpose under the statute would require full, proportionate look-through of all foreign corporations. *See* part XVI.E.2 of this Explanation of Provisions. The Treasury Department and the IRS are of the view that it is appropriate to narrow the application of this statutory rule in this context to address compliance and administrability concerns.

3. The Proposed De Minimis Rule for Domestic Entity Ownership

Several stakeholders recommended that the Treasury Department and the IRS: (i) adopt a de minimis threshold for direct or indirect domestic ownership of a foreign partnership before the foreign partnership is treated as an applicable specified affiliate; and (ii) limit the

applicability of section 4501(d)(1) to foreign partnerships to situations in which the domestic entity partner is related to the relevant applicable foreign corporation. Although the plain language of the statute does not provide for either of these limitations, the stakeholders contended that a de minimis exception or a relatedness requirement (or both) are appropriate in light of the statute's focus on entities with a meaningful U.S. connection and the potential diligence issues with determining indirect domestic ownership for foreign partnerships potentially subject to the section 4501(d) excise tax.

One stakeholder recommended a de minimis threshold of one or two percent, analogizing to de minimis exceptions under other Code provisions (*see* §§ 1.351–1(c)(7), *Example 1* (treating a less-than-one percent interest as de minimis for purposes of section 351(e)), and 1.1202–2(a)(2) (applying a two percent de minimis threshold for purposes of section 1202 of the Code)). Another stakeholder recommended a 10 percent de minimis threshold, analogizing to § 1.59A–7(d)(2) (exception for base erosion tax benefits for certain small partners). A stakeholder also suggested that the section 4501(d) proposed regulations should require the domestic entity partner to be related (within the meaning of section 267 of the Code) to the applicable foreign corporation in order to be consistent with the purpose of the stock repurchase excise tax, which (in the stakeholder's view) was to impose a tax on repurchases or acquisitions of stock of publicly traded corporations and persons related to them.

The Treasury Department and the IRS are of the view that a de minimis threshold would be appropriate to address compliance and administrability concerns regarding the determination of when direct or indirect ownership by domestic entity partners causes a foreign partnership to be an applicable specified affiliate. Accordingly, the section 4501(d) proposed regulations would provide that a foreign partnership with one or more direct or indirect domestic entity partners is not considered an applicable specified affiliate if the domestic entities hold, directly or indirectly, in aggregate, less than five percent of the capital and profits interests in the foreign partnership. *See* proposed § 58.4501–7(h)(5).

The Treasury Department and the IRS also are of the view that, because the statute does not require any relationship between the direct or indirect domestic entity partner and the applicable foreign corporation of which the foreign partnership is a specified affiliate, no such relationship is required. The addition of such a relatedness requirement in the section 4501(d) proposed regulations would be a departure from the statutory structure. However, the de minimis rule would provide a minimum threshold of direct or indirect domestic ownership required for treating a foreign partnership as an applicable specified affiliate.

4. Domestic Entity

A stakeholder recommended that a domestic entity that is a disregarded entity and holds an interest in a partnership should not itself be treated as a partner. The statute does not treat a ''true'' U.S. branch as a domestic entity; therefore, the Treasury Department and the IRS agree with this recommendation. *See* proposed § 58.4501–7(b)(2)(x) (definition of ''domestic entity'').

5. Filing Requirements

Section 6.02(6) of Notice 2023–2 requested comments on whether the foreign partnership or the domestic entity partner should be required to file the Form 720 and pay the stock repurchase excise tax. Several stakeholders recommended that the domestic entity partner be required to file the stock repurchase excise tax return and pay the stock repurchase excise tax. One stakeholder requested guidance regarding the level of diligence required to determine whether a foreign partnership has a direct or indirect domestic entity as a partner. The stakeholder recommended that the diligence process should not impose undue burdens and expense on taxpayers given the limited application of the stock repurchase excise tax to acquisitions of applicable foreign corporation stock by foreign entities.

The stakeholder therefore recommended that, assuming a 10 percent de minimis partner threshold and a related-party requirement (discussed in part XVI.F.2 of this Explanation of Provisions), the domestic entity partner(s), rather than the foreign partnership, should be required (i) to determine the applicability of the stock repurchase excise tax, and (ii) to report and pay the stock repurchase excise tax on the full amount of the stock acquisition. The stakeholder noted that imposing the reporting and payment obligation on domestic entities does not raise the jurisdictional, enforcement, and collectability challenges that arise when such obligations are imposed on the foreign partnership, and that regulations could impose joint and several liability on the domestic entity partner(s). The stakeholder also recommended that the section 4501(d) proposed regulations provide procedures describing how a domestic entity may determine whether it holds the requisite ownership interest in a foreign partnership and whether the stock repurchase excise tax applies, and suggested rules similar to the safe harbor rules for determining whether a domestic entity holds an interest in a CFC in Rev. Proc. 2019–40, 2019–43 I.R.B. 982.

However, the stakeholder acknowledged that, if the 10 percent de minimis threshold and related-party requirements were not adopted, then a relatively small indirect domestic partner would not be able to file the stock repurchase excise tax return as it would be unlikely to have the requisite information. In the stakeholder's view, imposing the full excise tax on such partners would be unfair. Accordingly, the stakeholder recommended that, in this scenario, domestic partners only should be required to pay their allocable share of stock repurchase tax, although the stakeholder acknowledged that this approach could be complex and impracticable.

The Treasury Department and the IRS do not agree that the domestic entity partner should be required to file Form 720 and pay the section 4501(d) excise tax. Under the statute, the foreign partnership is the entity that is the applicable specified affiliate, which, in turn, is the entity that is liable for the section 4501(d) excise tax. The Treasury Department and the IRS continue to evaluate adding items relevant to the section 4501(d) excise tax to other existing tax return forms, including forms that at least certain domestic entity partners may otherwise be required to file.

Consequently, the section 4501(d) proposed regulations would not provide special filing or liability rules with respect to an applicable specified affiliate that is a foreign partnership with a direct or indirect domestic entity partner. Rather, such an applicable specified affiliate would be subject to the general requirements that apply to all entities that are section 4501(d) covered corporations.

The section 4501(d) proposed regulations also would not include diligence procedures for determining an entity's status as an applicable specified affiliate. The Treasury Department and the IRS are of the view that relevant diligence considerations may vary based on the particular facts and circumstances, and so specific

guidelines would be neither appropriate nor practical.

G. AFC Repurchases and CSFC Repurchases

Proposed § 58.4501–7(j) would provide rules for determining whether an acquisition by an applicable foreign corporation of its stock is an ''AFC repurchase'' and whether an acquisition by a covered surrogate foreign corporation of its stock is a ''CSFC repurchase'' for purposes of proposed § 58.4501–7. These rules are based on the rules in proposed § 58.4501–2(e) for determining whether a transaction is a repurchase for purposes of proposed § 58.4501–2. These rules are relevant for purposes of determining whether there is a covered purchase that could be subject to the proposed funding rule and whether a covered surrogate foreign corporation's repurchase of its stock is subject to section 4501(d)(2).

H. Date of Section 4501(d)(1) or Section 4501(d)(2) Repurchase; Fair Market Value of Stock

Proposed § 58.4501–7(k) would provide rules for determining the date on which a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase occurs. These proposed rules generally reflect the rules in proposed § 58.4501–2(g), except that the rule in proposed § 58.4501–7(k)(4) would provide that stock subject to a covered purchase to which the funding rule applies is treated as acquired by the applicable specified affiliate on the later of the date of the covered funding or the covered purchase. *See* part XVI.D.2.b of this Explanation of Provisions.

Proposed § 58.4501–7(l) would provide rules for determining the fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is subject to a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase. These rules generally follow the rules in proposed § 58.4501–2(h) for determining the fair market value of stock of a covered corporation that is repurchased.

I. Section 4501(d) Statutory Exceptions

1. In General

Section 4501(d) operates by modifying the general rules in section 4501(a) and (c). Because section 4501(d) operates in this manner, the section 4501(e) exceptions can be relevant to transactions subject to section 4501(d), except in one respect described in part XVI.I.2 of this Explanation of Provisions.

Proposed § 58.4501–7(m) would provide rules for determining the applicability of the statutory exceptions (section 4501(d) statutory exceptions), other than the section 4501(d) de minimis exception, to transactions that are subject to section 4501(d). The rules in proposed § 58.4501–7(m) are based on the rules in proposed § 58.4501–3, with certain modifications discussed in part XVI.I.2 of this Explanation of Provisions. For a discussion of the section 4501(d) de minimis exception, *see* part XVI.B.2 of this Explanation of Provisions.

2. Application of Section 4501(d) Statutory Exceptions

The section 4501(d) reorganization exception would apply only with respect to stock of an applicable foreign corporation repurchased in an AFC repurchase that is a section 4501(d)(1) repurchase and to stock of a covered surrogate foreign corporation repurchased in a CSFC repurchase that is a section 4501(d)(2) repurchase. *See* proposed § 58.4501–7(m)(2). The Treasury Department and the IRS are of the view that, based on the statutory language and the operation of section 4501(d), the relevant ''stock'' for purposes of applying the section 4501(d) reorganization exception is the stock of the applicable foreign corporation or the covered surrogate foreign corporation, as applicable. The references to ''stock'' in section 4501 refer to stock of the types of corporations subject to the excise tax that is repurchased or acquired—that is, covered corporations, applicable foreign corporations, and covered surrogate foreign corporations. Thus, the plain language of the statute demonstrates that ''stock'' for purposes of the section 4501(d) reorganization exception can only be stock of the applicable foreign corporation or covered surrogate corporation, as applicable. In accordance with this plain meaning, the Treasury Department and the IRS are of the view that the section 4501(d) reorganization exception only applies to repurchases and acquisitions of the equity of the corporation that is traded on an established securities market.

The stock contribution exception would apply only with respect to contributions of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, to an employer-sponsored retirement plan of the section 4501(d) covered corporation. *See* proposed § 58.4501–7(m)(3). The section 4501(d) proposed regulations would limit the employer-sponsored retirement plan exception to contributions to the employer-sponsored retirement plans of the section 4501(d) covered corporation to be consistent with the scope of the section 4501(d) netting rule, which only allows netting of stock provided by an applicable specified affiliate or an expatriated entity to its respective employees.

The section 4501(d) proposed regulations would apply the section 4501(e)(4) exception for certain repurchases by a dealer in securities in the ordinary course of the dealer's business based on the rules in proposed § 58.4501–3(e). *See* proposed § 58.4501–7(m)(4). For this purpose, the exception would apply to any repurchasing or acquiring entity that is a dealer in securities, whether such entity is an applicable foreign corporation, covered surrogate foreign corporation, or a specified affiliate of either.

The section 4501(d) proposed regulations would provide that the exception for RICs and REITs does not apply to a section 4501(d) repurchase or section 4501(d)(2) repurchase because each of an applicable foreign corporation or a covered surrogate foreign corporation will not qualify as a RIC or a REIT. *See* proposed § 58.4501–7(m)(5).

The dividend equivalence exception in proposed § 58.4501–7(m)(6) generally reflects the exception in proposed § 58.4501–3(g), including that the exception would apply to repurchases (as defined in proposed §§ 58.4501–2(e) and 58.4501–7(j)) but not to acquisitions by specified affiliates. However, with respect to the rebuttable presumption of no dividend equivalence, proposed § 58.4501–7(m)(6)(ii) would differ regarding how a section 4501(d) covered corporation may rebut the presumption, because section 4501(d) covered corporations are not the entities that are engaging in the repurchase for purposes of determining dividend equivalence. Further, unlike covered corporations, certain applicable foreign corporations or covered surrogate foreign corporations may not have relevant Federal income tax return filing requirements.

3. Feedback Received

One stakeholder requested clarification that the exceptions in section 4501(e) apply with respect to stock acquisitions or repurchases under section 4501(d). The section 4501(d) proposed regulations would implement that request in the manner described in part XVI.I.2 of this Explanation of Provisions.

One stakeholder recommended that, if an applicable specified affiliate uses stock of the applicable foreign corporation as consideration in a transaction, its acquisition of the

applicable foreign corporation stock should not be subject to section 4501(d)(1) as a matter of policy because the total amount of outstanding equity of the applicable foreign corporation would not be changed as a result of the two transactions taken together. The Treasury Department and the IRS are of the view that this recommendation is contrary to the plain language and statutory structure of section 4501(d)(1). However, in appropriate cases, transfers of applicable foreign corporation stock may qualify for a section 4501(d) statutory exception.

J. Section 4501(d) Netting Rule

1. Overview

Section 4501(d)(1)(C) and (d)(2)(C) provide that the adjustment in section 4501(c)(3) is determined only with respect to stock issued or provided by the section 4501(d) covered corporation to employees of the section 4501(d) covered corporation. Proposed § 58.4501–7(n) would provide rules for applying the section 4501(d) netting rule. Proposed § 58.4501–7(n) would clarify that the section 4501(d) netting rule applies only to stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, that is issued or provided by a section 4501(d) covered corporation to an employee in connection with the employee's performance of services in the employee's capacity as an employee of the section 4501(d) covered corporation.

These proposed rules are generally based on the rules in proposed § 58.4501–4, except that proposed § 58.4501–7(n) generally would incorporate the provisions of proposed § 58.4501–5 relating to the issuance or provision of stock to employees in connection with the performance of services.

2. Feedback Received

a. Relevant Stock

Section 6 of Notice 2023–2 requested comments on whether, for purposes of the section 4501(d) netting rule, there are any circumstances in which stock of the applicable specified affiliate or expatriated entity should be taken into account in addition to, or in lieu of, the stock of the applicable foreign corporation or covered surrogate foreign corporation, respectively.

One stakeholder recommended that, because the statute uses the term ''issued by,'' and an applicable specified affiliate or expatriated entity can issue only its own stock, stock of the applicable specified affiliate or expatriated entity, as applicable, should be taken into account for purposes of the section 4501(d) netting rule. The stakeholder also recognized that an applicable specified affiliate could provide the stock of the applicable foreign corporation to its employees, or an expatriated entity could provide the stock of the covered surrogate foreign corporation to its employees.

The Treasury Department and the IRS are of the view that, based on the statutory language, the relevant ''stock'' referenced in section 4501(d)(1)(C) and (d)(2)(C) is stock of the applicable foreign corporation and covered surrogate foreign corporation. All antecedent references to ''stock'' in section 4501(d) refer to stock of the applicable foreign corporation and covered surrogate foreign corporation. More broadly, all other references to ''stock'' in section 4501 refer to stock of the types of corporations subject to the excise tax that is repurchased or acquired—that is, covered corporations, applicable foreign corporations, and covered surrogate foreign corporations. Further, if an applicable specified affiliate or expatriated entity transfers to an employee treasury stock of an applicable foreign corporation or a covered surrogate foreign corporation, that transfer could be interpreted to constitute an issuance of that stock within the meaning of the statutory language.

Thus, the plain language of the statute demonstrates that ''stock'' for purposes of the section 4501(d) netting rule only can be stock of the applicable foreign corporation or covered surrogate corporation, as relevant. In accordance with this plain meaning, the Treasury Department and the IRS are of the view that the section 4501(d) netting rule functions to tailor the section 4501(d) excise tax base to the net reduction of the equity of the corporation that is traded on an established securities market.

Further, the stakeholder acknowledged that, under its recommendation, a partnership that is a section 4501(d) covered corporation would be unable to qualify for the section 4501(d) netting rule with respect to its equity because partnership interests are not ''stock.'' However, this discontinuity in the application of the section 4501(d) netting rule would be avoided if ''stock'' is interpreted to refer to stock of an applicable foreign corporation or a covered surrogate foreign corporation.

The stakeholder further acknowledged that allowing netting under the section 4501(d) netting rule for stock of a section 4501(d) covered corporation would permit the section 4501(d) covered corporation to redeem any such issued stock without application of section 4501 (assuming the applicable specified affiliate or expatriated entity is not itself a covered corporation). The Treasury Department and the IRS are of the view that it is not appropriate to allow stock issuances by section 4501(d) covered corporations to reduce the section 4501(d) excise tax base if the repurchase or acquisition of that stock would not be subject to section 4501.

Accordingly, the section 4501(d) proposed regulations would provide that only stock of the applicable foreign corporation or covered surrogate foreign corporation, as appropriate, is taken into account for purposes of the section 4501(d) netting rule. *See* proposed § 58.4501–7(n)(1).

b. Stock Issued or Provided by Specified Affiliates

The section 4501(d) netting rule would apply only with respect to stock issued or provided by the section 4501(d) covered corporation to employees (in connection with the performance of services) of the section 4501(d) covered corporation. *See* proposed § 58.4501–7(n)(1). However, stakeholders recommended that, if the Notice funding rule applies to treat an applicable specified affiliate as acquiring the stock of the applicable foreign corporation when it funds the applicable foreign corporation's repurchase, the proposed regulations also should provide that the section 4501(d) netting rule applies at least to some degree with respect to stock issued or provided by the applicable foreign corporation to employees of the applicable foreign corporation.

The Treasury Department and the IRS are of the view that such a modification would be inappropriate. The proposed funding rule is intended to prevent an applicable specified affiliate from avoiding the section 4501(d) excise tax through funding transactions. Therefore, the section 4501(d) proposed regulations should not provide for such an expansion of the section 4501(d) netting rule if the funding rule applies. Furthermore, the Treasury Department and the IRS are of the view that this requested modification to the section 4501(d) netting rule is unwarranted given the narrower scope of the proposed funding rule relative to the Notice funding rule.

One stakeholder also requested clarification as to whether the section 4501(d) netting rule is applied on an entity-by-entity basis or on an aggregate basis. Under an entity-by-entity approach, the section 4501(d) netting

rule would be applied separately to each section 4501(d) covered corporation. In contrast, under an aggregate approach, the modified netting rule would be applied on an aggregate basis to all section 4501(d) covered corporations. The stakeholder expressed the view that the entity-by-entity approach arguably is more consistent with the statutory language of the section 4501(d) netting rule, but that the aggregate approach would better achieve the anti-dilutive policy focus of the stock repurchase excise tax and simplify compliance.

The Treasury Department and the IRS agree with the stakeholder that the entity-by-entity approach follows the statutory language of the section 4501(d) netting rule. Section 4501(d)(1)(C) and (d)(2)(C) require the section 4501(d) netting rule to apply ''only'' with respect to stock issued or provided by ''such'' applicable specified affiliate or expatriated entity. Therefore, the Treasury Department and the IRS are of the view that the statute provides for an entity-by-entity approach. Furthermore, the Treasury Department and the IRS are of the view that it is not appropriate to expand the section 4501(d) netting rule beyond that statutory scope.

c. Employee-Related Issues

One stakeholder recommended that, for purposes of applying the section 4501(d) netting rule, employee status alone should be sufficient, and there should be no requirement that the stock be issued or provided to the employee in connection with the performance of services.

The Treasury Department and the IRS do not agree with the stakeholder. The reference in the statue to ''employees'' is most naturally read to refer to employees in their capacity as employees providing services to their employer. The requirement that the stock be issued in connection with the performance of services also would prevent potential abuse in situations in which a company could make an individual into a nominal employee and then allow the individual to acquire stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable.

In addition, the issuance or provision of an instrument that is not in the legal form of stock generally is disregarded for purposes of the section 4501(d) netting rule. An exception is provided if such an instrument is repurchased or acquired in a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, as applicable, but only if such instrument is issued or provided by the section 4501(d) covered corporation to its employees. The Treasury Department and the IRS are of the view that it is unlikely that an applicable specified affiliate would issue or provide an instrument that is not in the legal form of stock to its employees in connection with the employee's performance of services in its capacity as an employee. The Treasury Department and the IRS request comments on whether this provision should be retained, deleted, or modified to reflect actual practices of applicable specified affiliate issuing or providing instruments that are not in the legal form of stock as compensation for an employee's performance of services.

In section 6 of Notice 2023–2, the Treasury Department and the IRS also requested comments on whether, in cases in which a foreign partnership is the applicable specified affiliate, stock issued or provided to any employees of the foreign partnership should be taken into account, or whether the section 4501(d) netting rule should be applied to stock issued or provided only to employees of the domestic entity that is a direct or indirect partner.

One stakeholder recommended against adopting an approach that would distinguish between the treatment of domestic and foreign partnerships that are applicable specified affiliates because that approach would be inconsistent with the statute, which does not make that type of distinction.

The Treasury Department and the IRS agree with the stakeholder that the section 4501(d) proposed regulations should not distinguish between the treatment of domestic partnership and foreign partnerships in this respect for purposes of the section 4501(d) netting rule. Furthermore, section 4501(d)(1)(C) and (d)(2)(C) apply the section 4501(d) netting rule to ''employees *of* the specified affiliate'' and ''employees *of* the expatriated entity'' (*emphasis added*). The statute thus provides for netting with respect to stock issued or provided to employees of the applicable specified affiliate or the expatriated entity itself, and not to employees of partners or shareholders of the applicable specified affiliate or expatriated entity.

K. Rules Applicable Before April 13, 2024

Proposed § 58.4501–7(o) would provide rules that track section 3.05(2) of Notice 2023–2 and that would apply to transactions occurring on or after December 31, 2022, and before April 12, 2024. *See* proposed § 58.4501–7(r)(2). A section 4501(d) covered corporation may generally choose, in lieu of applying proposed § 58.4501–7(o) to this period, to apply the section 4501(d) proposed regulations (other than proposed §§ 58.4501–7(o) and (r)(1)–(2)), as finalized. *See* proposed § 58.4501–7(r)(3). Thus, a section 4501(d) covered corporation would have this option not to apply the rules in proposed § 58.4501–7(o) to any period. *See* part XVI.L of this Explanation of Provisions (discussion of applicability dates for proposed § 58.4501–7).

L. Applicability Dates

Proposed § 58.4501–7(r)(1) would provide that the section 4501(d) proposed regulations (other than proposed § 58.4501–7(o)) generally apply to transactions occurring after April 12, 2024. *See* section 7805(b)(1)(B) of the Code. Transactions would include a covered purchase after that date to which a covered funding that occurred on or after December 27, 2022, and on or before April 12, 2024 is allocated. *See* proposed § 58.4501–7(e)(1).

Proposed § 58.4501–7(r)(2) would provide that proposed § 58.4501–7(o) applies to transactions occurring on or after December 31, 2022, and on or before April 12, 2024. *See* section 7805(b)(1)(C). Transactions would include a covered purchase during this period that is funded by a funding that occurred on or after December 27, 2022, and on or before April 12, 2024. *See* proposed § 58.4501–7(o)(2).

Proposed § 58.4501–7(r)(3) would provide that a section 4501(d) covered corporation may generally choose instead to apply the section 4501(d) proposed regulations (other than proposed §§ 58.4501–7(o) and (r)(1)–(2)), as finalized, with respect to transactions occurring after December 31, 2022, subject to a consistency requirement. Transactions would include a covered purchase after December 31, 2022, to which a covered funding that occurred on or after December 27, 2022, is allocated. *See* proposed § 58.4501–7(e)(1).

XVII. Procedure and Administration

Subpart B of part 58, as proposed elsewhere in this issue of the **Federal Register**, would add rules on procedure and administration under sections 6001, 6011, 6060, 6061, 6065, 6071, 6091, 6107, 6109, 6151, 6694, 6695, and 6696 of the Code to prescribe the manner and method of reporting and paying the stock repurchase excise tax.

Effect on Other Documents

Notice 2023–2, 2023–3 I.R.B. 374, is obsoleted for repurchases, issuances, and provisions of stock of a covered

corporation occurring after April 12, 2024.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

The collections of information in these proposed regulations contain reporting, third-party disclosure, and recordkeeping requirements in §§ 58.4501–2(j)(6) and 58.4501–7(e)(2). This information is necessary for the IRS to accurately determine the stock repurchase excise tax due and is required by law to comply with the provisions of section 4501 of the Code as enacted by section 10201 of the Inflation Reduction Act of 2022. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The recordkeeping requirements mentioned within these proposed regulations are considered general tax records under section 6001. These records are required for the IRS to validate that taxpayers have met the regulatory requirements and are required as proof of their qualification for an exception to the stock repurchase excise tax. For PRA purposes, general tax records are already approved by OMB under 1545–0123 for business filers and 1545–0074 for individual filers.

The reporting and third-party disclosure requirements will be covered within Form 7208 and its instructions. The IRS is seeking OMB approval and requesting a new OMB control number for Form 7208 in accordance with the procedures outlined in 5 CFR 1320.10.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations apply only to publicly traded corporations, which tends to consist of larger businesses. Specifically, based on data available to the IRS, for tax year 2021, 4,366 corporations reported publicly traded common stock. Of those corporations, 2,407 (over 55 percent) reported gross receipts over $100 million, and 3,272 (approximately 75 percent) reported gross receipts over $10 million. Meanwhile, for tax year 2021, the IRS received 7,464,790 Corporation Income Tax Returns and 4,710,457 U.S. Returns of Partnership Income. IRS Publication 6292, Fiscal Year Projections for the United States: 2022–2029, Fall 2022, Table 2. Of these corporation and partnership returns for tax year 2021, 11,685,207 reported total assets below $10 million. Thus, the number of corporations affected by these proposed regulations that reported total assets below $10 million is less than one hundredth of one percent of the total number of businesses that reported total assets below $10 million for tax year 2021. Therefore, these proposed regulations will not create additional obligations for, or impose an economic impact on, a substantial number of small entities. Accordingly, the Secretary certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation.

These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (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 preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, including on forms related to the proposed regulations. In addition, the Treasury Department and the IRS request comments on the specific requests made in the Explanation of Provisions. All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on *https://www.regulations.gov.*

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, a notice of the date and time for the public hearing will be published in the **Federal Register**.

Statement of Availability of IRS Documents

Any IRS Revenue Procedure, Revenue Ruling, Notice, or other guidance cited in this document is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal authors of these proposed regulations are Samuel G. Trammell of the Office of Associate Chief Counsel (Corporate), Naomi Lehr of the Office of Associate Chief Counsel

(Employee Benefits, Exempt Organizations, and Employment Taxes), Jonathan A. LaPlante of the Office of Associate Chief Counsel (Financial Institutions and Products), and Brittany N. Dobi of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 58

Excise taxes, Stock repurchase excise tax, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR chapter 1 as follows:

PART 1—INCOME TAX

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1275–6 is amended by adding paragraph (f)(12)(iii) to read as follows:

§ 1.1275–6 Integration of qualifying debt instruments.

* * * * *

(f) * * *

(12) * * *

(iii) *Excise tax on repurchase of corporate stock.* If a taxpayer enters into an integrated transaction (for example, a convertible debt instrument integrated with one or more § 1.1275–6 hedges consisting of an option on the taxpayer's own stock), then, solely for purposes of section 4501 of the Code and the stock repurchase excise tax regulations (as defined in § 58.4501–1(b)(30) of this chapter), the taxpayer must apply the rules that would apply on a separate basis to the components of the integrated transaction rather than the rules that otherwise would apply to the integrated transaction under this section. Notwithstanding paragraph (j) of this section, this paragraph (f)(12)(iii) applies to an integrated transaction outstanding after December 31, 2022 (regardless of when such integrated transaction was entered into by the taxpayer).

* * * * *

■ **Par. 3.** Add part 58 to read as follows:

PART 58—STOCK REPURCHASE EXCISE TAX

Subpart A—Excise Tax on Stock Repurchases

Sec.

Subpart B [Reserved]

Authority: 26 U.S.C. 4501(f) and 7805.

Subpart A—Excise Tax on Stock Repurchases

§ 58.4501–0 Table of contents.

This section lists the major captions that appear in §§ 58.4501–1 through 58.4501–7.

§ 58.4501–1 Excise tax on stock repurchases.

(a) *Excise tax imposed.* Section 4501(a) of the Code imposes on each covered corporation an excise tax (stock repurchase excise tax) equal to the applicable percentage of the fair market value of any stock of the corporation that is repurchased by the corporation during the taxable year. This section and § 58.4501–2 provide generally applicable definitions and operating rules regarding the application of the stock repurchase excise tax and the computation of the stock repurchase excise tax liability of a covered corporation. Section 58.4501–3 provides rules regarding the application of the exceptions in section 4501(e) (other than the de minimis exception described in section 4501(e)(3), which is addressed in § 58.4501–2(b)(2)), and § 58.4501–4 provides rules regarding the application of section 4501(c)(3). Section 58.4501–5 provides examples that illustrate the application of section 4501 and the stock repurchase excise tax regulations. Section 58.4501–6 provides applicability dates for the stock repurchase excise tax regulations (other than § 58.4501–7). For special rules and examples regarding the application of section 4501(d) to acquisitions or repurchases of stock of certain foreign corporations, see § 58.4501–7.

(b) *Definitions.* The following definitions apply for purposes of this section and 58.4501–2 through 58.4501–6, and, to the extent provided in § 58.4501–7, for purposes of § 58.4501–7:

(1) *Acquisitive reorganization.* The term *acquisitive reorganization* means a transaction that qualifies as a reorganization under—

(i) Section 368(a)(1)(A) of the Code (A reorganization) (including by reason of section 368(a)(2)(D) or section 368(a)(2)(E) (reverse triangular merger));

(ii) Section 368(a)(1)(C);

(iii) Section 368(a)(1)(D) (D reorganization) (if the D reorganization satisfies the requirements of section 354(b)(1) of the Code); or

(iv) Section 368(a)(1)(G) (if the reorganization satisfies the requirements of section 354(b)(1)).

(2) *Applicable percentage.* The term *applicable percentage* means the percentage provided in section 4501(a).

(3) *Cessation date.* The term *cessation date* means the date on which all stock of a covered corporation ceases to be traded on an established securities market.

(4) *Clawback.* The term *clawback* means a surrender of stock pursuant to a contractual provision that requires an employee to return vested stock.

(5) *Controlled corporation.* The term *controlled corporation* has the meaning given the term in section 355(a)(1)(A) of the Code.

(6) *Covered corporation.* The term *covered corporation* means any domestic corporation (including within the meaning of paragraph (f) of this section) the stock of which is traded on an established securities market.

(7) *De minimis exception.* The term *de minimis exception* has the meaning given the term in § 58.4501–2(b)(2)(i).

(8) *Distributing corporation.* The term *distributing corporation* has the meaning given the term in section 355(a)(1)(A).

(9) *Economically similar transaction.* The term *economically similar transaction* means a transaction described in § 58.4501–2(e)(4).

(10) *Employee.* The term *employee* means an employee as defined in section 3401(c) of the Code and § 31.3401(c)-1 of this chapter, or a former employee, of the covered corporation or specified affiliate (as appropriate).

(11) *Employer-sponsored retirement plan*—(i) *In general.* The term *employer-sponsored retirement plan* means a retirement plan that is qualified under section 401(a) of the Code and maintained by a covered corporation or a specified affiliate of the covered corporation.

(ii) *ESOPs included.* The term *employer-sponsored retirement plan* includes an employee stock ownership plan described in section 4975(e)(7) of the Code (ESOP) that is maintained by a covered corporation or a specified affiliate of the covered corporation.

(12) *E reorganization.* The term *E reorganization* means a transaction that qualifies as a reorganization under section 368(a)(1)(E).

(13) *Established securities market.* The term *established securities market* has the meaning given the term in § 1.7704–1(b) of this chapter.

(14) *F reorganization.* The term *F reorganization* means a transaction that qualifies as a reorganization under section 368(a)(1)(F).

(15) *Forfeiture.* The term *forfeiture* means a surrender of stock to the issuing corporation for no consideration.

(16) *Initiation date.* The term *initiation date* means the date on which stock of a corporation begins to be traded on an established securities market.

(17) *IRS.* The term *IRS* means the Internal Revenue Service.

(18) *Netting rule.* The term *netting rule* has the meaning given the term in § 58.4501–4(a).

(19) *Qualifying property repurchase.* The term *qualifying property repurchase* has the meaning given the term in § 58.4501–3(c).

(20) *REIT.* The term *REIT* has the meaning given the term *real estate investment trust* in section 856(a) of the Code.

(21) *Reorganization exception.* The term *reorganization exception* has the meaning given the term in § 58.4501–3(c).

(22) *Repurchase.* The term *repurchase* has the meaning given the term in § 58.4501–2(e)(2).

(23) *RIC.* The term *RIC* has the meaning given the term *regulated investment company* in section 851 of the Code.

(24) *Section 317(b) redemption.* The term *section 317(b) redemption* means a redemption within the meaning of section 317(b) of the Code with regard to the stock of a covered corporation.

(25) *Specified affiliate.* The term *specified affiliate* means, with regard to any corporation—

(i) Any corporation more than 50 percent of the stock of which is owned (by vote or by value), directly or indirectly, by the corporation; and

(ii) Any partnership more than 50 percent of the capital interests or profits interests of which is held, directly or indirectly, by the corporation.

(26) *Split-off.* The term *split-off* means a distribution qualifying under section 355 (or so much of section 356 of the Code as relates to section 355) by a distributing corporation pursuant to which the shareholders of the distributing corporation exchange stock of the distributing corporation for stock of the controlled corporation and, if applicable, other property (including securities of the controlled corporation) or money.

(27) *Statutory exception.* The term *statutory exception* has the meaning given the term in § 58.4501–3(a).

(28) *Statutory references.* For purposes of this part—

(i) The term *chapter 1* means chapter 1 of the Code; and

(ii) The term *Code* means the Internal Revenue Code.

(29) *Stock*—(i) *In general.* The term *stock* means any instrument issued by a corporation that is stock (including treasury stock) or that is treated as stock for Federal tax purposes at the time of issuance, regardless of whether the instrument is traded on an established securities market.

(ii) *Additional tier 1 capital.* The term *stock* does not include preferred stock that—

(A) Qualifies as additional tier 1 capital (within the meaning of 12 CFR 3.20(c), 217.20(c), or 324.20(c)); and

(B) Does not qualify as common equity tier 1 capital (within the meaning of 12 CFR 3.20(b), 217.20(b), or 324.20(b)).

(30) *Stock repurchase excise tax.* The term *stock repurchase excise tax* has the meaning given the term in paragraph (a) of this section.

(31) *Stock repurchase excise tax base.* The term *stock repurchase excise tax base* has the meaning given the term in § 58.4501–2(c)(1).

(32) *Stock repurchase excise tax regulations.* The term *stock repurchase excise tax regulations* means the following provisions of 26 CFR chapter I:

(i) Subpart A of this part, which consists of this section and §§ 58.4501–2 through 58.4501–7.

(ii) Subpart B of this part.

(iii) Section 1.1275–6(f)(12)(iii) of this chapter, which provides that the integration of a qualifying debt instrument with a hedge pursuant to § 1.1275–6 of this chapter is not taken into account in determining whether and when stock is repurchased or issued.

(33) *Taxable year.* The term *taxable year* has the meaning given the term in section 7701(a)(23) of the Code.

(34) *Treasury stock.* The term *treasury stock* means treasury stock within the meaning of section 317(b).

(c) *No application for any purposes of chapter 1.* The rules of this part have no application for purposes of chapter 1.

(d) *Status as a domestic or foreign corporation.* If a corporation is, or is treated as, a domestic corporation for purposes of the Code or for purposes that include chapter 37 of the Code, then the corporation is a domestic corporation for purposes of the stock repurchase excise tax regulations. A corporation that is not a domestic corporation for purposes of the stock repurchase excise tax regulations is a foreign corporation for such purposes.

§ 58.4501–2 General rules regarding excise tax on stock repurchases.

(a) *Scope.* This section provides general rules regarding the application of the stock repurchase excise tax and the computation of the stock repurchase excise tax liability of a covered corporation. Paragraphs (b) and (c) of this section provide rules for computing a covered corporation's stock repurchase excise tax liability. Paragraph (d) of this section provides rules for determining whether a corporation is a covered corporation. Paragraph (e) of this section provides rules for determining whether a transaction is a repurchase. Paragraph (f) of this section provides rules for acquisitions of stock of a covered corporation by a specified affiliate of the covered corporation. Paragraph (g) of this section provides rules for determining when stock is repurchased. Paragraph (h) of this section provides rules for determining the fair market value of repurchased stock.

(b) *Computation of excise tax liability*—(1) *Imposition of tax.* Except as provided in paragraph (b)(2) of this section (regarding the de minimis exception), the amount of stock repurchase excise tax imposed on a covered corporation for a taxable year equals the product obtained by multiplying—

(i) The applicable percentage; by

(ii) The stock repurchase excise tax base of the covered corporation for the taxable year determined in accordance with paragraph (c)(1) of this section.

(2) *De minimis exception*—(i) *In general.* A covered corporation is not subject to the stock repurchase excise tax with regard to a taxable year if, during that taxable year, the aggregate fair market value of the stock described in paragraphs (b)(2)(i)(A) and (B) of this section does not exceed $1,000,000 (de minimis exception):

(A) The stock of the covered corporation that is repurchased by the covered corporation.

(B) The stock of the covered corporation that is acquired by a specified affiliate of the covered corporation.

(ii) *Determination.* A determination of whether the de minimis exception applies with regard to a taxable year is made before applying—

(A) Any statutory exception under § 58.4501–3; and

(B) Any adjustments pursuant to the netting rule under § 58.4501–4.

(c) *Stock repurchase excise tax base*—(1) *In general.* With regard to a covered corporation, the term *stock repurchase excise tax base* means the dollar amount (not less than zero) that is obtained by—

(i) Determining (in accordance with paragraphs (e) through (h) of this section) the aggregate fair market value of—

(A) The stock of the covered corporation that is repurchased by the covered corporation during the covered corporation's taxable year; and

(B) The stock of the covered corporation that is acquired by a specified affiliate of the covered corporation during the covered corporation's taxable year;

(ii) Reducing the amount determined under paragraph (c)(1)(i) of this section by the fair market value of the stock of the covered corporation repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation during the covered corporation's taxable year to the extent any statutory exceptions apply in accordance with § 58.4501–3; and then

(iii) Reducing the amount determined under paragraphs (c)(1)(i) and (ii) of this section by the aggregate fair market value of stock of the covered corporation issued by the covered corporation, or provided by a specified affiliate of the covered corporation, during the covered corporation's taxable year under the netting rule in accordance with § 58.4501–4.

(2) *Taxable year determination*—(i) *In general.* The determinations under paragraph (c)(1)(i) of this section are made separately for each covered corporation and for each taxable year of the covered corporation.

(ii) *No carrybacks or carryforwards.* Reductions under paragraphs (c)(1)(ii) and (iii) of this section in excess of the amount determined under paragraph (c)(1)(i) of this section with regard to a

covered corporation are not carried forward or backward to preceding or succeeding taxable years of the covered corporation.

(3) *Repurchases before January 1, 2023.* Stock of a covered corporation repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation before January 1, 2023 (as determined under paragraphs (e) through (g) of this section) is neither—

(i) Included in the stock repurchase excise tax base of the covered corporation; nor

(ii) Taken into account in determining the applicability of the de minimis exception.

(d) *Duration of covered corporation status*—(1) *Initiation date.* A corporation becomes a covered corporation at the beginning of the corporation's initiation date.

(2) *Cessation date*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a corporation ceases to be a covered corporation at the end of the corporation's cessation date.

(ii) *Repurchases after cessation date.* If a corporation ceases to be a covered corporation pursuant to a plan that includes a repurchase, and if the cessation date precedes the date on which any repurchase undertaken pursuant to the plan occurs (for example, if stock of a covered corporation ceases trading prior to completion of an acquisitive reorganization), then the corporation will continue to be a covered corporation with regard to each repurchase pursuant to the plan until the end of the date on which the last repurchase pursuant to the plan occurs.

(3) *Inbound and outbound F reorganizations*—(i) *Inbound F reorganization.* In the case of a foreign corporation that transfers its assets or that is treated as transferring its assets to a domestic corporation in an F reorganization (as described in § 1.367(b)–2(f) of this chapter), the corporation is not treated as a domestic corporation until the day after the reorganization.

(ii) *Outbound F reorganization.* In the case of a domestic corporation that transfers its assets or that is treated as transferring its assets to a foreign corporation in an F reorganization (as described in § 1.367(a)–1(e) of this chapter), the corporation is not treated as a foreign corporation until the day after the reorganization.

(e) *Repurchase*—(1) *Overview.* This paragraph (e) provides rules for determining whether a transaction is a repurchase. Paragraph (e)(2) of this section provides a general rule regarding the scope of the term *repurchase.* Paragraph (e)(3) of this section provides an exclusive list of transactions that are treated as a section 317(b) redemption but are not a repurchase. Paragraph (e)(4) of this section provides an exclusive list of transactions that are economically similar transactions. Paragraph (e)(5) of this section provides a non-exclusive list of transactions that are not repurchases. Paragraph (f) of this section provides rules regarding acquisitions of covered corporation stock by specified affiliates.

(2) *Scope of repurchase.* A *repurchase* means solely—

(i) A section 317(b) redemption, except as provided in paragraph (e)(3) of this section; or

(ii) An economically similar transaction described in paragraph (e)(4) of this section.

(3) *Certain section 317(b) redemptions that are not repurchases.* This paragraph (e)(3) provides an exclusive list of transactions that are section 317(b) redemptions but are not repurchases.

(i) *Section 304(a)(1) transactions*—(A) *Rule regarding deemed distributions.* If section 304(a)(1) of the Code applies to an acquisition of stock by an acquiring corporation (within the meaning of section 304(a)(1)), the acquiring corporation's deemed distribution in redemption of the acquiring corporation's stock (resulting from the application of section 304(a)(1)) is not a repurchase.

(B) *Scope of rule.* The rule described in paragraph (e)(3)(i)(A) of this section applies to a transaction described in paragraph (e)(3)(i)(A) of this section regardless of whether section 302(a) or (d) of the Code applies to the acquiring corporation's deemed distribution in redemption of its stock.

(C) *Rule regarding deemed issuances.* For the rule addressing the treatment of any stock deemed to be issued by the acquiring corporation as a result of the application of section 304(a)(1), *see* § 58.4501–4(f)(4).

(ii) *Payment by a covered corporation of cash in lieu of fractional shares.* A payment by a covered corporation of cash in lieu of a fractional share of the covered corporation's stock is not a repurchase if—

(A) The payment is carried out as part of a transaction that qualifies as a reorganization under section 368(a) or a distribution to which section 355 applies, or pursuant to the settlement of an option or similar financial instrument (for example, a convertible debt instrument or convertible preferred share);

(B) The cash received by the shareholder entitled to the fractional share is not separately bargained-for consideration (that is, the cash paid by the covered corporation in lieu of the fractional share represents a mere rounding off of the shares issued in the exchange or settlement);

(C) The payment is carried out solely for administrative convenience (and, therefore, solely for non-tax reasons); and

(D) The amount of cash paid to the shareholder in lieu of a fractional share does not exceed the fair market value of one full share of the class of stock of the covered corporation with respect to which the payment of cash in lieu of a fractional share is made.

(4) *Economically similar transactions.* This paragraph (e)(4) provides an exclusive list of transactions that are economically similar transactions. For rules regarding the statutory exceptions, *see* § 58.4501–3.

(i) *Acquisitive reorganizations.* In the case of an acquisitive reorganization in which the target corporation is a covered corporation, the exchange by the target corporation shareholders of their target corporation stock pursuant to the plan of reorganization is a repurchase by the target corporation.

(ii) *E reorganizations.* In the case of an E reorganization in which the recapitalizing corporation is a covered corporation, the exchange by the recapitalizing corporation shareholders of their recapitalizing corporation stock pursuant to the plan of reorganization is a repurchase by the recapitalizing corporation.

(iii) *F reorganizations.* In the case of an F reorganization in which the transferor corporation (as defined in § 1.368–2(m)(1) of this chapter) is a covered corporation, the exchange by the transferor corporation shareholders of their transferor corporation stock pursuant to the plan of reorganization is a repurchase by the transferor corporation.

(iv) *Split-offs.* In the case of a split-off by a distributing corporation that is a covered corporation, the exchange by the distributing corporation shareholders of their distributing corporation stock is a repurchase by the distributing corporation.

(v) *Complete liquidations to which both sections 331 and 332 apply.* In the case of a complete liquidation of a covered corporation to which sections 331 and 332(a) of the Code respectively apply to component distributions of the complete liquidation—

(A) Each distribution to which section 331 applies is a repurchase by the covered corporation; and

(B) The distribution to which section 332(a) applies is not a repurchase by the

covered corporation (*see* paragraph (e)(5)(i)(A) of this section).

(vi) *Certain forfeitures and clawbacks of stock*—(A) *In general.* In the case of a forfeiture or clawback of stock of a covered corporation pursuant to a legal or contractual obligation, the forfeiture or clawback is a repurchase by the covered corporation or acquisition by a specified affiliate of the covered corporation (as appropriate) on the date of forfeiture or clawback (as appropriate) if the stock was treated as issued or provided under § 58.4501–4(b) and the forfeiture or clawback of the stock (as appropriate) is described in paragraph (e)(4)(vi)(B), (C), or (D) of this section.

(B) *Stock subject to post-closing price adjustments.* The stock was issued pursuant to an acquisition of a target entity or its business, and the forfeiture of the stock was in accordance with the terms of the documents governing the transaction (for example, to compensate the acquiring corporation for breaches of representations or warranties made by the target entity, or because the business of the target entity did not achieve certain performance benchmarks agreed upon in the transaction documents).

(C) *Stock for which a section 83(b) election was made.* The stock was subject to a substantial risk of forfeiture within the meaning of section 83(a) of the Code on the date the stock was issued or provided, the service provider made a valid election under section 83(b) with regard to the stock, and the forfeiture resulted from the service provider failing to meet the vesting condition.

(D) *Clawbacks.* On the date the stock was issued or provided, the stock was subject to a clawback agreement, and a clawback of the stock resulted from the occurrence of an event specified in the clawback agreement.

(5) *Transactions that are not repurchases.* This paragraph (e)(5) provides a non-exclusive list of transactions that are not repurchases.

(i) *Complete liquidations generally.* Except as provided in paragraph (e)(4)(v)(A) of this section, the following is not a repurchase by a covered corporation:

(A) A distribution in complete liquidation of the covered corporation to which section 331 or 332(a) applies.

(B) A distribution pursuant to the resolution or plan of dissolution of the covered corporation that is reported on the original (but not a supplemented or an amended) IRS Form 966, *Corporate Dissolution or Liquidation* (or any successor form).

(C) A distribution pursuant to a deemed dissolution of the covered corporation (for instance, pursuant to a deemed liquidation under § 301.7701–3 of this chapter).

(ii) *Distributions during taxable year of complete liquidation or dissolution.* Unless paragraph (e)(4)(v) of this section applies, no distribution by a covered corporation during a taxable year of the covered corporation is a repurchase by the covered corporation if the covered corporation—

(A) Completely liquidates during the taxable year (that is, has a final distribution during the taxable year in a complete liquidation to which section 331 applies);

(B) Dissolves during the taxable year pursuant to the resolution or plan of dissolution as reported on the original (but not a supplemented or an amended) IRS Form 966, *Corporate Dissolution or Liquidation* (or any successor form); or

(C) Is deemed to dissolve during the taxable year (for instance, pursuant to a deemed liquidation under § 301.7701–3 of this chapter).

(iii) *Divisive transactions under section 355 other than split-offs*—(A) *In general.* Subject to paragraph (e)(5)(iii)(B) of this section, a distribution by a distributing corporation that is a covered corporation of stock of a controlled corporation qualifying under section 355 that is not a split-off is not a repurchase by the distributing corporation.

(B) *Exception regarding non-qualifying property in spin-offs.* A distribution by a distributing corporation that is a covered corporation of other property or money in exchange for stock of the distributing corporation is a repurchase by the distributing corporation if it occurs in pursuance of a transaction qualifying under section 355 in which the distribution by the distributing corporation of stock of the controlled corporation is with respect to stock of the distributing corporation.

(iv) *Non-redemptive distributions subject to section 301(c)(2) or (3).* A distribution to which section 301 of the Code applies by a covered corporation to a distributee is not a repurchase by the covered corporation if the distribution—

(A) Is subject to section 301(c)(2) or (3); and

(B) The distributee does not exchange stock of the covered corporation (and is not treated as exchanging stock of the covered corporation for Federal income tax purposes).

(v) *Net cash settlement of an option contract or other derivative financial instrument.* The net cash settlement of an option contract or other derivative financial instrument with respect to stock of a covered corporation is not a repurchase by the covered corporation. The net cash settlement of an instrument in the legal form of an option contract or other derivative financial instrument that is treated as stock for Federal tax purposes at the time of issuance is treated as a repurchase of that instrument, and therefore a repurchase by the covered corporation.

(f) *Acquisitions by specified affiliates*—(1) *Acquisitions of stock of a covered corporation by a specified affiliate treated as a repurchase.* If a specified affiliate of a covered corporation acquires stock of the covered corporation from a person that is not the covered corporation or another specified affiliate of the covered corporation, the acquisition is treated as a repurchase of the stock of the covered corporation by the covered corporation.

(2) *Determination of specified affiliate status*—(i) *Timing of determination.* A covered corporation must determine if another corporation or a partnership is a specified affiliate of the covered corporation if the determination is relevant for purposes of computing the stock repurchase excise tax with regard to the covered corporation.

(ii) *Indirect ownership.* For purposes of determining whether a corporation or a partnership is a specified affiliate of a covered corporation, the covered corporation is treated as indirectly owning stock in the corporation or holding capital or profits interests in the partnership in the percentage equal to the covered corporation's proportionate percentage of stock owned, or capital or profits interests held, through other entities.

(3) *Constructive specified affiliate acquisition*—(i) *General rule.* Except as provided in paragraph (f)(3)(ii) of this section, shares of stock of a covered corporation are treated as repurchased by the covered corporation if—

(A) A corporation or a partnership becomes a specified affiliate of the covered corporation;

(B) At the time the corporation or partnership becomes a specified affiliate of the covered corporation, the corporation or partnership owns such shares, and such shares represent more than one percent of the fair market value of the assets of the corporation or partnership as determined at such time; and

(C) The corporation or partnership acquired such shares after December 31, 2022.

(ii) *Stock previously treated as repurchased not subject to deemed repurchase more than once.* Paragraph

(f)(3)(i) of this section does not apply with regard to any shares of stock of a covered corporation—

(A) Held by the corporation or partnership described in paragraph (f)(3)(i) of this section at the time that it becomes a specified affiliate of the covered corporation; and

(B) That the covered corporation identifies as previously having been treated as repurchased by the covered corporation under paragraph (f)(3)(i) of this section when held by the corporation or partnership.

(iii) *Specific identification.* For purposes of paragraphs (f)(3)(i) and (ii) of this section, if the corporation or partnership described in paragraph (f)(3)(i) of this section is unable to specifically identify which shares of stock of the covered corporation the corporation or partnership is treated as holding at the time it becomes a specified affiliate of the covered corporation, the covered corporation must treat the corporation or partnership as holding the most recently acquired shares of the stock of the covered corporation.

(g) *Date of repurchase*—(1) *General rule.* In general, stock of a covered corporation is treated as repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation on the date on which ownership of the stock transfers to the covered corporation or specified affiliate (as appropriate) for Federal income tax purposes. To determine the date of repurchase in particular situations, *see* paragraphs (g)(2), (3), and (4) of this section.

(2) *Regular-way sale.* A regular-way sale of stock of a covered corporation (that is, a transaction in which a trade order is placed on the trade date, and settlement of the transaction, including payment and delivery of the stock, occurs a standardized number of days after the trade date that is set by a regulator) is treated as a repurchase by the covered corporation or an acquisition by a specified affiliate of the covered corporation on the trade date.

(3) *Repurchase pursuant to certain economically similar transactions.* Stock of a covered corporation repurchased in an economically similar transaction described in paragraph (e)(4) of this section is treated as repurchased on the date the shareholders of the covered corporation exchange their stock in the covered corporation.

(4) *Constructive specified affiliate acquisition.* Stock of a covered corporation that is treated as repurchased by the covered corporation under paragraph (f)(3)(i) of this section is treated as acquired by a specified affiliate on the date on which the other corporation or partnership described in paragraph (f)(3)(i) of this section becomes a specified affiliate of the covered corporation.

(h) *Fair market value of repurchased stock*—(1) *In general.* The fair market value of stock of a covered corporation that is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation is the market price of the stock on the date the stock is repurchased or acquired (as determined under paragraph (g) of this section). That is, if the price at which the repurchased or acquired stock is purchased differs from the market price of the stock on the date the stock is repurchased or acquired, the fair market value of the stock is the market price on the date the stock is repurchased or acquired.

(2) *Stock traded on an established securities market*—(i) *In general.* If stock of a covered corporation that is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation is traded on an established securities market, the covered corporation must determine the market price of the repurchased or acquired stock by applying one of the methods provided in paragraph (h)(2)(ii) of this section. For purposes of this paragraph (h)(2), repurchased or acquired stock of a covered corporation is treated as traded on an established securities market if any stock of the same class and issue of stock is so traded, regardless of whether the shares repurchased or acquired are so traded.

(ii) *Acceptable methods.* The following are acceptable methods for determining the market price of repurchased or acquired stock of a covered corporation traded on an established securities market:

(A) The daily volume-weighted average price as determined on the date the stock is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation.

(B) The closing price on the date the stock is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation.

(C) The average of the high and low prices on the date the stock is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation.

(D) The trading price at the time the stock is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation.

(iii) *Date of repurchase not a trading day.* For purposes of each method provided in paragraph (h)(2)(ii) of this section, if the date the stock of a covered corporation is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation is not a trading day, the date on which the market price is determined is the immediately preceding trading day.

(iv) *Consistency requirement*—(A) *Solely one method permitted for determining market price of repurchased or acquired stock.* The market price of repurchased or acquired stock of a covered corporation that is traded on an established securities market must be determined by consistently applying one (but not more than one) of the methods provided in paragraph (h)(2)(ii) of this section to all stock of the covered corporation repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation throughout the covered corporation's taxable year.

(B) *Application to netting rule.* Except as provided in the second sentence of this paragraph (h)(2)(iv)(B), the method used by the covered corporation under paragraph (h)(2)(iv)(A) of this section must be consistently applied to determine the market price of all stock of the covered corporation issued or provided under the netting rule throughout the covered corporation's taxable year. The consistency rule set forth in the first sentence of this paragraph (h)(2)(iv)(B) does not apply to the determination of the fair market value of stock of a covered corporation that the covered corporation issues, or that a specified affiliate of the covered corporation provides, in connection with the performance of services. *See* § 58.4501–4(e)(5).

(v) *Stock traded on multiple exchanges*—(A) *In general.* A covered corporation the stock of which is traded on multiple established securities markets must determine the market price of the stock of the covered corporation by reference to trading on the established securities market in the country in which the covered corporation is organized, including a regional established securities market that trades in that country.

(B) *Stock traded on multiple exchanges in country where covered corporation is organized.* If a covered corporation's stock is traded on multiple established securities markets in the country in which the covered corporation is organized, the covered corporation must determine the market price of the stock by reference to trading on the established securities market in that country with the highest trading volume in that stock in the prior taxable year.

(C) *Other cases in which stock is traded on multiple exchanges.* If stock of a covered corporation is traded on multiple established securities markets and neither paragraph (h)(2)(v)(A) nor (B) of this section applies, the covered corporation must determine the fair market value of its traded stock in a manner that is reasonable under the facts and circumstances.

(3) *Stock not traded on an established securities market*—(i) *General rule.* If repurchased or acquired stock of a covered corporation is not traded on an established securities market, the market price of the stock is determined as of the date the stock is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation under the principles of § 1.409A–1(b)(5)(iv)(B)(*1*) of this chapter.

(ii) *Consistency requirement*—(A) *Solely one method permitted for determining market price of repurchased or acquired stock.* The valuation method for determining the market price of repurchased or acquired stock of a covered corporation that is not traded on an established securities market must be used for all repurchases of stock of the covered corporation or acquisitions by a specified affiliate of the covered corporation of the same class throughout the covered corporation's taxable year, unless the application of that method to a particular repurchase or acquisition would be unreasonable under the facts and circumstances as of the valuation date within the meaning of § 1.409A–1(b)(5)(iv)(B)(*1*).

(B) *Application to netting rule.* Except as provided in the second sentence of this paragraph (h)(3)(ii)(B), the method used by the covered corporation under paragraph (h)(3)(ii)(A) of this section also must be consistently applied to determine the market price of all stock of the covered corporation of the same class issued under the netting rule throughout the covered corporation's taxable year. The consistency rule set forth in the first sentence of this paragraph (h)(3)(ii)(B) does not apply to the determination of the market price of stock of the covered corporation that is issued in connection with the performance of services or if the application of that method to a particular issuance would be unreasonable under the facts and circumstances as of the valuation date.

(4) *Market price of stock denominated in non-U.S. currency.* The market price of any stock of a covered corporation that is denominated in a currency other than the U.S. dollar is converted into U.S. dollars at the spot rate (as defined in § 1.988–1(d)(1) of this chapter) on the date the stock is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation.

§ 58.4501–3 Statutory exceptions.

(a) *Scope.* This section provides rules regarding the application of each *statutory exception* (that is, each exception set forth in section 4501(e) of the Code), other than the de minimis exception described in section 4501(e)(3) and subject to § 58.4501–2(b)(2), to a repurchase of stock of a covered corporation by the covered corporation or an acquisition of stock of a covered corporation by a specified affiliate of the covered corporation (as appropriate). For rules regarding the application of the statutory exceptions in the context of section 4501(d), *see* § 58.4501–7(m).

(b) *Reduction of covered corporation's stock repurchase excise tax base.* The fair market value of stock of a covered corporation repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation in a repurchase or acquisition described in this section is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base. *See* § 58.4501–2(c)(1)(ii).

(c) *Reorganization exception.* The fair market value of stock of a covered corporation repurchased by the covered corporation in a repurchase described in any of paragraphs (c)(1) through (4) of this section is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base (that is, the reorganization exception) to the extent that the repurchase is for property permitted by section 354 or 355 to be received without the recognition of gain or loss (each, a qualifying property repurchase):

(1) A repurchase by a target corporation in an acquisitive reorganization pursuant to the plan of reorganization.

(2) A repurchase by a recapitalizing corporation in an E reorganization pursuant to the plan of reorganization.

(3) A repurchase by a transferor corporation in an F reorganization pursuant to the plan of reorganization.

(4) A repurchase by a distributing corporation in a split-off (whether or not part of a D reorganization).

(d) *Stock contributions to an employer-sponsored retirement plan*—(1) *Reductions in computing covered corporation's stock repurchase excise tax base*—(i) *General rule.* The fair market value of stock of a covered corporation that is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base if the stock that is repurchased or acquired, or an amount of stock equal to the fair market value of the stock repurchased or acquired, is contributed to an employer-sponsored retirement plan. The amount of the reduction under this paragraph (d)(1) is determined as provided in paragraph (d)(3) or (4) of this section.

(ii) *Special rule for leveraged ESOPs.* If a covered corporation or a specified affiliate of the covered corporation maintains an ESOP with an exempt loan (as defined in section 4975(d)(3)), allocations of qualifying employer securities from the ESOP suspense account to ESOP participants' accounts that are attributable to employer contributions (and not to dividends) are treated as contributions of stock under this paragraph (d) as of the date stock attributable to repayment of the exempt loan is released from the suspense account and allocated to ESOP participants' accounts.

(2) *Classes of stock contributed to an employer-sponsored retirement plan.* This paragraph (d) applies to contributions of any class of covered corporation stock to an employer-sponsored retirement plan, regardless of the class of stock that was repurchased or acquired.

(3) *Same class of stock repurchased and contributed.* If stock of a covered corporation is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation, and stock of the covered corporation of the same class is contributed to an employer-sponsored retirement plan, the amount of the reduction under paragraph (d)(1) of this section is equal to the lesser of—

(i) The aggregate fair market value of the stock of the same class that was repurchased or acquired (as determined under § 58.4501–2(h)) during the covered corporation's taxable year; or

(ii) The amount obtained by—

(A) Determining the aggregate fair market value of all stock of that class repurchased or acquired (as determined under § 58.4501–2(h)) during the covered corporation's taxable year, reduced by the fair market value of shares of that class of stock that is a reduction to the stock repurchase excise tax base for the taxable year under a statutory exception other than the exception in this paragraph (d);

(B) Dividing the amount determined under paragraph (d)(3)(ii)(A) of this section by the number of shares of that class repurchased or acquired, reduced by the number of shares of that class of

stock the fair market value of which is a reduction to the stock repurchase excise tax base for the taxable year under a statutory exception other than the exception in this paragraph (d); and

(C) Multiplying the amount determined under paragraph (d)(3)(ii)(B) of this section by the number of shares of that class contributed to an employer-sponsored retirement plan for the taxable year.

(4) *Different class of stock repurchased and contributed*—(i) *In general.* Subject to paragraph (d)(4)(ii) of this section, if stock of a covered corporation is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation, and stock of the covered corporation of a different class is contributed to an employer-sponsored retirement plan, then the amount of the reduction under paragraph (d)(1) of this section is equal to the fair market value of the contributed stock at the time the stock is contributed to the employer-sponsored retirement plan.

(ii) *Maximum reduction permitted.* The amount of the reduction under paragraph (d)(4)(i) of this section must not exceed the aggregate fair market value of stock repurchased or acquired during the covered corporation's taxable year, reduced by the fair market value of any stock that is a reduction to the stock repurchase excise tax base for the taxable year under a statutory exception other than the exception in this paragraph (d).

(5) *Timing of contributions*—(i) *In general.* The reduction in the stock repurchase excise tax base, in accordance with paragraph (d)(1) of this section (that is, the reduction in computing the stock repurchase excise tax base), for a taxable year applies to contributions of covered corporation stock to an employer-sponsored retirement plan during the covered corporation's taxable year.

(ii) *Treatment of contributions after close of taxable year.* For purposes of paragraph (d)(1) of this section, a covered corporation may treat stock contributions to an employer-sponsored retirement plan made after the close of the covered corporation's taxable year as having been contributed during that taxable year if the following two requirements are satisfied:

(A) The stock must be contributed to the employer-sponsored retirement plan by the filing deadline for the form on which the stock repurchase excise tax must be reported (applicable form) that is due for the first full quarter after the close of the covered corporation's taxable year.

(B) The stock must be treated by the employer-sponsored retirement plan in the same manner that the plan would treat a contribution received on the last day of that taxable year.

(iii) *No duplicate reductions.* Stock contributions that are treated under paragraph (d)(5)(ii) of this section as having been contributed in the taxable year to which the applicable form applies may not be treated as having been contributed for any other taxable year for purposes of the stock repurchase excise tax.

(6) *Contributions before January 1, 2023.* A covered corporation with a taxable year that both begins before January 1, 2023, and ends after December 31, 2022, may include the fair market value of all contributions of its stock to an employer-sponsored retirement plan during the entirety of that taxable year for purposes of applying this paragraph (d).

(e) *Repurchases or acquisitions by a dealer in securities in the ordinary course of business*—(1) *In general.* Subject to paragraph (e)(2) of this section, the fair market value of stock of a covered corporation repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation (as appropriate) that is a dealer in securities (within the meaning of section 475(c)(1) of the Code) is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base to the extent the stock is acquired in the ordinary course of the dealer's business of dealing in securities.

(2) *Applicability.* The reduction described in paragraph (e)(1) of this section applies solely to the extent that—

(i) The dealer accounts for the stock as securities held primarily for sale to customers in the dealer's ordinary course of business;

(ii) The dealer disposes of the stock within a period of time that is consistent with the holding of the stock for sale to customers in the dealer's ordinary course of business, taking into account the terms of the stock and the conditions and practices prevailing in the markets for similar stock during the period in which the stock is held; and

(iii) The dealer (if it is a covered corporation) does not sell or otherwise transfer the stock to a specified affiliate of the covered corporation, or the dealer (if it is a specified affiliate of the covered corporation) does not sell or otherwise transfer the stock to the covered corporation or to another specified affiliate of the covered corporation, in each case other than in a sale or transfer to a dealer that also satisfies the requirements of this paragraph (e)(2).

(f) *Repurchases by a RIC or REIT.* The fair market value of stock of a covered corporation that is a RIC or a REIT that is repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base.

(g) *Repurchase treated as a dividend*—(1) *Reduction of covered corporation's stock repurchase excise tax base.* Except as provided in paragraph (g)(2)(ii) of this section, the fair market value of stock of a covered corporation repurchased by the covered corporation (excluding stock treated as repurchased under § 58.4501–2(f)(1) and (3)) is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base to the extent the repurchase is treated as a distribution of a dividend under section 301(c)(1) or 356(a)(2).

(2) *Rebuttable presumption of no dividend equivalence*—(i) *Presumption.* A repurchase to which section 302 or 356(a) applies is presumed to be subject to section 302(a) or 356(a)(1), respectively (and, therefore, is presumed ineligible for the exception in paragraph (g)(1) of this section).

(ii) *Rebuttal of presumption.* A covered corporation may rebut the presumption described in paragraph (g)(2)(i) of this section with regard to a specific shareholder solely by establishing with sufficient evidence that the shareholder treats the repurchase as a dividend on the shareholder's Federal income tax return.

(iii) *Sufficient evidence requirement.* To provide sufficient evidence under paragraph (g)(2)(ii) of this section to establish that the shareholder treats the repurchase as a dividend on the shareholder's Federal income tax return, the covered corporation must—

(A) Obtain certification from the shareholder, in accordance with paragraph (g)(3) of this section, that the repurchase constitutes a redemption treated as a distribution to which section 301 applies by reason of section 302(d), or that the repurchase has the effect of the distribution of a dividend under section 356(a)(2), including evidence that applicable withholding occurred if required;

(B) Treat the repurchase consistent with the shareholder certification required under paragraph (g)(2)(iii)(A) of this section;

(C) Have no knowledge of facts that would indicate that the shareholder certification required under paragraph

(g)(2)(iii)(A) of this section is incorrect; and

(D) Demonstrate sufficient earnings and profits to treat as a dividend either the redemption under section 302 or the receipt of money or other property under section 356.

(3) *Content of shareholder certification.* The shareholder certification required under paragraph (g)(2)(iii)(A) of this section must include the following information:

(i) The name of the shareholder.

(ii) The name of the covered corporation.

(iii) The total number of shares of the covered corporation outstanding immediately before and immediately after the repurchase.

(iv) A certification from the shareholder that either—

(A) The repurchase is a payment in exchange for stock because the shareholder's proportionate interest in the corporation has been reduced but not completely terminated;

(B) The repurchase is a payment in exchange for stock because the shareholder's interest in the corporation is completely terminated; or

(C) The repurchase is a dividend.

(v) With respect to the certification described in paragraph (g)(3)(iv) of this section—

(A) The number of shares actually and constructively owned by the shareholder before and after the repurchase; and

(B) The shareholder's percentage ownership before and after the repurchase.

(vi) With respect to the certification described in paragraph (g)(3)(iv)(C) of this section, if the shareholder is not a United States person (within the meaning of section 7701(a)(30)) and the shares are held through a broker (within the meaning of section 6045(c) of the Code), the certification also must include a statement that a copy of the certification has been provided to the shareholder's broker.

(vii) Any other information required by the IRS in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (*see* §§ 601.601(d)(2) and 601.602 of this chapter).

(viii) A penalties of perjury statement.

(ix) The signature of the shareholder and date of signature.

(4) *Agreement to shareholder certification.* After receiving the shareholder certification required under paragraph (g)(2)(iii)(A) of this section, the covered corporation must include on the shareholder certification a statement signed by the covered corporation under penalties of perjury that the covered corporation—

(i) Agrees to treat the repurchase consistent with the shareholder certification required under paragraph (g)(2)(iii)(A) of this section; and

(ii) Has no knowledge of facts that would indicate that the shareholder certification required under paragraph (g)(2)(iii)(A) of this section is incorrect.

(5) *Documentation of sufficient evidence*—(i) *Retention and availability of evidence.* A covered corporation must retain the evidence described in paragraph (g)(2)(iii) of this section and make that evidence available for inspection to the IRS if any of the evidence becomes material in the administration of any internal revenue law.

(ii) *Retention of supporting records.* The covered corporation must retain records of all information necessary to document and substantiate all content of the shareholder certification described in paragraph (g)(2)(iii)(A) of this section.

§ 58.4501–4 Application of netting rule.

(a) *Scope.* This section provides rules regarding the application of section 4501(c)(3) of the Code. Paragraph (b) of this section provides general rules regarding the adjustment to a covered corporation's stock repurchase excise tax base with respect to stock that is issued by the covered corporation or provided by a specified affiliate of the covered corporation (netting rule). Paragraph (c) of this section provides special rules for stock issued or provided in connection with the performance of services. Paragraph (d) of this section provides rules for determining the date on which stock is issued or provided. Paragraph (e) of this section provides rules for determining the fair market value of stock that is issued or provided. Paragraph (f) of this section sets forth the sole circumstances under which an issuance or provision of stock is disregarded for purposes of the netting rule. For rules regarding the application of the netting rule in the context of section 4501(d), *see* § 58.4501–7(n).

(b) *Issuances and provisions of stock that are a reduction in computing the stock repurchase excise tax base*—(1) *General rule.* Under the *netting rule* provided by this paragraph (b)(1), the aggregate fair market value of stock of a covered corporation is a reduction for purposes of computing the covered corporation's stock repurchase excise tax base for a taxable year if the stock is issued by the covered corporation or provided by a specified affiliate of the covered corporation in the following circumstances:

(i) Issued by the covered corporation during the covered corporation's taxable year in connection with the performance of services for the covered corporation by an employee or other service provider of the covered corporation.

(ii) Provided by a specified affiliate of the covered corporation in connection with the performance of services for the specified affiliate by an employee of the specified affiliate during the covered corporation's taxable year.

(iii) Issued by the covered corporation during the covered corporation's taxable year not in connection with the performance of services.

(2) *Stock issued or provided outside period of covered corporation status.* Any stock of a covered corporation issued by the covered corporation or provided by a specified affiliate of the covered corporation before the initiation date or after the cessation date is not taken into account under paragraph (b)(1) of this section. *See* § 58.4501–2(d).

(3) *Issuances or provisions before January 1, 2023.* Except as provided in paragraph (b)(2) of this section, a covered corporation with a taxable year that begins before January 1, 2023, and ends after December 31, 2022, must include the fair market value of all issuances or provisions of its stock during the entirety of that taxable year for purposes of applying paragraph (b)(1) of this section to that taxable year.

(4) *F reorganizations.* For purposes of this section, the transferor corporation and the resulting corporation (as defined in § 1.368–2(m)(1) of this chapter) in an F reorganization are treated as the same corporation.

(c) *Stock issued or provided in connection with the performance of services*—(1) *In general.* For purposes of this section, stock of a covered corporation is transferred by the covered corporation or a specified affiliate of the covered corporation in connection with the performance of services only if the transfer is described in section 83, including pursuant to a nonqualified stock option described in § 1.83–7 of this chapter, or is pursuant to a stock option described in section 421 of the Code. A specified affiliate of the covered corporation is not a service provider for purposes of this section.

(2) *Sale of shares to cover exercise price and withholding*—(i) *Payment or advance by third party equal to exercise price.* If a third party pays the exercise price of a stock option on behalf of a service provider or advances to a service provider an amount equal to the exercise price of a stock option that the service provider uses to exercise the option, then any stock transferred by the

covered corporation to the service provider, by a specified affiliate to the specified affiliate's employee, or by the covered corporation or specified affiliate to the third party upon exercise of the option in connection with exercising the option is treated as issued or provided in connection with the performance of the services.

(ii) *Advance by third party equal to withholding obligation.* If a third party advances an amount equal to the withholding obligation of a service provider, then any stock transferred by the covered corporation to the service provider, by a specified affiliate to the specified affiliate's employee, or by the covered corporation or specified affiliate to the third party in connection with this arrangement is treated as issued or provided in connection with the performance of services.

(d) *Date of issuance*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, stock of a covered corporation is treated as issued by the covered corporation or provided by a specified affiliate of the covered corporation on the date on which ownership of the stock transfers to the recipient for Federal income tax purposes.

(2) *Stock issued or provided in connection with the performance of services*—(i) *In general.* Stock of a covered corporation is issued by the covered corporation or provided by a specified affiliate of the covered corporation in connection with the performance of services as of the date the recipient of the stock is treated as the beneficial owner of the stock for Federal income tax purposes. In general, a recipient is treated as the beneficial owner of the stock when the stock is both transferred by the covered corporation (or a specified affiliate of the covered corporation) and substantially vested within the meaning of § 1.83–3(b) of this chapter. Thus, stock transferred pursuant to a vested stock award or restricted stock unit is issued or provided when the covered corporation or a specified affiliate of the covered corporation initiates payment of the stock. Stock transferred that is not substantially vested within the meaning of § 1.83–3(b) of this chapter is not issued or provided until it vests, except as provided in paragraph (d)(2)(iii) of this section.

(ii) *Stock options and stock appreciation rights.* Stock of a covered corporation transferred by the covered corporation or a specified affiliate of the covered corporation pursuant to an option described in § 1.83–7 of this chapter or section 421 or a stock appreciation right is issued by the covered corporation or provided by the specified affiliate of the covered corporation (as applicable) as of the date the option or stock appreciation right is exercised.

(iii) *Stock on which a section 83(b) election is made.* Stock of a covered corporation transferred by the covered corporation or a specified affiliate of the covered corporation when it is not substantially vested within the meaning of § 1.83–3(b) of this chapter, but as to which a valid election under section 83(b) is made, is treated as issued by the covered corporation or provided by the specified affiliate of the covered corporation (as applicable) as of the transfer date.

(e) *Fair market value of issued or provided stock*—(1) *In general.* Except as provided in paragraph (e)(5) of this section, the fair market value of stock of a covered corporation issued by the covered corporation or provided by a specified affiliate of the covered corporation is the market price of the stock on the date the stock is issued or provided.

(2) *Stock traded on an established securities market*—(i) *In general.* If stock of a covered corporation that is issued by the covered corporation is traded on an established securities market, the covered corporation must determine the market price of the stock by applying one of the methods provided in paragraph (e)(2)(ii) of this section.

(ii) *Acceptable methods.* The following are acceptable methods for determining the market price of stock of a covered corporation traded on an established securities market:

(A) The daily volume-weighted average price as determined on the date the stock is issued by the covered corporation.

(B) The closing price on the date the stock is issued by the covered corporation.

(C) The average of the high and low prices on the date the stock is issued by the covered corporation.

(D) The trading price at the time the stock is issued by the covered corporation.

(iii) *Date of issuance not a trading day.* For purposes of each method provided in paragraph (e)(2)(ii) of this section, if the date the stock of a covered corporation is issued by the covered corporation is not a trading day, the date on which the market price is determined is the immediately preceding trading day.

(iv) *Consistency requirement*—(A) *Solely one method permitted for determining market price of issued stock.* The market price of stock of a covered corporation that is traded on an established securities market must be determined by consistently applying solely one of the methods provided in paragraph (e)(2)(ii) of this section to all stock of the covered corporation issued by the covered corporation throughout the covered corporation's taxable year.

(B) *Application to repurchased stock.* The method used by the covered corporation under paragraph (e)(2)(ii)(A) of this section must be consistently applied to determine the market price of all stock of the covered corporation repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation throughout the covered corporation's taxable year. *See* § 58.4501–2(h)(2)(iv).

(v) *Stock traded on multiple exchanges. See* § 58.4501–2(h)(2)(v) for rules regarding the valuation of stock of a covered corporation traded on multiple established securities markets.

(3) *Stock not traded on an established securities market*—(i) *General rule.* If stock of a covered corporation is not traded on an established securities market, the market price of the stock is determined as of the date the stock is issued by a covered corporation under the principles of § 1.409A–1(b)(5)(iv)(B)(*1*) of this chapter.

(ii) *Consistency requirement.* In determining the market price of stock of a covered corporation that is not traded on an established securities market, the same valuation method must be used for all issuances of stock of the covered corporation belonging to the same class throughout the covered corporation's taxable year, unless the application of that method to a particular issuance would be unreasonable under the facts and circumstances as of the valuation date. That same method also must be consistently applied to determine the market price of all stock of the covered corporation of the same class repurchased by the covered corporation or acquired by a specified affiliate of the covered corporation throughout the covered corporation's taxable year, unless the application of that method to a particular issuance would be unreasonable under the facts and circumstances as of the valuation date. *See* § 58.4501–2(h)(3)(ii).

(4) *Market price of stock denominated in non-U.S. currency.* The market price of any stock of a covered corporation that is denominated in a currency other than the U.S. dollar is converted into U.S. dollars at the spot rate (as defined in § 1.988–1(d)(1) of this chapter) on the date the stock is issued by the covered corporation or provided by a specified affiliate of the covered corporation (as applicable).

(5) *Stock issued or provided in connection with the performance of services.* The fair market value of stock of a covered corporation issued by the covered corporation or provided by a specified affiliate of the covered corporation (as applicable) in connection with the performance of services is the fair market value of the stock, as determined under section 83, as of the date the stock is issued by the covered corporation or provided by the specified affiliate of the covered corporation (as applicable). For purposes of this section, the fair market value of the stock is determined under the rules provided in section 83 regardless of whether an amount is includible in the service provider's income under section 83 or otherwise. For example, the fair market value of stock issued by a covered corporation pursuant to a stock option described in section 421 and stock issued by a covered corporation to a nonresident alien for services performed outside of the United States is determined using the rules provided in section 83.

(f) *Issuances that are disregarded for purposes of applying the netting rule.* This paragraph (f) lists the sole circumstances in which an issuance of stock of a covered corporation is disregarded for purposes of the netting rule.

(1) *Distributions by a covered corporation of its own stock.* Stock of a covered corporation distributed by the covered corporation to its shareholders with respect to the covered corporation's stock is disregarded for purposes of the netting rule.

(2) *Issuances to a specified affiliate*—(i) *In general.* Subject to paragraphs (f)(2)(ii) through (iv) of this section, stock of a covered corporation issued by the covered corporation to a specified affiliate of the covered corporation, or issued by the covered corporation in connection with the performance of services by an employee or other service provider for a specified affiliate of the covered corporation, is disregarded for purposes of the netting rule.

(ii) *Subsequent transfer by specified affiliate.* Stock of a covered corporation issued by the covered corporation to a specified affiliate of the covered corporation that is subsequently transferred by the specified affiliate of the covered corporation to a person that is not a specified affiliate of the covered corporation is regarded for purposes of the netting rule, and is treated as issued by the covered corporation on the date of the subsequent transfer, only if—

(A) The subsequent transfer by the specified affiliate occurs within the same taxable year that the specified affiliate receives the stock from the covered corporation (*applicable year*);

(B) The covered corporation does not otherwise reduce its stock repurchase excise tax base for the applicable year with respect to the stock under this section; and

(C) The subsequent transfer by the specified affiliate is not in connection with the performance of services provided to the specified affiliate.

(iii) *Specific identification.* For purposes of paragraph (f)(2)(ii) of this section, unless specifically identified, the shares of stock of the covered corporation treated as subsequently transferred by the specified affiliate are the earliest shares issued by the covered corporation to the specified affiliate.

(iv) *Subsequent transfers in connection with the performance of services for a specified affiliate.* Stock issued by a covered corporation in connection with the performance of services for a specified affiliate is not treated as issued by the covered corporation. However, a transfer of stock of a covered corporation described in § 1.83–6(d) of this chapter (in addition to an actual provision of stock by a specified affiliate described in paragraph (b)(1)(ii) of this section) by a specified affiliate of the covered corporation to an employee of the specified affiliate is treated as a provision of stock described in paragraph (b)(1)(ii) of this section.

(3) *No double benefit for issuances that are part of a transaction to which the reorganization exception applies.* Stock of a covered corporation issued by the covered corporation as part of a transaction qualifying as a reorganization under section 368(a) or a distribution under section 355 is disregarded for purposes of the netting rule if—

(i) The stock constitutes property permitted to be received under section 354 or 355 without the recognition of gain;

(ii) The stock is used by another covered corporation (second covered corporation) to repurchase stock of the second covered corporation in a transaction that is a repurchase under § 58.4501–2(e)(4)(i), (ii), (iii), or (iv); and

(iii) The repurchase described in paragraph (f)(3)(ii) of this section is not included in the second covered corporation's stock repurchase excise tax base because that repurchase is a qualifying property repurchase.

(4) *Deemed issuances under section 304(a)(1).* Any stock treated as issued by the acquiring corporation by reason of the application of section 304(a)(1) to a transaction (as more fully described in § 58.4501–2(e)(3)(i)) is disregarded for purposes of the netting rule.

(5) *Deemed issuance of a fractional share.* Any fractional share of a covered corporation's stock deemed to be issued for Federal income tax purposes (in a payment described in § 58.4501–2(e)(3)(ii)) is disregarded for purposes of the netting rule.

(6) *Issuance by a covered corporation that is a dealer in securities.* Any stock of a covered corporation issued by the covered corporation that is a dealer in securities is disregarded for purposes of the netting rule to the extent the stock is issued, or otherwise is used to satisfy obligations to customers arising, in the ordinary course of the dealer's business of dealing in securities.

(7) *Issuance by the target corporation in a reverse triangular merger.* Any target corporation stock that is issued by the target corporation to the merged corporation (within the meaning of section 368(a)(2)(E)) in exchange for consideration that includes the stock of the controlling corporation (within the meaning of section 368(a)(2)(E)) in a transaction qualifying as a reverse triangular merger is disregarded for purposes of the netting rule.

(8) *Issuance as part of a section 1036(a) exchange.* Any stock of a covered corporation issued by the covered corporation in exchange for stock of the covered corporation in a transaction that qualifies under section 1036(a) of the Code is disregarded for purposes of the netting rule.

(9) *Issuance as part of a distribution under section 355.* Any stock issued by a controlled corporation in a distribution qualifying under section 355 (or so much of section 356 as relates to section 355) that is not a split-off is disregarded for purposes of the netting rule.

(10) *Stock contributions to an employer-sponsored retirement plan.* Any stock of a covered corporation contributed to an employer-sponsored retirement plan, any stock of a covered corporation treated as contributed to an employer-sponsored retirement plan under § 58.4501–3(d)(1)(ii) and (d)(5)(ii), and any stock of a covered corporation sold to a leveraged or non-leveraged ESOP, is disregarded for purposes of the netting rule.

(11) *Net exercises and share withholding*—(i) *In general.* Stock of a covered corporation withheld by the covered corporation or a specified affiliate of the covered corporation to satisfy the exercise price of a stock option issued in connection with the performance of services, or to pay any withholding obligation, is disregarded for purposes of the netting rule. For

example, stock of a covered corporation withheld by a covered corporation or a specified affiliate of the covered corporation to pay the exercise price of a stock option, to satisfy an employer's income tax withholding obligation under section 3402 of the Code, to satisfy an employer's withholding obligation under section 3102 of the Code, or to satisfy an employer's withholding obligation for State, local, or foreign taxes, is disregarded for purposes of the netting rule.

(ii) *Net share settlement not in connection with the performance of services.* Settlement in net shares of an option or other derivative financial instrument that is not issued in connection with the performance of services is treated as an issuance of the net shares delivered.

(12) *Settlement other than in stock.* Settlement of an option contract with respect to stock of a covered corporation using any consideration other than stock of the covered corporation (including cash) is disregarded for purposes of the netting rule.

(13) *Instrument not in the legal form of stock*—(i) *Generally disregarded.* Except as provided in paragraph (f)(13)(ii) of this section, the issuance by a covered corporation or provision by a specified affiliate of the corporation of an instrument that is not in the legal form of stock of the covered corporation but is treated as stock for Federal income tax purposes (*non-stock instrument*) is disregarded for purposes of the netting rule.

(ii) *Certain instruments treated as issued*—(A) *In general.* Subject to paragraphs (f)(13)(ii)(B), (C), and (D) of this section, if a non-stock instrument is repurchased by a covered corporation or acquired by a specified affiliate of the covered corporation, the issuance or provision of the instrument is regarded for purposes of the netting rule at the time of such repurchase or acquisition. For purposes of the stock repurchase excise tax regulations, the delivery of stock pursuant to the terms of a non-stock instrument is treated as a repurchase of the non-stock instrument in exchange for an issuance or provision of the stock that is delivered.

(B) *Issuance or provision before the initiation date or after the cessation date.* Any non-stock instrument issued by the covered corporation or provided by a specified affiliate of the covered corporation before the initiation date or after the cessation date is not regarded for purposes of the netting rule.

(C) *Identification of an instrument not in the legal form of stock.* The covered corporation must identify the repurchase or acquisition of a non-stock instrument as the repurchase or acquisition of a non-stock instrument on the return on which the stock repurchase excise tax must be reported for the covered corporation's taxable year in which the repurchase or acquisition occurs (*repurchase year*) in order for the issuance or provision to be regarded under paragraph (f)(13)(ii)(A) of this section.

(D) *Consistency requirement.* In the repurchase year of a non-stock instrument (*tested non-stock instrument*), the issuance or provision of the non-stock instrument is not regarded under paragraph (f)(13)(ii)(A) of this section unless the covered corporation reports or has reported the repurchase or acquisition of all other comparable non-stock instruments repurchased or acquired within the five taxable years ending on the last day of the repurchase year in a consistent manner. A comparable non-stock instrument is a non-stock instrument that has substantially similar economic terms as the tested non-stock instrument, regardless of whether the comparable non-stock instrument and the tested non-stock instrument have the same legal form. A comparable non-stock instrument is reported in a consistent manner if it is or was timely reported on the return on which the stock repurchase excise tax must be reported that is or was due for the first full quarter after the close of the repurchase year for such comparable non-stock instrument. Notwithstanding the first sentence of this paragraph (f)(13)(ii)(D), the issuance or provision of the tested non-stock instrument will be regarded if the covered corporation demonstrates to the satisfaction of the IRS that the covered corporation's failure to timely report the repurchase or acquisition of the comparable non-stock instruments was due to reasonable cause (within the meaning of § 1.6664–4 of this chapter) and not willful neglect. In determining whether this failure to report was due to reasonable cause and not willful neglect, the IRS will consider all the facts and circumstances, including the steps the covered corporation took to comply with its Federal tax reporting and payment obligations.

(E) *Fair market value of the instrument.* The amount of the reduction for purposes of computing the covered corporation's stock repurchase excise tax base for a taxable year under this section for the issuance or provision of a non-stock instrument is equal to the lesser of the fair market value of the instrument when the instrument was issued or provided within the meaning of paragraph (e) of this section or the fair market value of the instrument at the time of the repurchase by the covered corporation or acquisition by the specified affiliate of the covered corporation.

§ 58.4501–5 Examples.

(a) *Scope.* This examples in this section illustrate the application of section 4501 of the Code and the stock repurchase excise tax regulations other than the provisions of section 4501(d) and § 58.4501–7. *See* § 58.4501–7(p) and (q) for examples that illustrate the application of the rules in § 58.4501–7 related to section 4501(d)(1) and (2), respectively.

(b) *In general.* For purposes of the examples in this section, unless otherwise stated: each of Corporation X and unrelated Target is a covered corporation that is a calendar-year taxpayer; the only outstanding stock of each of Corporation X and Target is a single class of common stock that is traded on an established securities market; any shareholder whose stock is redeemed in a section 317(b) redemption qualifies for sale or exchange treatment under section 302(a); the de minimis exception does not apply; the receipt of money or other property by any shareholder whose stock is repurchased in an acquisitive reorganization or an E reorganization is not treated as having the effect of a distribution of a dividend under section 356(a)(2); the covered corporation determines the fair market value of its stock repurchased or issued based on the trading price of the stock at the time it is repurchased or issued; and any instrument that is not in the legal form of stock is not treated as stock for Federal income tax purposes.

(1) *Example 1: Redemption of preferred stock*—(i) *Facts.* Corporation X has outstanding common stock that is traded on an established securities market. Corporation X also has outstanding mandatorily redeemable preferred stock that is stock for Federal tax purposes but that is neither additional tier 1 capital nor traded on an established securities market. On January 1, 2024, Corporation X redeems the preferred stock pursuant to its terms.

(ii) *Analysis.* The redemption by Corporation X of its mandatorily redeemable preferred stock is a repurchase because Corporation X redeemed an instrument that is stock for Federal tax purposes (that is, mandatorily redeemable preferred stock issued by Corporation X) and the redemption is a section 317(b) redemption. *See* §§ 58.4501–1(b)(29) and 58.4501–2(e)(2)(i).

(2) *Example 2: Valuation of repurchase*—(i) *Facts.* On April 15, 2024, when the stock of Corporation X is trading at $0.70x per share, Corporation X purchases 50 shares of its stock for $35x from one of its shareholders on an established securities market. The shareholder is required to deliver the stock

to Corporation X within the standard settlement cycle for the stock (a regular-way sale), which is one business day after execution of the sale (that is, the trade date of April 15, 2024). On April 17, 2024, the 50 shares are delivered to Corporation X.

(ii) *Analysis.* Corporation X's purchase of 50 shares of Corporation X stock is a repurchase because the transaction is a section 317(b) redemption. *See* § 58.4501–2(e)(2)(i). For purposes of computing Corporation X's stock repurchase excise tax base, the trade date of April 15, 2024, is the date of repurchase. *See* § 58.4501–2(g)(1). The fair market value of the 50 shares of stock repurchased on April 15, 2024, is the aggregate market price of those shares on the date of repurchase, or $35x ($0.70x per share x 50 shares = $35x). *See* § 58.4501–2(h)(1). Accordingly, the repurchase by Corporation X increases its stock repurchase excise tax base for the 2024 taxable year by $35x.

(iii) *Application of netting rule.* The facts are the same as in paragraph (b)(2)(i) of this section (*Example 2*), except that, on August 1, 2024, Corporation X issues 20 shares of its stock to an unrelated party, at which time ownership of the stock transfers to the unrelated party for Federal income tax purposes. On that date, the stock of Corporation X is trading at $0.50x per share. For purposes of computing Corporation X's stock repurchase excise tax base, Corporation X is treated as issuing the 20 shares of its stock on August 1, 2024 (that is, the date on which ownership of the stock transfers to the recipient for Federal income tax purposes). *See* § 58.4501–4(d)(1). The fair market value of that issued stock is its aggregate market price on the date of issuance by Corporation X, or $10x ($0.50x per share x 20 shares = $10x). *See* § 58.4501–4(e)(1). Accordingly, the net increase in Corporation X's stock repurchase excise tax base for its 2024 taxable year is $25x ($35x repurchase − $10x issuance = $25x). *See* § 58.4501–2(c)(1).

(3) *Example 3: Acquisition partially funded by the target corporation*—(i) *Facts.* On May 30, 2024, Corporation X acquires all of Target's outstanding stock (Target Stock Acquisition). To effectuate the Target Stock Acquisition, Corporation X causes the following transactions steps to occur. First, Corporation X contributes $40x to a newly formed corporation (Merger Sub). Second, Merger Sub merges into Target, with Target surviving the merger (Subsidiary Merger). At the time of the Subsidiary Merger, the stock of Target has an aggregate fair market value of $100x. In the Subsidiary Merger, Target's shareholders exchange all their Target stock for $100x of cash, of which $60x is funded by Target and $40x is funded by Corporation X. For Federal income tax purposes, the transitory existence of Merger Sub is disregarded, and Target is treated as if Target redeemed 60 percent of its outstanding stock for $60x as part of the Subsidiary Merger. (This treatment results from the fact that Target funded $60x of the consideration received by Target's shareholders in exchange for their Target stock.) All of Target's stock ceases to trade on an established securities market upon completion of the Target Stock Acquisition.

(ii) *Analysis.* Target ceases to be a covered corporation at the end of the day on May 30, 2024 (that is, the cessation date of Target). *See* § 58.4501–2(d)(2). Target's redemption of 60 percent of its outstanding stock is a redemption within the meaning of section 317(b) with regard to the stock of a covered corporation. *See* § 58.4501–1(b)(24). In addition, Target's redemption is not included in the exclusive list of transactions under § 58.4501–2(e)(3) that are treated as a section 317(b) redemption but are not a repurchase. Accordingly, the redemption is a repurchase. *See* § 58.4501–2(e)(2). Therefore, as a result of the Target Stock Acquisition, Target's stock repurchase excise tax base for its 2024 taxable year is increased by $60x. *See* § 58.4501–2(c)(1).

(4) *Example 4: Leveraged buyout*—(i) *Facts.* The facts are the same as in paragraph (b)(3)(i) of this section (*Example 3*), except that $60x of the consideration received by Target's shareholders in exchange for their Target stock is funded by a $60x loan to Merger Sub from an unrelated lender. In the Subsidiary Merger, Target assumes Merger Sub's obligation on the $60x loan. As a result of the disregarded transitory existence of Merger Sub, the Target Stock Acquisition is treated for Federal income tax purposes as though Target directly borrowed $60x from the unrelated lender and then used the loan proceeds to redeem $60x of its stock from the Target shareholders.

(ii) *Analysis.* The analysis is the same as in paragraph (b)(3)(ii) of this section (*Example 3*).

(5) *Example 5: Pro rata stock split*—(i) *Facts.* On October 1, 2024, Corporation X distributes three shares of Corporation X stock with respect to each existing share of its outstanding stock (Corporation X Stock Split).

(ii) *Analysis.* The stock distributed by Corporation X to its shareholders through the Corporation X Stock Split is disregarded for purposes of the netting rule because Corporation X distributed the stock to its shareholders with respect to its outstanding stock. *See* § 58.4501–4(f)(1). Accordingly, the Corporation X Stock Split is not taken into account in computing Corporation X's stock repurchase excise tax base for its 2024 taxable year. *See* § 58.4501–2(c)(1) (regarding the computation of the stock repurchase excise tax base).

(6) *Example 6: Acquisition of a target corporation in an acquisitive reorganization*—(i) *Facts.* On October 1, 2024, Target merges into Corporation X in a transaction that qualifies as an A reorganization (Target Merger). On the date of the Target Merger, the fair market value of Target's outstanding stock is $100x. In the Target Merger, Target's shareholders exchange $60x of their Target stock for Corporation X stock and $40x of their Target stock for $40x of cash.

(ii) *Analysis regarding repurchase treatment, timing, and amount.* The exchange by the Target shareholders of their Target stock for the consideration received in the Target Merger is a repurchase by Target because the exchange is an economically similar transaction. *See* § 58.4501–2(e)(2)(ii) and (e)(4)(i). This repurchase occurs on October 1, 2024 (that is, the date on which the Target shareholders exchange their Target shares as part of the Target Merger). *See* § 58.4501–2(g)(2). The amount of this repurchase by Target is $100x, which equals the aggregate fair market value of the Target stock on the date the stock is exchanged by the Target shareholders as part of the Target Merger (that is, October 1, 2024). *See* § 58.4501–2(h)(1).

(iii) *Analysis regarding impact of Target Merger on Target's stock repurchase excise tax base.* Target's stock repurchase excise tax base for its 2024 taxable year initially is increased by $100x on account of the Target Merger. *See* § 58.4501–2(c)(1)(i). Under the reorganization exception, the fair market value of the Target stock exchanged by the Target shareholders for Corporation X stock in the Target Merger (that is, $60x) is a reduction in Target's stock repurchase excise tax base. *See* §§ 58.4501–2(c)(1)(ii) and 58.4501–3(c)(1) (regarding acquisitive reorganizations). However, the fair market value of the Target stock exchanged by the Target shareholders for $40x of cash in the Target Merger does not qualify for the reorganization exception. *See* § 58.4501–3(c). Therefore, Target's stock repurchase excise tax base for its 2024 taxable year is increased by $40x ($100x repurchase − $60x exception = $40x) as a result of the Target Merger.

(iv) *Analysis regarding impact of Target Merger on Corporation X's stock repurchase excise tax base.* Corporation X's transfer of Corporation X stock to Target in the Target Merger is disregarded for purposes of the netting rule because Corporation X's issuance of that stock is part of a transaction to which the reorganization exception applies. *See* § 58.4501–4(f)(3) (disregarding such types of issuances to ensure no double benefit). Specifically, Corporation X's transfer of Corporation X stock to Target is disregarded for purposes of the netting rule because the Corporation X stock constitutes property permitted to be received under section 354 without the recognition of gain, the Corporation X stock is used by a covered corporation (that is, Target) to repurchase its stock in a transaction that is a repurchase under § 58.4501–2(e)(4)(i), and the repurchase by Target is not included in Target's stock repurchase excise tax base because it is a qualifying property repurchase. *See id.* Therefore, Corporation X does not take into account any of the $60x of its stock transferred to Target in the Target Merger in computing Corporation X's stock repurchase excise tax base for its 2024 taxable year under § 58.4501–4(b)(1).

(7) *Example 7: Cash paid in lieu of fractional shares*—(i) *Facts.* The facts are the same as in paragraph (b)(6)(i) of this section (*Example 6*). Additionally, the exchange ratio in the Target Merger is 1.25 shares of Corporation X stock for each share of Target stock. As part of the Target Merger, Shareholder A (who owns two shares of Target stock) receives two shares of Corporation X stock as well as cash in lieu of a 0.5 fractional share in Corporation X. The payment by Corporation X to Shareholder A of cash in lieu of a fractional share of Corporation X stock was not separately bargained-for consideration (that is, the cash paid by Corporation X in lieu of the fractional shares represented a mere

rounding off of the two Corporation X shares issued to Shareholder A in the exchange). In addition, the payment by Corporation X to Shareholder A of cash in lieu of a fractional share of Corporation X stock was carried out solely for administrative convenience (and therefore, solely for non-tax reasons) and was for an amount of cash that did not exceed the value of one full share of Corporation X stock.

(ii) *Analysis.* The payment by Corporation X of cash to Shareholder A in lieu of a fractional share of Corporation X stock is treated for Federal income tax purposes as though the 0.5 fractional share were distributed by Corporation X to Shareholder A as part of the Target Merger and then redeemed by Corporation X for cash. This deemed redemption is not a repurchase because the payment of cash in lieu of a fractional share satisfies the requirements of § 58.4501–2(e)(3)(ii). In addition, Corporation X's deemed issuance of the fractional share to Shareholder A is disregarded for purposes of the netting rule. *See* § 58.4501–4(f)(5).

(8) *Example 8: Two-step asset acquisition*—(i) *Facts.* Corporation X acquires the assets of Target through the following transaction steps pursuant to an integrated plan to effect the acquisition. First, on September 30, 2024, Corporation X contributes $60x of Corporation X stock and $40x of cash to a newly formed subsidiary (Merger Sub). Second, on October 1, 2024, Merger Sub merges into Target in a statutory merger, with Target surviving (Subsidiary Merger). Third, on October 15, 2024, Target merges into Corporation X in a statutory merger (Upstream Merger). On the date of the Subsidiary Merger, the fair market value of Target's outstanding stock is $100x. In the Subsidiary Merger, $60x of Target stock is exchanged for Corporation X stock, and $40x of Target stock is exchanged for $40x of cash. For Federal income tax purposes, the Subsidiary Merger and the Upstream Merger are integrated into a single statutory merger of Target into Corporation X that qualifies as an A reorganization.

(ii) *Analysis.* The analysis is the same as in paragraph (b)(6) of this section (*Example 6*).

(9) *Example 9: E reorganization*—(i) *Facts.* On November 1, 2024, Corporation X issues new stock, with an aggregate fair market value of $100x (New Common Stock), to its shareholders in exchange for their outstanding stock in Corporation X (Old Common Stock). The exchange (Recapitalization) qualifies as an E reorganization. At the time of the Recapitalization, the fair market value of Corporation X's Old Common Stock is $100x.

(ii) *Analysis regarding repurchase treatment, timing, and amount.* The exchange by the Corporation X shareholders of their Old Common Stock for New Common Stock in the Recapitalization pursuant to the plan of reorganization is a repurchase by Corporation X because that exchange is an economically similar transaction. *See* § 58.4501–2(e)(2)(ii) and (e)(4)(ii). This repurchase occurs on November 1, 2024 (that is, the date on which the Target shareholders exchange their old Common Stock pursuant to the plan of reorganization). *See* § 58.4501–2(g)(2). The amount of this repurchase by Corporation X is $100x, which equals the aggregate fair market value of the Old Common Stock on the date that stock is exchanged by the Corporation X shareholders pursuant to the plan of reorganization (that is, November 1, 2024). *See* § 58.4501–2(h)(1).

(iii) *Analysis regarding impact of repurchase of Old Common Stock on Corporation X's stock repurchase excise tax base.* Corporation X's stock repurchase excise tax base for its 2024 taxable year initially is increased by $100x on account of the Recapitalization. *See* § 58.4501–2(c)(1)(i). Under the reorganization exception, the fair market value of the Old Common Stock exchanged by the Corporation X shareholders for New Common Stock in the Recapitalization (that is, $100x) is a qualifying property repurchase that reduces the amount of Corporation X's stock repurchase excise tax base. *See* §§ 58.4501–2(c)(1)(ii) and § 58.4501–3(c)(2). Consequently, because all the Old Common Stock was exchanged by the Corporation X shareholders for New Common Stock, the Recapitalization does not increase Corporation X's stock repurchase excise tax base for its 2024 taxable year ($100x repurchase − $100x exception = $0).

(iv) *Analysis regarding impact of issuance of New Common Stock on Corporation X's stock repurchase excise tax base.* Corporation X's issuance of the New Common Stock is disregarded for purposes of the netting rule because Corporation X's issuance of that stock is part of a transaction to which the reorganization exception applies. *See* § 58.4501–4(f)(3) (disregarding such types of issuances to ensure no double benefit). Specifically, Corporation X's issuance of its New Common Stock to Corporation X's shareholders is disregarded for purposes of the netting rule because the New Common Stock constitutes property permitted to be received under section 354 without the recognition of gain, the New Common Stock is used by a covered corporation (that is, Corporation X) to repurchase its stock in a transaction that is a repurchase under § 58.4501–2(e)(4)(ii), and the repurchase by Corporation X is not included in Corporation X's stock repurchase excise tax base for its 2024 taxable year because it is a qualifying property repurchase. *See id.* Therefore, Corporation X does not take into account any of the $100x of New Common Stock issued to its shareholders in computing its stock repurchase excise tax base for its 2024 taxable year under § 58.4501–4(b)(1).

(10) *Example 10: F reorganization*—(i) *Facts.* Corporation X is a State A corporation. In order to reorganize under the laws of State B, on November 15, 2024, Corporation X forms Corporation Y (a State B corporation) and merges into Corporation Y in a transaction (Corporation X Redomiciliation) that qualifies as an F reorganization. On the date of the Corporation X Redomiciliation, the fair market value of Corporation X's stock is $100x. Shareholder A owns $25x of Corporation X's outstanding stock. In the Corporation X Redomiciliation, Shareholder A transfers all its Corporation X stock to Corporation X in exchange for $25x of cash, which is treated for Federal income tax purposes as an unrelated, separate transaction from the Corporation X Redomiciliation to which section 302(a) applies (Shareholder A Redemption). *See* § 1.368–2(m)(3)(iii) of this chapter. The remaining Corporation X shareholders exchange their Corporation X stock for Corporation Y stock as part of the Corporation X Redomiciliation.

(ii) *Analysis regarding repurchase treatment, timing, and amount.* The exchange by Shareholder A of its Corporation X stock is a repurchase by Corporation X in the amount of $25x because it is a section 317(b) redemption. *See* § 58.4501–2(e)(2)(i). In addition, the exchange by Corporation X's other shareholders of their Corporation X stock for Corporation Y stock is a repurchase by Corporation X in the amount of $75x because that exchange is an economically similar transaction. *See* § 58.4501–2(e)(2)(ii) and (e)(4)(iii). These repurchases occur on November 15, 2024 (that is, the date on which the Corporation X shareholders transfer their Corporation X stock to Corporation X as part of the transaction). *See* § 58.4501–2(g)(1) and (2). The total amount of these repurchases by Corporation X is $100x, which equals the sum of $25x (the fair market value of the Corporation X stock redeemed in the Shareholder A Redemption on the date of the redemption) and $75x (the aggregate fair market value of the Corporation X stock on the date that stock is exchanged by the remaining Corporation X shareholders as part of the Corporation X Redomiciliation (that is, November 15, 2024)). *See* § 58.4501–2(h)(1).

(iii) *Analysis regarding impact of Shareholder A Redemption and Corporation X Redomiciliation on Corporation X's stock repurchase excise tax base.* Corporation X's stock repurchase excise tax base for its 2024 taxable year initially is increased by $100x on account of the Shareholder A Redemption and the Corporation X Redomiciliation. *See* § 58.4501–2(c)(1)(i). Under the reorganization exception, the fair market value of the Corporation X stock exchanged by the Corporation X shareholders for Corporation Y stock in the Corporation X Redomiciliation (that is, $75x) is a qualifying property repurchase that reduces the amount of Corporation X's stock repurchase excise tax base. *See* §§ 58.4501–2(c)(1)(ii) and 58.4501–3(c)(3). Accordingly, Corporation X's stock repurchase excise tax base for its 2024 taxable year is increased by $25x ($25x repurchase + ($75x repurchase − $75x exception) = $25x) because of the Corporation X Redomiciliation.

(iv) *Analysis regarding impact of Corporation X Redomiciliation on Corporation Y's stock repurchase excise tax base.* Corporation Y's transfer of the $75x of its stock to Corporation X in the Corporation X Redomiciliation is disregarded for purposes of the netting rule because Corporation Y's issuance of that stock is part of a transaction to which the reorganization exception applies. *See* § 58.4501–4(f)(3) (disregarding such types of issuances to ensure no double benefit). Specifically, Corporation Y's transfer of its stock to Corporation X is disregarded for purposes of the netting rule because the Corporation Y

stock constitutes property permitted to be received under section 354 without the recognition of gain, the Corporation Y stock is used by a covered corporation (that is, Corporation X) to repurchase its stock in a transaction that is a repurchase under § 58.4501–2(e)(4)(iii), and the repurchase by Corporation X is not included in Corporation X's stock repurchase excise tax base for its 2024 taxable year because it is a qualifying property repurchase. *See id.* Therefore, Corporation Y does not take into account any of the $75x of its stock transferred to Corporation X in computing Corporation Y's stock repurchase excise tax base for its 2024 taxable year under § 58.4501–4(f)(2)(i).

(11) *Example 11: Section 355 split-off*—(i) *Facts.* Corporation X owns all the stock of a pre-existing subsidiary (Controlled). On December 1, 2024, Corporation X distributes all the stock of Controlled and $20x of cash to certain of its shareholders (Participating Shareholders) in exchange for $100x of Corporation X stock in a split-off (Corporation X Split-Off). On the date of the Corporation X Split-Off, the Corporation X stock has a fair market value of $100x, and the Controlled stock has a fair market value of $80x.

(ii) *Analysis regarding repurchase treatment, timing, and amount.* The exchange by the Participating Shareholders of their Corporation X stock for the $80x of Controlled stock and $20x of cash in the Corporation X Split-Off is a repurchase by Corporation X because the exchange is an economically similar transaction. *See* § 58.4501–2(e)(2)(ii) and (e)(4)(iv). This repurchase occurs on December 1, 2024 (that is, the date on which the Participating Shareholders exchange their Corporation X stock as part of the Corporation X Split-Off). *See* § 58.4501–2(g)(2). The amount of the repurchase by Corporation X is $100x, which equals the aggregate fair market value of the Corporation X stock on the date the stock is exchanged by the Participating Shareholders in the Corporation X Split-Off (that is, December 1, 2024). *See* § 58.4501–2(h)(1).

(iii) *Analysis regarding impact of Corporation X Split-Off on Corporation X's stock repurchase excise tax base.* Corporation X's stock repurchase excise tax base for its 2024 taxable year initially is increased by $100x on account of the Corporation X Split-Off. However, under the reorganization exception, the fair market value of the Corporation X stock exchanged by the Participating Shareholders for Controlled stock in the Corporation X Split-Off (that is, $80x) is a qualifying property repurchase that reduces the amount of Corporation X's stock repurchase excise tax base. *See* §§ 58.4501–2(c)(1)(ii) and 58.4501–3(c)(4). The fair market value of the Corporation X stock exchanged by the Participating Shareholders for the $20x of cash in the Corporation X Split-Off does not qualify for the reorganization exception. *See* § 58.4501–3(c). Therefore, Corporation X's stock repurchase excise tax base for its 2024 taxable year is increased by $20x ($100x repurchase − $80x exception = $20x) as a result of the Corporation X Split-Off.

(12) *Example 12: Section 355 split-off as part of a D reorganization*—(i) *Facts.* The facts are the same as in paragraph (b)(11)(i) of this section (*Example 11*), except that Controlled is a newly formed corporation, and the Corporation X Split-Off is carried out as part of a transaction qualifying as a D reorganization in which Corporation X transfers assets to Controlled.

(ii) *General analysis.* Except as described in paragraph (b)(12)(iii) of this section, the analysis is the same as in paragraphs (b)(11)(ii) and (iii) of this section (*Example 11*).

(iii) *Analysis regarding Controlled's stock repurchase excise tax base.* Controlled's transfer of $80x of its stock to Corporation X in the Corporation X Split-Off is disregarded for purposes of the netting rule because Controlled's issuance of that stock is part of a transaction to which the reorganization exception applies. *See* § 58.4501–4(f)(3) (disregarding such types of issuances to ensure no double benefit). Specifically, Controlled's transfer of its stock to Corporation X is disregarded for purposes of the netting rule because the Controlled stock constitutes property permitted to be received under section 355 without the recognition of gain, the Controlled stock is used by a covered corporation (that is, Corporation X) to repurchase its stock in a transaction that is a repurchase under § 58.4501–2(e)(4)(iv), and the repurchase by Corporation X is not included in Corporation X's stock repurchase excise tax base for its 2024 taxable year because it is a qualifying property repurchase. *See id.* Controlled's transfer of its stock to Corporation X also is disregarded for purposes of the netting rule because Controlled is not a covered corporation at the time of the transfer. *See* § 58.4501–2(d)(1). Therefore, Controlled does not take into account any of the $80x of its stock transferred to Corporation X in computing Controlled's stock repurchase excise tax base for its 2024 taxable year under § 58.4501–4(b)(1).

(13) *Example 13: Spin-off*—(i) *Facts.* The facts are the same as in paragraph (b)(11)(i) of this section (*Example 11*), except that Corporation X distributes the Controlled stock and cash to its shareholders pro rata without the shareholders exchanging any Corporation X stock (Corporation X Spin-Off).

(ii) *Analysis.* The Corporation X Spin-Off is not a repurchase by Corporation X. *See* § 58.4501–2(e)(5)(iii).

(14) *Example 14: Section 355 spin-off as part of a D reorganization*—(i) *Facts.* The facts are the same as in paragraph (b)(13)(i) of this section (*Example 13*), except that Controlled is a newly formed corporation, the Corporation X Spin-Off is carried out as part of a transaction qualifying as a D reorganization in which Corporation X transfers assets to Controlled, and Corporation X receives the $20x of cash from Controlled and distributes the cash to certain of Corporation X's shareholders in exchange for Corporation X stock.

(ii) *Analysis regarding Corporation X.* The distribution by Corporation X of the $80x of stock of Controlled in the Corporation X Spin-Off is not a repurchase by Corporation X. *See* § 58.4501–2(e)(5)(iii)(A). The distribution by Corporation X of the $20x of cash in exchange for Corporation X stock is a repurchase. *See* § 58.4501–2(e)(5)(iii)(B).

(iii) *Analysis regarding Controlled's stock repurchase excise tax base.* Controlled's transfer of the $80x of its stock to Corporation X is disregarded for purposes of the netting rule. *See* § 58.4501–4(f)(9) (providing that any stock issued by a controlled corporation in a distribution qualifying under section 355 (or so much of section 356 as relates to section 355) that is not a split-off is disregarded for purposes of the netting rule).

(15) *Example 15: Repurchase pursuant to an accelerated share repurchase agreement*—(i) *Facts.* On October 10, 2022, Corporation X entered into an accelerated share repurchase (ASR) agreement with an investment bank (Bank). Under the terms of the ASR agreement, Bank agrees to deliver a number of shares of Corporation X stock to Corporation X during the term of the ASR, in an amount determined by reference to the price of Corporation X stock on specified days during the term of the ASR. Pursuant to the terms of the ASR agreement, Corporation X paid Bank a prepayment amount. Bank borrowed 80 shares of Corporation X stock from a party not related to Bank or Corporation X. Pursuant to the terms of the ASR agreement, Bank delivered 80 shares of Corporation X stock to Corporation X on October 12, 2022. On final settlement of the ASR, Bank may be required to deliver additional shares of Corporation X stock to Corporation X or Corporation X may be required to make a payment to Bank. The terms of the ASR agreement and the facts and circumstances cause ownership of the 80 shares to transfer from Bank to Corporation X for Federal income tax purposes at the time of delivery (that is, October 12, 2022). The agreement will settle in 2023. On February 1, 2023, Bank delivers an additional 20 shares to Corporation X in final settlement of the ASR agreement. For Federal income tax purposes, ownership of those 20 shares is treated as transferring from Bank to Corporation X at the time of delivery (that is, February 1, 2023).

(ii) *Analysis.* Corporation X is treated as repurchasing 80 shares of Corporation X stock on October 12, 2022 (that is, the date on which ownership of the 80 shares delivered by Bank transferred from Bank to Corporation X for Federal income tax purposes). *See* § 58.4501–2(g)(1). However, the repurchase by Corporation X of the 80 shares of Corporation X stock does not increase Corporation X's stock repurchase excise tax base for its 2023 taxable year because the repurchase occurred prior to January 1, 2023. *See* § 58.4501–2(c)(3); *see also* section 10201(d) of the IRA (providing that the stock repurchase excise tax applies to repurchases after December 31, 2022). The delivery by Bank to Corporation X of 20 shares of Corporation X stock on February 1, 2023, constitutes a repurchase because, for Federal income tax purposes, the terms of the ASR agreement and the facts and circumstances cause ownership of those shares to transfer from Bank to Corporation X on that date. *See* § 58.4501–2(g)(1). Therefore, the repurchase by Corporation X of those 20 shares of Corporation X stock

increases Corporation X's stock repurchase excise tax base for its 2023 taxable year.

(16) *Example 16: Distribution in complete liquidation of a covered corporation*—(i) *Facts.* Corporation X adopts a plan of complete liquidation that becomes effective on March 1, 2024 (Corporation X Liquidation). Corporation X has 100 shares of stock outstanding. On April 1, 2024, all shareholders of Corporation X receive a liquidating distribution by Corporation X in full payment for their Corporation X stock. On the date on which Corporation X distributes all its corporate assets to its shareholders in complete liquidation (that is, April 1, 2024), Corporation X stock is trading at $1x per share. Each distribution in complete liquidation is subject to section 331.

(ii) *Analysis.* A distribution in complete liquidation of a covered corporation (that is, Corporation X) to which section 331 (but not section 332(a)) applies is not a repurchase by the covered corporation. *See* § 58.4501–2(e)(5)(i). Therefore, none of the distributions by Corporation X in complete liquidation is a repurchase by Corporation X, and Corporation X's stock repurchase excise tax for its 2024 taxable year is not increased because of the Corporation X Liquidation.

(17) *Example 17: Complete liquidation of a covered corporation to which sections 331 and 332(a) both apply*—(i) *Facts.* The facts are the same as in paragraph (b)(16)(i) of this section (*Example 16*), except that one of Corporation X's shareholders (Corporation Z) is an 80-percent distributee (as defined in section 337(c) of the Code), and the liquidating distribution by Corporation X to Corporation Z as part of the Corporation X Liquidation qualifies as a complete liquidation under section 332(a).

(ii) *Analysis.* In the case of a complete liquidation of a covered corporation, if sections 331 and 332(a), respectively, apply to component distributions of the complete liquidation, a distribution to which section 331 applies is a repurchase by the covered corporation, and the distribution to which section 332(a) applies is not a repurchase by the covered corporation. *See* § 58.4501–2(e)(4)(v). Therefore, as a result of the component liquidating distributions of the Corporation X Liquidation to which section 331 applies, Corporation X repurchased 20 shares of its stock on April 1, 2024. The Corporation X Liquidation results in a $20x increase in Corporation X's stock repurchase excise tax base for its 2024 taxable year because the fair market value of Corporation X's stock on the date of repurchase (that is, April 1, 2024) was $1x per share (20 shares x $1x = $20x). *See* § 58.4501–2(h)(1).

(18) *Example 18: Acquisition by disregarded entity*—(i) *Facts.* Corporation X owns all the interests in LLC, a domestic limited liability company that is disregarded as an entity separate from its owner for Federal tax purposes (disregarded entity) under § 301.7701–3 of this chapter. On May 31, 2024, LLC purchases shares of Corporation X's stock for cash from an unrelated shareholder.

(ii) *Analysis.* Because LLC is a disregarded entity, the May 31, 2024, acquisition of Corporation X stock is treated as an acquisition by Corporation X. Accordingly, the acquisition is a section 317(b) redemption and therefore a repurchase. *See* § 58.4501–2(e)(2)(i). Section 301.7701–2(c)(2)(v) of this chapter (treating disregarded entities as corporations for purposes of certain excise taxes) does not apply to treat LLC as a corporation because neither chapter 37 of the Code nor section 4501 is described in § 301.7701–2(c)(2)(v)(A) of this chapter.

(19) *Example 19: Reverse triangular merger*—(i) *Facts.* On October 1, 2024, Corporation X acquires all of Target's outstanding stock (Target Stock Acquisition) in a transaction that qualifies as a reverse triangular merger. To effectuate the Target Stock Acquisition, Corporation X causes the following steps to occur on the same day. First, Corporation X contributes $80x of Corporation X stock and $20x of cash (Merger Consideration) to a newly formed corporation (Merger Sub). Second, Merger Sub merges into Target in a statutory merger, with Target surviving (Reverse Triangular Merger). On the date of the Reverse Triangular Merger (that is, October 1, 2024), the fair market value of Target's outstanding stock is $100x. In the Reverse Triangular Merger, $80x of Target stock is exchanged for Corporation X stock, and $20x of Target stock is exchanged for $20x of cash.

(ii) *Analysis regarding repurchase treatment, timing, and amount.* The exchange by the Target shareholders of their Target stock for the Merger Consideration is a repurchase by Target because that exchange is an economically similar transaction. *See* § 58.4501–2(e)(2)(ii) and (e)(4)(i). The repurchase occurs on October 1, 2024 (that is, the date on which the Target shareholders exchange their Target shares as part of the Reverse Triangular Merger). *See* § 58.4501–2(g)(2). The amount of the repurchase is $100x, which equals the aggregate fair market value of the Target stock on the date the stock is exchanged by the Target shareholders as part of the Reverse Triangular Merger (that is, October 1, 2024). *See* § 58.4501–2(h)(1).

(iii) *Analysis regarding impact of Reverse Triangular Merger on Target's stock repurchase excise tax base.* Target's stock repurchase excise tax base for its 2024 taxable year initially is increased by $100x on account of the Reverse Triangular Merger. *See* § 58.4501–2(c)(1)(i). Under the reorganization exception, the fair market value of the Target stock exchanged by the Target shareholders for Corporation X stock in the Reverse Triangular Merger (that is, $80x) is a qualifying property repurchase that reduces the amount of Target's stock repurchase excise tax base. *See* §§ 58.4501–2(c)(1)(ii) and 58.4501–3(c)(1) (regarding acquisitive reorganizations). However, the fair market value of the Target stock exchanged by the Target shareholders for the $20x of cash in the Reverse Triangular Merger does not qualify for the reorganization exception. *See* § 58.4501–3(c). In addition, any Target stock that is deemed to be issued by Target to Merger Sub in exchange for the Merger Consideration is disregarded for purposes of the netting rule. *See* § 58.4501–4(f)(7). Therefore, Target's stock repurchase excise tax base for its 2024 taxable year is increased by $20x ($100x repurchase − $80x exception = $20x) as a result of the Reverse Triangular Merger.

(iv) *Analysis regarding impact of Reverse Triangular Merger on Corporation X's stock repurchase excise tax base.* Corporation X's issuance of Corporation X stock in the Reverse Triangular Merger is disregarded for purposes of the netting rule because Corporation X's issuance of that stock is part of a transaction to which the reorganization exception applies. *See* § 58.4501–4(f)(3) (disregarding such types of issuances to ensure no double benefit). Specifically, Corporation X's issuance of Corporation X stock is disregarded for purposes of the netting rule because the Corporation X stock constitutes property permitted to be received under section 354 without the recognition of gain, the Corporation X stock is used by a covered corporation (that is, Target) to repurchase its stock in a transaction that is a repurchase under § 58.4501–2(e)(4)(i), and the repurchase by Target is not included in Target's stock repurchase excise tax base because it is a qualifying property repurchase. *See id.* Therefore, Corporation X does not take into account any of the $80x of its stock issued in the Reverse Triangular Merger in computing its stock repurchase excise tax base for its 2024 taxable year under § 58.4501–4(b)(1).

(20) *Example 20: Multiple repurchases and contributions of same class of stock*—(i) *Facts.* On January 15, 2024, Corporation X repurchases 100 shares of its Class A stock that have an aggregate fair market value of $1,000x ($10x per share). On September 16, 2024, Corporation X repurchases 50 shares of its Class A stock that have an aggregate fair market value of $200x ($4x per share). Corporation X contributes to its ESOP 75 shares of its Class A stock on March 15, 2024, and 75 shares of its Class A stock on October 15, 2024.

(ii) *Analysis.* Corporation X's stock repurchase excise tax base for its 2024 taxable year initially is increased by $1,200x ($1,000x + $200x = $1,200x) as a result of the repurchases of its Class A stock. *See* § 58.4501–2(c)(1)(i). Under the exception for stock contributions to an employer-sponsored retirement plan, Corporation X's stock contributions reduce the amount of Corporation X's stock repurchase excise tax base. *See* §§ 58.4501–2(c)(1)(ii) and 58.4501–3(d). The amount of the reduction is determined by dividing the aggregate fair market value of shares of Class A stock repurchased by the number of shares repurchased ($1,200x/150 shares = $8 per share) and multiplying the number of shares contributed by the average price of the repurchased shares (150 shares x $8 per share = $1,200x). *See* § 58.4501–3(d)(3)(i). Therefore, Corporation X's stock repurchase excise tax base for its 2024 taxable year is $0 ($1,200x repurchase − $1,200x exception = $0).

(21) *Example 21: Multiple repurchases and contributions of different classes of stock*—(i) *Facts.* The facts are the same as in paragraph (b)(20)(i) of this section (*Example 20*), except that Corporation X has Class B stock and contributes its Class B stock rather than its Class A stock to its ESOP. On October 15, 2024, Corporation X contributes to its ESOP

75 shares of its Class B stock that have an aggregate fair market value of $1,000x. On December 16, 2024, Corporation X contributes to its ESOP 25 shares of its Class B stock that have an aggregate fair market value of $500x.

(ii) *Analysis.* Corporation X's reduction in computing its stock repurchase excise tax base is equal to the sum of the fair market values of the different class of stock at the time the stock is contributed to the employer-sponsored retirement plan ($1,000x + $500x = $1,500x). However, the amount of the reduction must not exceed the aggregate fair market value of stock of a different class repurchased during the taxable year by Corporation X (that is, $1,200x). *See* § 58.4501–3(d)(4)(ii). Therefore, Corporation X's stock repurchase excise tax base for its 2024 taxable year is $0 ($1,200x repurchase − $1,200x exception = $0).

(22) *Example 22: Treatment of contributions after the taxable year*—(i) *Facts.* Corporation X repurchases 200 shares of its stock on December 31, 2024, for $200x ($1x per share). Corporation X has no other repurchases in 2024. On February 2, 2026, Corporation X contributes 200 shares of stock to its ESOP. Corporation X treats the contribution as if it had been received for the 2024 calendar year for plan allocation purposes. *See* § 58.4501–3(d)(5)(ii).

(ii) *Analysis.* Corporation X may use the contribution of the 200x shares of its stock on February 2, 2026, to reduce its $200x stock repurchase excise tax base for 2024. *See* § 58.4501–3(d)(5)(ii).

(23) *Example 23: Becoming a covered corporation*—(i) *Facts.* As of January 1, 2024, all of Corporation X's stock is privately held (and, therefore, none of Corporation X's stock is traded on an established securities market). On February 15, 2024, Corporation X purchases 10 shares of its stock for $5x of cash ($.50x per share). On April 1, 2024, Corporation X issues 100 shares of its stock to the public (Public Shareholders), at which time Corporation X's stock begins trading on an established securities market. On November 15, 2024, when Corporation X stock is trading at $2x per share, Corporation X purchases 60 shares of its stock for $120x of cash.

(ii) *Analysis regarding purchase on February 15, 2024.* Corporation X becomes a covered corporation at the beginning of the day on April 1, 2024 (the initiation date). *See* § 58.4501–2(d)(1). Accordingly, Corporation X's purchase of 10 shares of its stock for $5x of cash on February 15, 2024, is not a repurchase. *See* § 58.4501–1(b)(24). Thus, the purchase on February 15, 2024, is not included in Corporation X's stock repurchase excise tax base for its 2024 taxable year.

(iii) *Analysis regarding issuance on April 1, 2024.* Corporation X is a covered corporation on April 1, 2024. *See* § 58.4501–2(d)(1). Accordingly, the Corporation X stock issued to the Public Shareholders on that date is stock of a covered corporation for purposes of the netting rule. *See* § 58.4501–4(b)(1). As a result, Corporation's stock repurchase excise tax base for its 2024 taxable year is reduced by $100x. *See* § 58.4501–2(c)(1)(iii).

(iv) *Analysis regarding purchase on November 15, 2024.* Corporation X is a covered corporation on November 15, 2024. Accordingly, Corporation X's purchase of 60x shares of its stock on that date is a repurchase because the transaction is a section 317(b) redemption (that is, a redemption within the meaning of section 317(b) with regard to the stock of a covered corporation). *See* §§ 58.4501–1(b)(24) and 58.4501–2(e)(2)(i). For purposes of computing Corporation X's stock repurchase excise tax base, the fair market value of the 60 shares of stock repurchased on November 15, 2024, is the aggregate market price of those shares on that repurchase date, or $120x ($2x per share x 60 shares = $120x). *See* § 58.4501–2(g)(1). Accordingly, Corporation's stock repurchase excise tax base for its 2024 taxable year is increased by $120x. *See* § 58.4501–2(c)(1)(i).

(24) *Example 24: Actual redemption in partial liquidation*—(i) *Facts.* Corporation X is actively engaged in the conduct of Businesses A and B. Each business constitutes a qualified trade or business within the meaning of section 302(e)(3). On September 1, 2024, pursuant to a plan of partial liquidation adopted in the same taxable year, Corporation X sells Business B for $100x and distributes the proceeds to its shareholders pro rata in redemption of $100x of Corporation X stock. The transaction qualifies as a distribution in partial liquidation under section 302(b)(4) and (e).

(ii) *Analysis.* Corporation X's distribution in partial liquidation is a section 317(b) redemption. In addition, Corporation X's distribution in partial liquidation is not included in the exclusive list of transactions under § 58.4501–2(e)(3) that are treated as a section 317(b) redemption but are not a repurchase. Accordingly, the distribution in partial liquidation is a repurchase. *See* § 58.4501–2(e)(2)(i). Therefore, as a result of the distribution, Corporation X's stock repurchase excise tax base for its 2024 taxable year is increased by $100x. *See* § 58.4501–2(c)(1)(i).

(25) *Example 25: Constructive redemption in partial liquidation*—(i) *Facts.* The facts are the same as in paragraph (b)(24)(i) of this section (*Example 24*), except that the shareholders of Corporation X surrender no stock in exchange for the proceeds from the sale of Business B. For Federal income tax purposes, a constructive redemption of stock is deemed to occur, and the transaction qualifies as a distribution in partial liquidation under section 302(b)(4) and (e).

(ii) *Analysis.* The analysis is the same as in paragraph (b)(24)(ii) of this section (*Example 24*).

(26) *Example 26: Physical settlement of call option contract*—(i) *Facts.* On March 1, 2024, Corporation X issues an option that entitles the holder to buy 100 shares of Corporation X stock from Corporation X for $150x ($1.50x per share). On the date the option is issued, Corporation X stock is trading at $1x per share. On November 1, 2024, when Corporation X stock is trading at $2x per share, the holder pays Corporation X $150x to exercise the option, and Corporation X issues 100 shares of Corporation X stock to the holder, at which time ownership of the shares transfers to the holder for Federal income tax purposes.

(ii) *Analysis.* For purposes of computing Corporation X's stock repurchase excise tax base, Corporation X is treated as issuing 100 shares of Corporation X stock on November 1, 2024. *See* § 58.4501–4(d)(1). The fair market value of that stock is its aggregate market price on the date of issuance by Corporation X, or $200x ($2x per share x 100 shares = $200x). *See* § 58.4501–4(e)(1). Accordingly, the issuance is a reduction of $200x in computing Corporation X's stock repurchase excise tax base for its 2024 taxable year. *See* § 58.4501–2(c)(1)(iii).

(27) *Example 27: Net cash settlement of call option contract*—(i) *Facts.* The facts are the same as in paragraph (b)(26)(i) of this section (*Example 26*), except that Corporation X net cash settles the option by paying the holder $50x.

(ii) *Analysis.* The net cash settlement is disregarded for purposes of the netting rule. *See* § 58.4501–4(f)(12) (disregarding the settlement of an option contract with respect to stock of a covered corporation using any consideration other than stock of the covered corporation).

(28) *Example 28: Physical settlement of put option contract*—(i) *Facts.* On April 1, 2024, Corporation X issues an option entitling the holder to sell 100 shares of Corporation X stock to Corporation X for $100x ($1x per share). On the date the option is issued, Corporation X stock is trading at $1.25x per share. On October 1, 2024, when Corporation X stock is trading at $0.75x per share, the holder exercises the option, and Corporation X purchases 100 shares of Corporation X stock for $100x, at which time ownership of the shares transfers to Corporation X.

(ii) *Analysis.* Corporation X's purchase on October 1, 2024, is a repurchase because it is a section 317(b) redemption. For purposes of computing Corporation X's stock repurchase excise tax base, the fair market value of the repurchased stock is its aggregate market price on the date on which ownership of the stock transfers to Corporation X for Federal income tax purposes (October 1, 2024), or $75x ($0.75x per share x 100 shares = $75x). *See* § 58.4501–2(g)(1) and (h)(1). Accordingly, the repurchase is an increase of $75x in computing Corporation X's stock repurchase excise tax base for its 2024 taxable year. *See* § 58.4501–2(c)(1)(i).

(29) *Example 29: Net cash settlement of put option contract*—(i) *Facts.* The facts are the same as in paragraph (b)(28)(i) of this section (*Example 28*), except that Corporation X net cash settles the put option by paying the holder $25x.

(ii) *Analysis.* The net cash settlement is not a repurchase. *See* § 58.4501–2(e)(5)(iv) (providing that net cash settlement of an option contract with respect to stock of a covered corporation is not a repurchase by the covered corporation).

(30) *Example 30: Indirect ownership*—(i) *Facts.* Corporation X owns 60 percent of the only class of stock of Sub 1, a domestic corporation. Sub 1 owns 60 percent of the only class of stock of Sub 2, which is also a domestic corporation. On October 15, 2024, Sub 2 purchases stock of Corporation X with a market price of $100,000.

(ii) *Analysis.* The determination of whether Sub 2 is a specified affiliate of Corporation X is relevant at the time Sub 2 purchases Corporation X stock on October 15, 2024, and

therefore must be made at that time. *See* § 58.4501–2(f)(2)(i). Under § 58.4501–2(f)(2)(ii), Corporation X indirectly owns 36 percent (60% x 60% = 36%) of the stock of Sub 2. Sub 2 is not a specified affiliate of Corporation X, because Corporation X does not own, directly or indirectly, more than 50 percent of the stock of Sub 2. *See* § 58.4501–1(b)(25). Accordingly, Sub 2's purchase of Corporation X stock on October 15, 2024, is not a repurchase under § 58.4501–2(f)(1).

(31) *Example 31: Constructive specified affiliate acquisition*—(i) *Facts.* The facts are the same as in paragraph (b)(30)(i) of this section (*Example 30*), except that, on January 15, 2025, Sub 1 acquires an additional 40 percent of the stock of Sub 2.

(ii) *Analysis.* Because Sub 2 owns stock of Corporation X, the determination of whether Sub 2 is a specified affiliate of Corporation X is relevant at the time Sub 1 purchases acquires additional stock of Sub 2 on January 15, 2025. *See* § 58.4501–2(f)(2)(i). Under § 58.4501–2(f)(2)(ii), Corporation X indirectly owns 60 percent (60% x 100% = 60%) of the stock of Sub 2. Accordingly, Sub 2 becomes a specified affiliate of Corporation X on January 15, 2025, because Corporation X owns, directly or indirectly, more than 50 percent of the stock of Sub 2. *See* § 58.4501–1(b)(25). Because Sub 2 owns stock of Corporation X that Sub 2 acquired after December 31, 2022, and Sub 2 became a specified affiliate of Corporation X after Sub 2 acquired the stock of Corporation X, the stock of Corporation X owned by Sub 2 is treated as repurchased by Corporation X on January 15, 2025. *See* § 58.4501–2(f)(3)(i) and (g)(4).

(32) *Example 32: Restricted stock provided to a service provider*—(i) *Facts.* Individual M provides services to Corporation X. In 2024, as compensation for Individual M's services, Corporation X transfers to individual M 100 shares of Corporation X restricted stock with an aggregate fair market value of $500x ($5x per share). The shares vest in 2028. Individual M does not make an election under section 83(b). In 2028, Corporation X withholds from Individual M's other wages amounts that are required to pay the income tax and employment tax withholding obligations arising from the stock transfer. The shares have a fair market value of $7x per share when they vest.

(ii) *Analysis.* Corporation X is treated as issuing 100 shares of stock to Individual M when they become substantially vested in 2028. *See* § 58.4501–4(d)(2)(i). The fair market value of the shares issued is $700x (100 shares x $7x per share = $700x). Accordingly, the issuance is a reduction of $700x in computing corporation X's stock repurchase excise tax base for its 2028 taxable year.

(33) *Example 33: Restricted stock provided to a service provider with section 83(b) election*—(i) *Facts.* The facts are the same as in paragraph (b)(32)(i) of this section (*Example 32*), except that Individual M makes a valid election under section 83(b) to include the fair market value of the shares of restricted stock in gross income when the shares are transferred.

(ii) *Analysis.* Corporation X is treated as issuing 100 shares of stock to Individual M when the shares are transferred in 2024. *See* § 58.4501–4(d)(2)(iii). The fair market value of the shares issued is $500x (100 shares x $5x per share = $500x). Accordingly, the issuance is a reduction of $500x in computing Corporation X's stock repurchase excise tax base for its 2024 taxable year. Corporation X is not treated as issuing stock to Individual M when the shares vest in 2028.

(34) *Example 34: Vested stock provided to a service provider with share withholding*—(i) *Facts.* Employee N is an employee of Corporation X. In 2024, as compensation for Employee N's services, Corporation X grants Employee N 100 restricted stock units (RSUs). Pursuant to the RSUs, if Employee N remains employed by Corporation X through December 31, 2027, Corporation X will transfer 100 shares of Corporation X stock to Employee N in January 2028. Employee N remains employed by Corporation X through December 31, 2027. In January 2028, when the shares have a fair market value of $5x per share, Corporation X initiates the transfer of 60 shares of Corporation X stock to Employee N and withholds 40 shares to satisfy its income tax and employment tax withholding obligations arising from Employee N vesting in the shares.

(ii) *Analysis.* Corporation X is treated as issuing 60 shares of stock to Employee N when the shares are transferred in 2028. *See* § 58.4501–4(d)(2)(i). The 40 shares of Corporation X stock withheld to satisfy Corporation X's withholding obligations are disregarded for purposes of the netting rule. *See* § 58.4501–4(f)(11)(i). The fair market value of the shares issued is $300x (60 shares x $5x per share = $300x). Accordingly, the issuance is a reduction of $300x in computing Corporation X's stock repurchase excise tax base for its 2028 taxable year.

(35) *Example 35: Stock option net exercise*—(i) *Facts.* Employee O is an employee of Corporation X. In 2024, in connection with the performance of services, Corporation X transfers to Employee O options to purchase 100 shares of Corporation X stock with an exercise price of $4x per share ($400x exercise price in total). The options are described in § 1.83–7 of this chapter and do not have a readily ascertainable fair market value. Employee O exercises the option to purchase 100 shares in 2026, when the fair market value is $5x per share. Corporation X withholds 80 shares to pay the $400x exercise price (80 shares x $5x per share = $400x).

(ii) *Analysis.* Corporation X is treated as issuing 20 shares of stock to Employee O when Employee O exercises the options in 2026. *See* § 58.4501–4(d)(2)(ii). The 80 shares of Corporation X stock withheld to pay the exercise price are disregarded for purposes of the netting rule. *See* § 58.4501–4(f)(11)(i). The fair market value of the shares issued is $100x (20 shares x $5x per share = $100x). Accordingly, the issuance is a reduction of $100x in computing Corporation X's stock repurchase excise tax base for its 2026 taxable year.

(36) *Example 36: Net share settlement not in connection with performance of services*—(i) *Facts.* Corporation X issues a call option to Individual A that entitles Individual A to buy 100 shares of Corporation X stock for $100x ($1x per share) from Corporation X for a limited time. The terms of the option require or permit net share settlement. On the date the option is issued, Corporation X stock is trading at $1x per share. On the date the option is exercised, Corporation X stock is trading at $1.25x per share. To settle the option, Individual A makes no payment to Corporation X, and Corporation X issues 20 shares of Corporation X stock (worth $25x).

(ii) *Analysis.* Corporation X is treated as issuing 20 shares with a fair market value of $25x. *See* § 58.4501–4(f)(11)(ii).

(37) *Example 37: Broker-assisted net exercise*—(i) *Facts.* The facts are the same as in paragraph (b)(35)(i) of this section (*Example 35*), except that, instead of Corporation X withholding shares to pay the exercise price, a third-party broker pays an amount equal to the exercise price (that is, $400x) to Corporation X. Corporation X transfers 100 shares of Corporation X stock to the third-party broker, which deposits the 100 shares into Employee O's account. The third-party broker then immediately sells 80 shares to recover the $400x exercise price paid to Corporation X (80 shares x $5x per share = $400x).

(ii) *Analysis.* Corporation X is treated as issuing 100 shares of stock to Employee O when Employee O exercises the options in 2026. *See* § 58.4501–4(c)(2) and (d)(1)(i). The fair market value of the shares issued is $500x (100 shares x $5x per share = $500x). Accordingly, the issuance is a reduction of $500x in computing Corporation X's stock repurchase excise tax base for its 2026 taxable year.

(38) *Example 38: Stock provided by a specified affiliate to an employee*—(i) *Facts.* Individual P is an employee of Corporation Y, which is a specified affiliate of Corporation X. In 2024, Corporation X transfers 100 shares of its stock to Individual P, when the stock is valued at $9x per share, in connection with Individual P's performance of services as an employee of Corporation Y.

(ii) *Analysis.* Under § 1.83–6(d) of this chapter, Corporation X is treated as contributing the stock to the capital of Corporation Y, which is treated as transferring the shares to Individual P as compensation for services. Corporation Y is treated as providing 100 shares to individual P. *See* § 58.4501–4(b)(1)(ii) and (f)(2)(iv). The fair market value of the shares provided is $900x (100 shares x $9x per share = $900x). Accordingly, the provision is a reduction of $900x in computing Corporation X's stock repurchase excise tax base for its 2024 taxable year.

(39) *Example 39: Stock provided by a specified affiliate to a nonemployee*—(i) *Facts.* The facts are the same as in paragraph (b)(38)(i) of this section (*Example 38*), except that Individual P provides services as a non-employee service provider of Corporation Y.

(ii) *Analysis.* Corporation Y is not treated as providing shares for purposes of the netting rule because P is a non-employee service provider. *See* § 58.4501–4(b)(1)(ii) and (f)(2)(iv). Accordingly, there is no reduction in Corporation X's stock repurchase excise tax base for its 2024 taxable year.

(40) *Example 40: Corporation treated as a domestic corporation under section 7874(b)*—(i) *Facts.* Corporation FB is a corporation the stock of which is traded on an established securities market (within the meaning of section 7704(b)(1) of the Code) and that is created or organized in a foreign jurisdiction. Corporation FB is treated as a domestic corporation under section 7874(b).

(ii) *Analysis.* Corporation FB is treated for purposes of this title as a domestic corporation under section 7874(b). Corporation FB is a covered corporation because it is treated for purposes of this title as a domestic corporation and its stock is traded on an established securities market. *See* § 58.4501–1(b)(6).

§ 58.4501–6 Applicability dates.

(a) *In general.* Except as provided in paragraph (b) of this section, §§ 58.4501–1 through 58.4501–5 apply to—

(1) Repurchases of stock of a covered corporation occurring after December 31, 2022, and during taxable years ending after December 31, 2022; and

(2) Issuances and provisions of stock of a covered corporation occurring during taxable years ending after December 31, 2022.

(b) *Exceptions*—(1) *Applicability date for certain rules.* Sections 58.4501–2(d), (e)(4)(vi), (f)(2) and (3), (g)(4), (h)(2)(v), and (h)(3)(ii), 58.4501–3(g)(3) and (4), 58.4501–4(e)(2)(v), (e)(3)(ii), (f)(2)(ii), and (f)(8), (9), and (13) apply to—

(i) Repurchases of stock of a covered corporation occurring after April 12, 2024, and during taxable years ending after April 12, 2024; and

(ii) Issuances and provisions of stock of a covered corporation occurring after April 12, 2024, and during taxable years ending after April 12, 2024.

(2) *Special rules for acquisitions or repurchases of stock of certain foreign corporations. See* § 58.4501–7(r) for applicability dates for the provisions of § 58.4501–7 and the provisions of § 58.4501–1 as applicable to transactions subject to § 58.4501–7.

§ 58.4501–7 Special rules for acquisitions or repurchases of stock of certain foreign corporations.

(a) *Scope.* This section provides rules regarding the application of section 4501(d) of the Code. Paragraph (b) of this section provides definitions applicable for purposes of this section. Paragraph (c) of this section provides rules for computing a section 4501(d) covered corporation's section 4501(d) excise tax liability. Paragraph (d) of this section provides certain coordination rules related to section 4501(d)(2). Paragraph (e) of this section provides rules that apply if an applicable specified affiliate funds certain acquisitions or repurchases of stock of an applicable foreign corporation. Paragraph (f) of this section provides certain rules for determining the status of a corporation as an applicable foreign corporation or a covered surrogate foreign corporation. Paragraph (g) of this section provides certain rules for determining the status of a corporation or partnership as an applicable specified affiliate, a relevant entity of an applicable foreign corporation, or a specified affiliate of a covered surrogate foreign corporation. Paragraph (h) of this section provides rules for determining whether a foreign partnership is an applicable specified affiliate. Paragraph (i) of this section is reserved. Paragraph (j) of this section defines the terms AFC repurchase and CSFC repurchase. Paragraph (k) of this section provides rules for determining the date of a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase. Paragraph (l) of this section provides rules for determining the fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation that is repurchased or acquired. Paragraph (m) of this section provides rules regarding the application of certain section 4501(d) statutory exceptions. Paragraph (n) of this section provides rules regarding the section 4501(d) netting rule. Paragraph (o) of this section provides rules applicable before April 15, 2024. Paragraph (p) of this section illustrates the application of the rules of this section through examples involving section 4501(d)(1). Paragraph (q) of this section illustrates the application of the rules of this section through examples involving section 4501(d)(2). Paragraph (r) of this section provides the applicability date of this section.

(b) *Definitions*—(1) *Application of definitions in § 58.4501–1(b).* Any term used in this section (other than paragraph (o) of this section as provided in paragraph (o)(5) of this section) but not defined in paragraph (b)(2) of this section has the meaning provided in § 58.4501–1(b), provided, however, that:

(i) For all definitions provided in § 58.4501–1(b) other than those described in paragraph (b)(1)(ii) of this section, any reference in those definitions to a *covered corporation* is treated as a reference to a section 4501(d) covered corporation or applicable foreign corporation or covered surrogate foreign corporation as appropriate based on the context.

(ii) For the definitions of *employee* and *employer-sponsored retirement plan* provided in § 58.4501–1(b)(10) and (11), any reference to a *covered corporation* or its *specified affiliates* is treated solely as a reference to a section 4501(d) covered corporation.

(2) *Section 4501(d) definitions.* The definitions in this paragraph (b)(2) apply solely for purposes of this section (other than paragraph (o) of this section as provided in paragraph (o)(5) of this section).

(i) *AFC repurchase.* The term *AFC repurchase* has the meaning provided in paragraph (j) of this section.

(ii) *Allocable amount of a covered purchase.* The term *allocable amount of a covered purchase* has the meaning provided in paragraph (e)(5) of this section.

(iii) *Applicable foreign corporation.* The term *applicable foreign corporation* means any foreign corporation the stock of which is traded on an established securities market.

(iv) *Applicable specified affiliate.* The term *applicable specified affiliate* means a specified affiliate of an applicable foreign corporation, other than a foreign corporation or a foreign partnership (unless the partnership has a domestic entity as a direct or indirect partner, as determined under paragraph (h) of this section).

(v) *CSFC repurchase.* The term *CSFC repurchase* has the meaning provided in paragraph (j) of this section.

(vi) *Covered funding.* The term *covered funding* means a funding described in paragraph (e)(1) of this section.

(vii) *Covered purchase.* The term *covered purchase* means an AFC repurchase or an acquisition of stock of an applicable foreign corporation by a relevant entity.

(viii) *Covered surrogate foreign corporation.* The term *covered surrogate foreign corporation* means any surrogate foreign corporation (as determined under section 7874(a)(2)(B) of the Code by substituting *September 20, 2021* for *March 4, 2003* each place it appears) the stock of which is traded on an established securities market, including any successor to the surrogate foreign corporation (as determined under § 1.7874–12(a)(10) of this chapter), but only with respect to taxable years that include any portion of the applicable period with respect to such corporation under section 7874(d)(1).

(ix) *Direct partner.* The term *direct partner* has the meaning given the term in paragraph (h)(2)(i) of this section.

(x) *Domestic entity.* The term *domestic entity* means a domestic corporation, a domestic partnership, or a trust within the meaning of section 7701(a)(30)(E) of the Code.

(xi) *Downstream relevant entity.* The term *downstream relevant entity* means a relevant entity—

(A) 25 percent or more of the stock of which is owned (by vote or by value), directly or indirectly, by, individually or in aggregate, one or more applicable specified affiliates of an applicable foreign corporation; or

(B) 25 percent or more of the capital interests or profits interests of which is held, directly or indirectly, by, individually or in aggregate, one or more applicable specified affiliates of an applicable foreign corporation.

(xii) *Expatriated entity.* The term *expatriated entity* has the meaning given the term in section 7874(a)(2)(A) and § 1.7874–12(a)(8) of this chapter, including any successor (as determined under § 1.7874–12(a)(6) of this chapter).

(xiii) *Indirect partner.* The term *indirect partner* has the meaning given the term in paragraph (h)(2)(ii) of this section.

(xiv) *Relevant entity.* The term *relevant entity* means a specified affiliate of an applicable foreign corporation that is not an applicable specified affiliate of the applicable foreign corporation.

(xv) *Section 4501(d) covered corporation.* The term *section 4501(d) covered corporation* means either—

(A) An applicable specified affiliate of an applicable foreign corporation that is treated as a covered corporation under section 4501(d)(1)(A) by reason of a section 4501(d)(1) repurchase; or

(B) Any expatriated entity with respect to a covered surrogate foreign corporation that is treated as a covered corporation under section 4501(d)(2)(A) by reason of a section 4501(d)(2) repurchase.

(xvi) *Section 4501(d) de minimis exception.* The term *section 4501(d) de minimis exception* has the meaning provided in paragraph (c)(2)(i) of this section.

(xvii) *Section 4501(d) economically similar transaction.* The term *section 4501(d) economically similar transaction* has the meaning provided in paragraph (j)(4) of this section.

(xviii) *Section 4501(d) excise tax.* The term *section 4501(d) excise tax* has the meaning provided in paragraph (c)(1) of this section.

(xix) *Section 4501(d) excise tax base.* The term *section 4501(d) excise tax base* has the meaning provided in paragraph (c)(3)(i) of this section.

(xx) *Section 4501(d) netting rule.* The term *section 4501(d) netting rule* has the meaning provided in paragraph (n)(1) of this section.

(xxi) *Section 4501(d) reorganization exception.* The term *section 4501(d) reorganization exception* has the meaning provided in paragraph (m)(2) of this section.

(xxii) *Section 4501(d)(1) repurchase.* The term *section 4501(d)(1) repurchase* means—

(A) An acquisition of stock of an applicable foreign corporation by an applicable specified affiliate of the applicable foreign corporation from a person other than the applicable foreign corporation or a specified affiliate of the applicable foreign corporation; and

(B) A covered purchase to the extent an applicable specified affiliate is treated under paragraph (e) of this section as acquiring stock of the applicable foreign corporation that is repurchased or acquired, as applicable, in the covered purchase.

(xxiii) *Section 4501(d)(2) repurchase.* The term *section 4501(d)(2) repurchase* means a CSFC repurchase or an acquisition of stock of a covered surrogate foreign corporation by a specified affiliate of the covered surrogate foreign corporation.

(xxiv) *Section 4501(d) statutory exception.* The term *section 4501(d) statutory exception* has the meaning provided in paragraph (m)(1) of this section.

(c) *Computation of section 4501(d) excise tax liability for a section 4501(d) covered corporation*—(1) *Imposition of tax.* Except as provided in paragraph (c)(2) of this section (regarding the section 4501(d) de minimis exception), the amount of excise tax imposed pursuant to section 4501(d) on a section 4501(d) covered corporation (*section 4501(d) excise tax*) for a taxable year equals the product obtained by multiplying—

(i) The applicable percentage; by

(ii) The section 4501(d) excise tax base of the section 4501(d) covered corporation for the taxable year determined in accordance with paragraph (c)(3)(i) of this section.

(2) *Section 4501(d) de minimis exception*—(i) *In general.* A section 4501(d) covered corporation is not subject to the section 4501(d) excise tax with regard to a taxable year of the section 4501(d) covered corporation if, during that taxable year, the aggregate fair market value of all section 4501(d)(1) repurchases with respect to all applicable specified affiliates or all section 4501(d)(2) repurchases with respect to an expatriated entity, as applicable, does not exceed $1,000,000 (section 4501(d) de minimis exception).

(ii) *Determination.* A determination of whether the section 4501(d) de minimis exception applies with regard to a taxable year of a section 4501(d) covered corporation is made before applying—

(A) Any section 4501(d) statutory exception under paragraph (m) of this section; and

(B) Any adjustments pursuant to the section 4501(d) netting rule under paragraph (n) of this section.

(3) *Section 4501(d) excise tax base*—(i) *In general.* With regard to a section 4501(d) covered corporation, the term *section 4501(d) excise tax base* means the dollar amount (not less than zero) that is obtained by—

(A) Determining the aggregate fair market value of, as applicable, all section 4501(d)(1) repurchases or section 4501(d)(2) repurchases during the section 4501(d) covered corporation's taxable year;

(B) Reducing the amount determined under paragraph (c)(3)(i)(A) of this section by the fair market value of stock repurchased or acquired in all section 4501(d)(1) repurchases or section 4501(d)(2) repurchases, as applicable, during the section 4501(d) covered corporation's taxable year to the extent any section 4501(d) statutory exceptions apply in accordance with paragraph (m) of this section; and then

(C) Reducing the amount determined under paragraphs (c)(3)(i)(A) and (B) of this section by the aggregate fair market value of, as applicable, stock of the applicable foreign corporation or stock of the covered surrogate foreign corporation to the extent the section 4501(d) netting rule applies in accordance with paragraph (n) of this section.

(ii) *Taxable year determination*—(A) *In general.* The determinations under paragraph (c)(3)(i) of this section are made separately for each section 4501(d) covered corporation and for each taxable year of such section 4501(d) covered corporation.

(B) *No carrybacks or carryforwards.* Reductions under paragraphs (c)(3)(i)(B) and (C) of this section in excess of the amount determined under paragraph (c)(3)(i)(A) of this section with regard to a section 4501(d) covered corporation are not carried forward or backward to preceding or succeeding taxable years of the section 4501(d) covered corporation.

(4) *Section 4501(d)(1) repurchases or section 4501(d)(2) repurchases before January 1, 2023.* Section 4501(d)(1) repurchases and section 4501(d)(2) repurchases before January 1, 2023, are neither included in the section 4501(d) excise tax base of a section 4501(d) covered corporation nor taken into account in determining the applicability of the section 4501(d) de minimis exception.

(d) *Section 4501(d)(2) coordination rules*—(1) *Coordination rule for section 4501(d)(1) repurchases and section 4501(d)(2) repurchases.* To the extent any CSFC repurchase or acquisition of stock of a covered surrogate foreign

corporation would be both a section 4501(d)(1) repurchase and a section 4501(d)(2) repurchase absent this paragraph (d)(1), the CSFC repurchase or acquisition will only be a section 4501(d)(2) repurchase.

(2) *Coordination rule for multiple section 4501(d) covered corporations*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, each section 4501(d) covered corporation with respect to a covered surrogate foreign corporation is liable for any section 4501(d) excise tax with respect to section 4501(d)(2) repurchases that occur during a taxable year of the section 4501(d) covered corporation.

(ii) *Full payment and reporting by a section 4501(d) covered corporation.* If there are multiple section 4501(d) covered corporations with respect to a covered surrogate foreign corporation, then provided that one of those section 4501(d) covered corporations pays the amount of section 4501(d) excise tax determined under paragraph (c)(1) of this section with respect to all section 4501(d)(2) repurchases relating to the covered surrogate foreign corporation and its specified affiliates that occur during the paying section 4501(d) covered corporation's taxable year and fulfills the filing obligations for the taxable year with respect to such section 4501(d)(2) repurchases, no other section 4501(d) covered corporation with respect to the covered surrogate foreign corporation is liable for section 4501(d) excise tax related to such section 4501(d)(2) repurchases.

(e) *Acquisitions and AFC repurchases of stock funded by applicable specified affiliates*—(1) *Principal purpose rule.* An applicable specified affiliate of an applicable foreign corporation is treated as acquiring stock of the applicable foreign corporation to the extent the applicable specified affiliate funds by any means (including through distributions, debt, or capital contributions), directly or indirectly, a covered purchase with a principal purpose of avoiding the section 4501(d) excise tax (a *covered funding*). If a principal purpose of the covered funding is to fund, directly or indirectly, a covered purchase, then there is a principal purpose of avoiding the section 4501(d) excise tax. Whether a covered funding is described in this paragraph (e)(1) is determined based on all the facts and circumstances. A covered funding may be described in this paragraph (e)(1) regardless of whether the funding occurs before or after a covered purchase. This paragraph (e)(1) applies to fundings that occur on or after December 27, 2022, in taxable years ending after December 27, 2022.

(2) *Rebuttable presumption.* A principal purpose described in paragraph (e)(1) of this section is presumed to exist if the applicable specified affiliate funds by any means, directly or indirectly, a downstream relevant entity, and the funding occurs within two years of a covered purchase by or on behalf of the downstream relevant entity. The presumption described in this paragraph (e)(2) may be rebutted only if facts and circumstances clearly establish that there was not a principal purpose described in paragraph (e)(1) of this section. An applicable specified affiliate that takes the position that the presumption is rebutted must, for the taxable year that includes the date on which the applicable specified affiliate would, absent the rebuttal, be treated as acquiring stock of the applicable foreign corporation: (i) attach a statement to its stock repurchase excise tax return disclosing the relevant fundings and covered purchases and the facts that rebut the presumption, and (ii) provide any additional information that the stock repurchase excise tax return or the accompanying instructions require. *See* paragraph (e)(3) of this section for the date on which the applicable specified affiliate would, absent the rebuttal, be treated as acquiring stock of the applicable foreign corporation.

(3) *Date stock of applicable foreign corporation is treated as acquired.* To the extent an applicable specified affiliate is treated, by reason of a covered funding, as acquiring stock of an applicable foreign corporation that is acquired by a relevant entity or applicable foreign corporation in a covered purchase, such stock is treated as acquired by the applicable specified affiliate on the later of the date of the covered funding or the covered purchase.

(4) *Amount of stock of applicable foreign corporation treated as acquired.* The amount of stock of an applicable foreign corporation acquired in a covered purchase that is treated as acquired by an applicable specified affiliate is equal to the amount of the applicable specified affiliate's covered fundings that are allocated to the covered purchase under paragraph (e)(7) of this section.

(5) *Rules for determining the allocable amount of a covered purchase.* The *allocable amount of a covered purchase* is equal to the aggregate fair market value of the shares repurchased or acquired in the covered purchase (as determined in accordance with paragraph (l) of this section), reduced by the amount described in paragraph (m)(2), (4), or (6) of this section, as applicable.

(6) *Priority rule for covered fundings.* The allocable amount of a covered purchase is treated as made first from covered fundings.

(7) *Rules for allocating covered fundings to allocable amounts of covered purchases*—(i) *In general.* The rules of this paragraph (e)(7) apply for purposes of determining the extent to which a covered purchase is treated as funded by covered fundings. For purposes of applying this paragraph (e)(7), a reference to covered fundings means all covered fundings by all applicable specified affiliates with respect to an applicable foreign corporation, and a covered funding denominated in a currency other than the U.S. dollar is converted into U.S. dollars at the spot rate (as defined in § 1.988–1(d)(1) of this chapter) on the date of the funding. To the extent covered fundings are allocated to an allocable amount of a covered purchase under this paragraph (e)(7), those fundings are not allocated to any other allocable amounts of covered purchases.

(ii) *Multiple covered purchases.* If there are multiple covered purchases by one or more relevant entities or an applicable foreign corporation, then covered fundings are allocated to the allocable amounts of covered purchases in the order in which the covered purchases occur. If multiple covered purchases occur simultaneously, covered fundings are allocated to the allocable amounts of those simultaneous covered purchases on a pro rata basis, based on the relative allocable amounts of those covered purchases.

(iii) *Single covered funding.* If there is a single covered funding, the covered funding is allocated to a covered purchase to the extent of the lesser of the amount of the covered funding or the allocable amount of the covered purchase.

(iv) *Multiple covered fundings.* If there are multiple covered fundings and the aggregate amount of those fundings exceeds the allocable amount of the covered purchase, then covered fundings are allocated to the allocable amount of the covered purchase in the order in which the covered fundings occur. If multiple covered fundings occur simultaneously, those covered fundings are allocated to the allocable amount of the covered purchase on a pro rata basis, based on the relative amounts of those covered fundings. To the extent the aggregate amount of covered fundings exceeds the allocable amount of the covered purchase, those excess covered fundings are allocated to

the allocable amounts of other covered purchases, if any.

(f) *Status as applicable foreign corporation or covered surrogate foreign corporation*—(1) *Initiation date.* A corporation becomes an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, at the beginning of the corporation's initiation date.

(2) *Cessation date*—(i) *In general.* Except as provided in paragraph (f)(2)(ii) of this section, a corporation ceases to be an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, at the end of the corporation's cessation date.

(ii) *Repurchases after cessation date.* If an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, ceases to be an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, pursuant to a plan that includes a repurchase, and if the cessation date precedes the date on which any section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, as applicable, undertaken pursuant to the plan occurs (for example, if stock of an applicable foreign corporation ceases trading prior to completion of an acquisitive reorganization), then the corporation will continue to be an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, with regard to each repurchase pursuant to the plan until the end of the date on which the last section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, as applicable, pursuant to the plan occurs.

(3) *Inbound and outbound F reorganizations*—(i) *Inbound F reorganization.* In the case of a foreign corporation that transfers its assets or that is treated as transferring its assets to a domestic corporation in an F reorganization (as described in § 1.367(b)–2(f) of this chapter), the corporation is not treated as a domestic corporation until the day after the reorganization.

(ii) *Outbound F reorganization.* In the case of a domestic corporation that transfers its assets or that is treated as transferring its assets to a foreign corporation in an F reorganization (as described in § 1.367(a)–1(e) of this chapter), the corporation is not treated as a foreign corporation until the day after the reorganization.

(g) *Status as applicable specified affiliate, a relevant entity of an applicable foreign corporation, or a specified affiliate of a covered surrogate foreign corporation*—(1) *Timing of determination.* The determination of whether a corporation or partnership is an applicable specified affiliate or a relevant entity of an applicable foreign corporation or a specified affiliate of a covered surrogate foreign corporation, as applicable, is made whenever such determination is relevant for purposes of this section.

(2) *Determination of indirect ownership.* Except as provided in paragraph (h)(2)(ii)(B) of this section, a corporation or partnership is treated as indirectly owning stock in a corporation or holding capital or profits interests in a partnership equal to the corporation's or partnership's proportionate percentage of stock owned or capital or profits interests held through other entities.

(3) *Consequences of becoming a specified affiliate*—(i) *General rule.* Except as provided in paragraph (g)(3)(ii) of this section, if a corporation or partnership becomes a specified affiliate of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, and, at the time the corporation or partnership becomes a specified affiliate, the corporation or partnership owns stock of the applicable foreign corporation or covered surrogate foreign corporation that the corporation or partnership acquired after December 31, 2022, and such stock represents more than one percent of the fair market value of the assets of the corporation or partnership as determined at the time that the corporation or partnership becomes a specified affiliate, then for purposes of this section, such stock is treated as acquired by the corporation or partnership immediately after the corporation or partnership becomes a specified affiliate.

(ii) *Stock previously treated as acquired not subject to deemed acquisition more than once.* Paragraph (g)(3)(i) of this section does not apply with regard to any shares of stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable—

(A) Held by the corporation or partnership described in paragraph (g)(3)(i) of this section at the time that it becomes a specified affiliate; and

(B) That the section 4501(d) covered corporation identifies as previously having been subject to paragraph (g)(3)(i) of this section when held by the corporation or partnership.

(iii) *Specific identification.* For purposes of paragraphs (g)(3)(i) and (g)(3)(ii)(B) of this section, if the section 4501(d) covered corporation is unable to specifically identify which shares of stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, the corporation or partnership described in paragraph (g)(3)(i) is treated as holding at the time it becomes a specified affiliate, the section 4501(d) covered corporation must treat the corporation or partnership described in paragraph (g)(3)(i) of this section as holding the most recently acquired shares of the stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable.

(h) *Foreign partnerships that are applicable specified affiliates*—(1) *In general.* A foreign partnership is an applicable specified affiliate of an applicable foreign corporation, if—

(i) More than 50 percent of the capital interests or profits interests of the foreign partnership are held, directly or indirectly, by the applicable foreign corporation; and

(ii) Under the rules described in paragraphs (h)(2) through (5) of this section, at least one domestic entity is a direct or indirect partner with respect to the foreign partnership.

(2) *Direct or indirect partner.* Except as provided in paragraphs (h)(4) and (5) of this section—

(i) A domestic entity is a direct partner with respect to a foreign partnership if it directly owns an interest in the foreign partnership; and

(ii) A domestic entity is an indirect partner with respect to a foreign partnership if the domestic entity owns an interest in the foreign partnership indirectly through—

(A) One or more other foreign partnerships;

(B) One or more foreign corporations controlled by one or more domestic entities within the meaning of paragraph (h)(3) of this section; or

(C) An ownership chain with one or more entities described in paragraphs (h)(2)(ii)(A) and (B) of this section.

(3) *Control of a foreign corporation.* For purposes of paragraph (h)(2)(ii)(B) of this section, a foreign corporation is controlled by one or more domestic entities, if more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote or the total value of the stock of such corporation is owned, directly or indirectly, in aggregate, by one or more domestic entities.

(4) *Indirect interests held through applicable foreign corporations.* Solely for purposes of paragraph (h)(2)(ii) of this section, if an applicable foreign corporation owns, directly or indirectly, stock of a foreign corporation or an interest in a foreign partnership, a domestic entity is not treated as indirectly owning stock of the foreign corporation or an interest in the foreign

partnership solely by reason of owning, directly or indirectly, stock of the applicable foreign corporation.

(5) *De minimis domestic entity (direct or indirect) partner.* A foreign partnership that has one or more domestic entities as direct or indirect partners is not considered an applicable specified affiliate if the domestic entities hold, directly or indirectly, in aggregate, less than five percent of the capital interests and profits interests in the foreign partnership.

(i) [Reserved]

(j) *AFC repurchase or CSFC repurchase*—(1) *Overview.* This paragraph (j) provides rules for determining whether a transaction is an AFC repurchase or CSFC repurchase for purposes of this section. Paragraph (j)(2) of this section provides a general rule regarding the scope of such terms. Paragraph (j)(3) of this section provides an exclusive list of transactions that are treated as a section 317(b) redemption but are not AFC repurchases or CSFC repurchases. Paragraph (j)(4) of this section provides an exclusive list of transactions that are section 4501(d) economically similar transactions. Paragraph (j)(5) of this section provides a non-exclusive list of transactions that are not AFC repurchases or CSFC repurchases.

(2) *Scope of AFC repurchases and CSFC repurchases.* For purposes of this section, an *AFC repurchase* or *CSFC repurchase* means solely—

(i) A section 317(b) redemption with respect to stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, except as provided in paragraph (j)(3) of this section; or

(ii) A section 4501(d) economically similar transaction described in paragraph (j)(4) of this section.

(3) *Certain section 317(b) redemptions not AFC repurchases or CSFC repurchases.* This paragraph (j)(3) provides an exclusive list of transactions that are section 317(b) redemptions but are not AFC repurchases or CSFC repurchases.

(i) *Section 304(a)(1) transactions*—(A) *Rule regarding deemed distributions.* If section 304(a)(1) applies to an acquisition of stock by an acquiring corporation (within the meaning of section 304(a)(1)), the acquiring corporation's deemed distribution in redemption of the acquiring corporation's stock (resulting from the application of section 304(a)(1)) is not an AFC repurchase or CSFC repurchase, as applicable.

(B) *Scope of rule.* The rule described in paragraph (j)(3)(i)(A) of this section applies to a transaction described in paragraph (j)(3)(i)(A) of this section regardless of whether section 302(a) or (d) of the Code applies to the acquiring corporation's deemed distribution in redemption of its stock.

(ii) *Payment by an applicable foreign corporation or a covered surrogate foreign corporation of cash in lieu of fractional shares.* A payment by an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, of cash in lieu of a fractional share of the applicable foreign corporation or covered surrogate foreign corporation is not an AFC repurchase or CSFC repurchase, as applicable, if—

(A) The payment is carried out as part of a transaction that qualifies as a reorganization under section 368(a) or a distribution to which section 355 of the Code applies, or pursuant to the settlement of an option or similar financial instrument (for example, a convertible debt instrument or convertible preferred share);

(B) The cash received by the shareholder entitled to the fractional share is not separately bargained-for consideration (that is, the cash paid by the applicable foreign corporation or covered surrogate foreign corporation in lieu of the fractional share represents a mere rounding off of the shares issued in the exchange or settlement);

(C) The payment is carried out solely for administrative convenience (and, therefore, solely for non-tax reasons); and

(D) The amount of cash paid to the shareholder in lieu of a fractional share does not exceed the fair market value of one full share of the class of stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, with respect to which the payment of cash in lieu of a fractional share is made.

(4) *Section 4501(d) economically similar transactions.* This paragraph (j)(4) provides an exclusive list of transactions that are economically similar transactions for section 4501(d) purposes (each a *section 4501(d) economically similar transaction*).

(i) *Acquisitive reorganizations.* In the case of an acquisitive reorganization in which the target corporation is an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, the exchange by the target corporation shareholders of their target corporation stock pursuant to the plan of reorganization is an AFC repurchase or a CSFC repurchase, as applicable, by the target corporation.

(ii) *E Reorganizations.* In the case of an E reorganization in which the recapitalizing corporation is an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, the exchange by the recapitalizing corporation shareholders of their recapitalizing corporation stock pursuant to the plan of reorganization is an AFC repurchase or a CSFC repurchase, as applicable, by the recapitalizing corporation.

(iii) *F Reorganizations.* In the case of an F reorganization in which the transferor corporation (as defined in § 1.368–2(m)(1) of this chapter) is an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, the exchange by the transferor corporation shareholders of their transferor corporation stock pursuant to the plan of reorganization is an AFC repurchase or a CSFC repurchase, as applicable, by the transferor corporation.

(iv) *Split-offs.* In the case of a split-off by a distributing corporation that is an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, the exchange by the distributing corporation shareholders of their distributing corporation stock is an AFC repurchase or a CSFC repurchase, as applicable, by the distributing corporation.

(v) *Complete liquidations to which both sections 331 and 332 apply.* In the case of a complete liquidation of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, to which sections 331 and 332(a) of the Code respectively apply to component distributions of the complete liquidation—

(A) Each distribution to which section 331 applies is an AFC repurchase or a CSFC repurchase, as applicable; and

(B) The distribution to which section 332(a) applies is not an AFC repurchase or a CSFC repurchase, as applicable. *See* paragraph (j)(5)(i)(A) of this section.

(vi) *Certain forfeitures and clawbacks of stock*—(A) *In general.* In the case of a forfeiture or clawback of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, pursuant to a legal or contractual obligation, the forfeiture or clawback is an AFC repurchase or a CSFC repurchase, as applicable, on the date of forfeiture or clawback (as appropriate) if the stock was treated as issued or provided under paragraph (n)(1) of this section and the forfeiture or clawback of the stock (as appropriate) is described in paragraph (j)(4)(vi)(B), (C), or (D) of this section.

(B) *Stock subject to post-closing price adjustments.* The stock was issued pursuant to an acquisition of a target entity or its business, and the forfeiture of the stock was in accordance with the terms of the documents governing the

transaction (for example, to compensate the acquiring corporation for breaches of representations or warranties made by the target entity, or because the business of the target entity did not achieve certain performance benchmarks agreed upon in the transaction documents).

(C) *Stock for which a section 83(b) election was made.* The stock was subject to a substantial risk of forfeiture within the meaning of section 83(a) of the Code on the date the stock was issued or provided, the service provider made a valid election under section 83(b) with regard to the stock, and the forfeiture resulted from the service provider failing to meet the vesting condition.

(D) *Clawbacks.* On the date the stock was issued or provided, the stock was subject to a clawback agreement, and a clawback of the stock resulted from the occurrence of an event specified in the clawback agreement.

(5) *Transactions that are not AFC repurchases or CSFC repurchases.* This paragraph (j)(5) provides a non-exclusive list of transactions that are not AFC repurchases or CSFC repurchases.

(i) *Complete liquidations generally.* Except as provided in paragraph (j)(4)(v)(A) of this section, the following is not an AFC repurchase or CSFC repurchase, as applicable:

(A) A distribution in complete liquidation of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, to which section 331 or 332(a) applies.

(B) A distribution pursuant to a plan of dissolution of such corporation that is reported on the original (but not a supplemented or an amended) IRS Form 966, *Corporate Dissolution or Liquidation* (or any successor form).

(C) A distribution pursuant to a deemed dissolution of such corporation (for instance, a deemed liquidation under § 301.7701–3 of this chapter).

(ii) *Distributions during taxable year of complete liquidation or dissolution.* Unless paragraph (j)(4)(v) of this section applies, no distribution by an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, during such corporation's taxable year is an AFC repurchase or CSFC repurchase, as applicable, if the applicable foreign corporation or covered surrogate foreign corporation—

(A) Completely liquidates during such corporation's taxable year (that is, has a final distribution during the taxable year in a complete liquidation to which section 331 applies);

(B) Dissolves during the taxable year pursuant to a plan of dissolution as reported on the original (but not a supplemented or an amended) IRS Form 966, *Corporate Dissolution or Liquidation* (or any successor form); or

(C) Is deemed to dissolve during the taxable year (for instance, pursuant to a deemed liquidation under § 301.7701–3 of this chapter).

(iii) *Divisive transactions under section 355 other than split-offs*—(A) *In general.* Subject to paragraph (j)(5)(iii)(B) of this section, a distribution by a distributing corporation that is an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, of stock of a controlled corporation qualifying under section 355 that is not a split-off is not an AFC repurchase or CSFC repurchase, as applicable.

(B) *Exception regarding non-qualifying property in spin-offs.* A distribution by a distributing corporation that is an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, of other property or money in exchange for stock of the distributing corporation is a repurchase by the distributing corporation if it occurs in pursuance of a transaction qualifying under section 355 in which the distribution by the distributing corporation of stock of the controlled corporation is with respect to stock of the distributing corporation.

(iv) *Non-redemptive distributions subject to section 301(c)(2) or (3).* A distribution to which section 301 of the Code applies by an applicable foreign corporation or a covered surrogate foreign corporation to a distributee is not an AFC repurchase or CSFC repurchase if the distribution—

(A) Is subject to section 301(c)(2) or (3); and

(B) The distributee does not exchange stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable (and is not treated as exchanging stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, for Federal income tax purposes).

(v) *Net cash settlement of an option contract.* The net cash settlement of an option contract with respect to stock of an applicable foreign corporation or a covered surrogate foreign corporation is not an AFC repurchase or CSFC repurchase, as applicable. The net cash settlement of an instrument in the legal form of an option contract or other derivative financial instrument that is treated as stock for Federal tax purposes at the time of issuance is treated as a repurchase of that instrument, and therefore an AFC repurchase or CSFC repurchase, as applicable.

(k) *Date of section 4501(d)(1) repurchase or section 4501(d)(2) repurchase*—(1) *General rule.* In general, stock of an applicable foreign corporation or a covered surrogate foreign corporation is treated as subject to a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, as applicable, on the date on which ownership of the stock transfers to the specified affiliate of the applicable foreign corporation, the applicable foreign corporation, the specified affiliate of the covered surrogate foreign corporation, or the covered surrogate foreign corporation, as applicable, for Federal income tax purposes. To determine the date of repurchase in particular situations, *see* paragraphs (k)(2), (3), and (4) of this section.

(2) *Regular-way sale.* A regular-way sale of stock of an applicable foreign corporation or a covered surrogate foreign corporation (that is, a transaction in which a trade order is placed on the trade date, and settlement of the transaction, including payment and delivery of the stock, occurs a standardized number of days after the trade date that is set by a regulator) is treated as subject to a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, as applicable, on the trade date.

(3) *AFC repurchase or CSFC repurchase pursuant to certain section 4501(d) economically similar transactions.* Stock of an applicable foreign corporation or a covered surrogate foreign corporation repurchased in an AFC repurchase or a CSFC repurchase that is a section 4501(d) economically similar transaction described in paragraph (j)(4) of this section is treated as repurchased on the date the shareholders of the applicable foreign corporation or covered surrogate foreign corporation exchange their stock in such corporation.

(4) *Section 4501(d)(1) repurchase pursuant to a covered funding.* To the extent an applicable specified affiliate of an applicable foreign corporation is treated under paragraph (e) of this section as acquiring stock of the applicable foreign corporation that is repurchased or acquired in a covered purchase, such stock is treated as acquired by the applicable specified affiliate on the date of the covered purchase. However, if the date of the covered funding occurs after the date of the covered purchase, then such stock is treated as acquired by the applicable specified affiliate on the date of the covered funding.

(l) *Fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation that is repurchased or acquired*—(1) *In*

general. The fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is subject to a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase is the market price of the stock on the date of the section 4501(d)(1) repurchase or section 4501(d)(2) repurchase (as determined under paragraph (k) of this section without regard to the last sentence of paragraph (k)(4) of this section). That is, if the price at which the repurchased or acquired stock is purchased differs from the market price of the stock on the date the stock is repurchased or acquired, the fair market value of the stock is the market price on the date the stock is repurchased or acquired.

(2) *Stock traded on an established securities market*—(i) *In general.* If stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is subject to a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase with respect to a section 4501(d) covered corporation is traded on an established securities market, the section 4501(d) covered corporation must determine the market price of the stock by applying one of the methods provided in paragraph (l)(2)(ii) of this section. For purposes of this paragraph (l)(2), stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, is treated as traded on an established securities market if any stock of the same class and issue of stock is so traded, regardless of whether the shares repurchased or acquired are so traded.

(ii) *Acceptable methods.* The following are acceptable methods for determining the market price of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, traded on an established securities market:

(A) The daily volume-weighted average price as determined on the date the stock is subject to a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase.

(B) The closing price on the date the stock is subject to a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase.

(C) The average of the high and low prices on the date the stock is subject to a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase.

(D) The trading price at the time the stock is subject to a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase.

(iii) *Date of section 4501(d)(1) repurchase or section 4501(d)(2) repurchase not a trading day.* For purposes of each method provided in paragraph (l)(2)(ii) of this section, if the date stock is subject to a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase is not a trading day, the date on which the market price is determined is the immediately preceding trading day.

(iv) *Consistency requirement.* The market price of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is traded on an established securities market must be determined by consistently applying one (but not more than one) of the methods provided in paragraph (l)(2)(ii) of this section to all section 4501(d)(1) repurchases with respect to an applicable foreign corporation or all section 4501(d)(2) repurchases with respect to a covered surrogate foreign corporation, as applicable, in the same taxable year of the applicable foreign corporation or covered surrogate foreign corporation, as applicable (which, if the applicable foreign corporation or covered surrogate foreign corporation, as applicable, does not have a taxable year for Federal income tax purposes, is the calendar year).

(v) *Stock traded on multiple exchanges*—(A) *In general.* A section 4501(d) covered corporation must determine the fair market value of the stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, by reference to trading on the established securities market in the country in which the applicable foreign corporation or covered surrogate foreign corporation, as applicable, is organized, including a regional established securities market that trades in that country.

(B) *Stock traded on multiple exchanges in country where corporation is organized.* If the stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, is traded on multiple established securities markets in the country in which the applicable foreign corporation or covered surrogate foreign corporation, as applicable, is organized, a section 4501(d) covered corporation must treat the established securities market with the highest trading volume in the stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, in the section 4501(d) covered corporation's prior taxable year as the established securities market that the section 4501(d) covered corporation must reference to determine the fair market value of the stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable.

(C) *Other cases in which stock is traded on multiple exchanges.* If stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable is traded on multiple established securities markets and paragraphs (l)(2)(v)(A) and (B) of this section do not apply, a section 4501(d) covered corporation must determine the fair market value of the stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, in a manner that is reasonable under the facts and circumstances.

(3) *Stock not traded on an established securities market*—(i) *General rule.* If stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, is not traded on an established securities market, the market price of the stock is determined as of the date of the section 4501(d)(1) repurchase or section 4501(d)(2) repurchase under the principles of § 1.409A–1(b)(5)(iv)(B)(*1*) of this chapter.

(ii) *Consistency requirement.* The valuation method for determining the market price of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is not traded on an established securities market must be used for all section 4501(d)(1) repurchases with respect to the same class of stock of an applicable foreign corporation or all section 4501(d)(2) repurchases with respect to the same class of stock of a covered surrogate foreign corporation, as applicable, in the same taxable year of the applicable foreign corporation or covered surrogate foreign corporation, as applicable (which, if the applicable foreign corporation or covered surrogate foreign corporation, as applicable, does not have a taxable year for Federal income tax purposes, is the calendar year), unless the application of that method to a particular section 4501(d)(1) repurchase or section 4501(d)(2) repurchase would be unreasonable under the facts and circumstances as of the valuation date within the meaning of § 1.409A–1(b)(5)(iv)(B)(*1*) of this chapter.

(4) *Market price of stock denominated in non-U.S. currency.* The market price of any stock of an applicable foreign corporation or a covered surrogate foreign corporation that is denominated in a currency other than the U.S. dollar is converted into U.S. dollars at the spot rate (as defined in § 1.988–1(d)(1) of this chapter) on the date the stock is subject to a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase.

(m) *Section 4501(d) statutory exceptions*—(1) *In general*—(i) *Overview.* This paragraph (m) provides rules regarding the application of the exceptions in section 4501(e) (each, a *section 4501(d) statutory exception*), other than the section 4501(d) de minimis exception, to a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase.

(ii) *Reduction of section 4501(d) excise tax base.* The fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, repurchased or acquired in a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase described in this paragraph (m) is a reduction for purposes of computing the section 4501(d) covered corporation's section 4501(d) excise tax base. *See* paragraph (c)(3)(i)(B) of this section.

(2) *Section 4501(d) reorganization exception.* The fair market value of stock repurchased in an AFC repurchase that is a section 4501(d)(1) repurchase or a CSFC repurchase that is a section 4501(d)(2) repurchase described in any of paragraphs (m)(2)(i) through (iv) of this section is a reduction for purposes of computing the section 4501(d) covered corporation's section 4501(d) excise tax base (*section 4501(d) reorganization exception*) to the extent that such AFC repurchase or CSFC repurchase is for property permitted by section 354 or 355 of the Code to be received without the recognition of gain or loss:

(i) A repurchase by a target corporation in an acquisitive reorganization pursuant to the plan of reorganization.

(ii) A repurchase by a recapitalizing corporation in an E reorganization pursuant to the plan of reorganization.

(iii) A repurchase by a transferor corporation in an F reorganization pursuant to the plan of reorganization.

(iv) A repurchase by a distributing corporation in a split-off (whether or not part of a D reorganization).

(3) *Stock contributions to an employer-sponsored retirement plan*—(i) *Reductions to section 4501(d) excise tax base*—(A) *General rule.* The fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is repurchased or acquired in a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, as applicable, with respect to a section 4501(d) covered corporation, is a reduction for purposes of computing the section 4501(d) covered corporation's section 4501(d) excise tax base if the stock that is repurchased or acquired, or an amount of stock equal to the fair market value of the stock repurchased or acquired, is contributed to an employer-sponsored retirement plan.

(B) *Special rule for leveraged ESOPs.* If a section 4501(d) covered corporation maintains an ESOP with an exempt loan (as defined in section 4975(d)(3) of the Code), allocations of qualifying employer securities that are stock of the applicable foreign corporation or covered surrogate foreign corporation from the ESOP suspense account to ESOP participants' accounts that are attributable to employer contributions (and not to dividends) are treated as contributions of stock under this paragraph (m)(3), as of the date stock attributable to repayment of the exempt loan is released from the suspense account and allocated to ESOP participants' accounts.

(ii) *Classes of stock contributed to an employer-sponsored retirement plan.* This paragraph (m)(3) applies to contributions of any class of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, to an employer-sponsored retirement plan regardless of the class of stock that was repurchased or acquired in a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase by the section 4501(d) covered corporation.

(iii) *Determining amount of reduction to section 4501(d) excise tax base.* The amount of the reduction under paragraph (m)(3)(i) of this section for a section 4501(d) covered corporation is determined as provided in paragraph (m)(3)(iii)(A) or (B) of this section.

(A) *Same class of stock repurchased and contributed.* If stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, is repurchased or acquired in a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, as applicable, with respect to a section 4501(d) covered corporation, and stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, that is of the same class is contributed to an employer-sponsored retirement plan of the section 4501(d) covered corporation, the amount of the reduction under paragraph (m)(3)(i) of this section is equal to the lesser of—

(*1*) The aggregate fair market value of the stock of the same class that was repurchased or acquired (as determined under paragraph (l) of this section) during the taxable year; or

(*2*) The amount obtained by—

(*i*) Determining the aggregate fair market value of all stock of that class repurchased or acquired in all section 4501(d)(1) repurchases or section 4501(d)(2) repurchases, as applicable, with respect to the section 4501(d) covered corporation (as determined under paragraph (l) of this section) during its taxable year, reduced by the fair market value of shares of that class of stock that is a reduction to the section 4501(d) excise tax base for the taxable year under a section 4501(d) statutory exception other than this paragraph (m)(3);

(*ii*) Dividing the amount determined under paragraph (m)(3)(iii)(A)(*2*)(*i*) of this section by the number of shares of that class repurchased or acquired in all section 4501(d)(1) repurchases or section 4501(d)(2) repurchases, as applicable, with respect to the section 4501(d) covered corporation during the taxable year, reduced by the number of shares of that class of stock the fair market value of which is a reduction to the section 4501(d) excise tax base for the taxable year under a section 4501(d) statutory exception other than this paragraph (m)(3); and

(*iii*) Multiplying the amount determined under paragraph (m)(3)(iii)(A)(*2*)(*ii*) of this section by the number of shares of that class contributed to an employer-sponsored retirement plan for the taxable year.

(B) *Different class of stock repurchased and contributed*—(*1*) *In general.* If stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, of a different class of stock than is repurchased or acquired in a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, as applicable, with respect to a section 4501(d) covered corporation is contributed to an employer-sponsored retirement plan of the section 4501(d) covered corporation, then the amount of the reduction under paragraph (m)(3)(i) of this section is equal to the fair market value of the contributed stock at the time the stock is contributed to the employer-sponsored retirement plan.

(*2*) *Maximum reduction permitted.* The amount of the reduction under paragraph (m)(3)(i) of this section must not exceed the section 4501(d) excise tax base for the taxable year (determined without regard to any reduction under paragraph (m)(3)(i) of this section), reduced by the fair market value of any stock that is a reduction to the section 4501(d) excise tax base for the taxable year under a section 4501(d) statutory exception other than this paragraph (m)(3).

(iv) *Timing of contributions*—(A) *In general.* The reduction in the section 4501(d) excise tax base, in accordance with paragraph (m)(3)(i) of this section

(that is, the reduction in the section 4501(d) excise tax base), for a taxable year applies to contributions of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, to an employer-sponsored retirement plan during the section 4501(d) covered corporation's taxable year.

(B) *Treatment of contributions after close of taxable year.* For purposes of paragraph (m)(3)(i) of this section, a section 4501(d) covered corporation may treat stock contributions to an employer-sponsored retirement plan made after the close of the section 4501(d) covered corporation's taxable year as having been contributed during that taxable year if the following two requirements are satisfied:

(*1*) The stock must be contributed to the employer-sponsored retirement plan by the filing deadline for the form on which the section 4501(d) excise tax must be reported (applicable form) that is due for the first full quarter after the close of the section 4501(d) covered corporation's taxable year.

(*2*) The stock must be treated by the employer-sponsored retirement plan in the same manner that the plan would treat a contribution received on the last day of that taxable year.

(C) *No duplicate reductions.* Stock contributions that are treated under paragraph (m)(3)(iv)(B) of this section as having been contributed in the taxable year to which the applicable form applies may not be treated as having been contributed for any other taxable year for purposes of the section 4501(d) excise tax.

(v) *Contributions before January 1, 2023.* A section 4501(d) covered corporation with a taxable year that both begins before January 1, 2023, and ends after December 31, 2022, may include the fair market value of all contributions of its stock to an employer-sponsored retirement plan during the entirety of that taxable year for purposes of applying this paragraph (m)(3).

(4) *Repurchases or acquisitions by a dealer in securities in the ordinary course of business*—(i) *In general.* Subject to paragraph (m)(4)(ii) of this section, the fair market value of stock repurchased or acquired in a section 4501(d)(1) repurchase (for this purpose, determined without regard to paragraph (b)(2)(xxii)(B) of this section) or a covered purchase that is treated as a section 4501(d)(1) repurchase by a specified affiliate of an applicable foreign corporation or an applicable foreign corporation, or in a section 4501(d)(2) repurchase by a specified affiliate of a covered surrogate foreign corporation or a covered surrogate foreign corporation, is a reduction for purposes of computing the section 4501(d) covered corporation's section 4501(d) excise tax base if the repurchasing or acquiring entity is a dealer in securities (within the meaning of section 475(c)(1) of the Code) to the extent the stock is repurchased or acquired in the ordinary course of the dealer's business of dealing in securities.

(ii) *Applicability.* The reduction described in paragraph (m)(4)(i) of this section applies solely to the extent that—

(A) The dealer accounts for the stock as securities held primarily for sale to customers in the dealer's ordinary course of business;

(B) The dealer disposes of the stock within a period of time that is consistent with the holding of the stock for sale to customers in the dealer's ordinary course of business, taking into account the terms of the stock and the conditions and practices prevailing in the markets for similar stock during the period in which the stock is held; and

(C) The dealer (if it is an applicable foreign corporation or a covered surrogate foreign corporation) does not sell or otherwise transfer the stock to a specified affiliate of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, or the dealer (if it is a specified affiliate of an applicable foreign corporation or of a covered surrogate foreign corporation, as applicable) does not sell or otherwise transfer the stock to the applicable foreign corporation, covered surrogate foreign corporation, or to another specified affiliate of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, in each case other than in a sale or transfer to a dealer that also satisfies the requirements of this paragraph (m)(4)(ii).

(5) *Repurchases by a RIC or REIT.* Section 4501(e)(5) does not apply for purposes of section 4501(d).

(6) *AFC repurchase or CSFC repurchase treated as a dividend*—(i) *In general.* In accordance with paragraph (m)(6)(ii) of this section, the fair market value of stock repurchased by an applicable foreign corporation or a covered surrogate foreign corporation in an AFC repurchase or a CSFC repurchase, as applicable, is a reduction for purposes of computing the section 4501(d) covered corporation's section 4501(d) excise tax base to the extent the AFC repurchase or CSFC repurchase, as applicable, is treated as a distribution of a dividend under section 301(c)(1) or 356(a)(2).

(ii) *Rebuttable presumption of no dividend equivalence.* An AFC repurchase or CSFC repurchase to which section 302 or 356(a) applies is presumed to be subject to section 302(a) or 356(a)(1), respectively (and, therefore, is presumed ineligible for the exception in paragraph (m)(6)(i) of this section). A section 4501(d) covered corporation may rebut this presumption with regard to a specific shareholder of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, solely by establishing with sufficient evidence that the shareholder treats the AFC repurchase or CSFC repurchase as a dividend on the shareholder's Federal income tax return or, for a shareholder who does not have a Federal income tax filing obligation with respect to the AFC repurchase or CSFC repurchase, would properly treat the AFC repurchase or CSFC repurchase as a dividend if the shareholder filed a Federal income tax return.

(n) *Application of section 4501(d) netting rule*—(1) *In general.* This paragraph (n) provides the *section 4501(d) netting rule,* under which the section 4501(d) excise tax base with respect to a section 4501(d) covered corporation for a taxable year is reduced only by stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, issued or provided by the section 4501(d) covered corporation to its employees during its taxable year. Any reference in this paragraph (n) to issuing or providing stock to an employee refers solely to stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, that is issued or provided by a section 4501(d) covered corporation to an employee in connection with the employee's performance of services in the employee's capacity as an employee of the section 4501(d) covered corporation. The fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, that is described in this paragraph (n) is a reduction for purposes of computing the section 4501(d) covered corporation's section 4501(d) excise tax base. *See* paragraph (c)(3)(i)(C) of this section.

(2) *Stock issued or provided outside period of applicable foreign corporation or covered surrogate foreign corporation status.* Any stock issued or provided prior to the initiation date or after the cessation date of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, is not taken into account under paragraph (n)(1) of

this section. *See* paragraph (f)(1) of this section.

(3) *Issuances or provisions before January 1, 2023.* Except as provided in paragraph (n)(2) of this section, a section 4501(d) covered corporation with a taxable year that begins before January 1, 2023, and ends after December 31, 2022, must include the fair market value of issuances or provisions of stock that occur before January 1, 2023, in such taxable year for purposes of paragraph (n)(1) of this section for that taxable year.

(4) *F reorganizations.* For purposes of this paragraph (n), the transferor corporation and the resulting corporation (as defined in § 1.368–2(m)(1) of this chapter) in an F reorganization are treated as the same corporation.

(5) *Stock issued or provided in connection with the performance of services*—(i) *In general.* For purposes of this paragraph (n), stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, is transferred by the section 4501(d) covered corporation in connection with the performance of services only if the transfer is described in section 83, including pursuant to a nonqualified stock option described in § 1.83–7 of this chapter, or is pursuant to a stock option described in section 421 of the Code.

(ii) *Sale of shares to cover exercise price or withholding*—(A) *Payment or advance by third party equal to exercise price.* If a third party pays the exercise price of a stock option on behalf of an employee or advances to an employee an amount equal to the exercise price of a stock option that the employee uses to exercise the option, then any stock transferred by the section 4501(d) covered corporation to the employee or to the third party in connection with exercising the option is treated as issued or provided in connection with the performance of the services.

(B) *Advance by third party equal to withholding obligation.* If a third party advances an amount equal to the withholding obligation of an employee, then any stock transferred by the section 4501(d) covered corporation to the employee or to the third party in connection with this arrangement is treated as issued or provided in connection with the performance of services.

(6) *Date of issuance or provision for section 4501(d) netting rule*—(i) *In general.* Stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, is issued or provided to an employee of a section 4501(d) covered corporation as of the date the employee is treated as the beneficial owner of the stock for Federal income tax purposes. In general, an employee is treated as the beneficial owner of the stock when the stock is both transferred by the section 4501(d) covered corporation and substantially vested within the meaning of § 1.83–3(b) of this chapter. Thus, stock transferred pursuant to a vested stock award or restricted stock unit is issued or provided when the section 4501(d) covered corporation initiates payment of the stock. Stock transferred that is not substantially vested within the meaning of § 1.83–3(b) of this chapter is not issued or provided until it vests, except as provided in paragraph (n)(6)(iii) of this section.

(ii) *Stock options and stock appreciation rights.* Stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, transferred by a section 4501(d) covered corporation pursuant to an option described in § 1.83–7 of this chapter or section 421 or a stock appreciation right is issued or provided by the section 4501(d) covered corporation as of the date the option or stock appreciation right is exercised.

(iii) *Stock on which a section 83(b) election is made.* Stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, transferred by the section 4501(d) covered corporation when it is not substantially vested within the meaning of § 1.83–3(b) of this chapter, but as to which a valid election under section 83(b) is made, is treated as issued or provided by the section 4501(d) covered corporation as of the transfer date.

(7) *Fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation that is issued or provided to employees*—(i) *In general.* For purposes of paragraph (n)(1) of this section, the fair market value of stock of an applicable foreign corporation or a covered surrogate foreign corporation that is issued or provided is determined under section 83 as of the date the stock is issued or provided to an employee by the section 4501(d) covered corporation. The fair market value of the stock is determined under the rules provided in section 83 regardless of whether an amount is includible in the employee's income under section 83 or otherwise. For example, the fair market value of stock issued or provided by a section 4501(d) covered corporation to its employee pursuant to a stock option described in section 421 and stock issued or provided by a section 4501(d) covered corporation to an employee who is a nonresident alien for services performed outside of the United States is determined using the rules provided in section 83.

(ii) *Market price of stock denominated in non-U.S. currency.* The market price of any stock of an applicable foreign corporation or a covered surrogate foreign corporation that is denominated in a currency other than the U.S. dollar is converted into U.S. dollars at the spot rate (as defined in § 1.988–1(d)(1) of this chapter) on the date the stock is issued or provided by the section 4501(d) covered corporation to its employee.

(8) *Issuances that are disregarded for purposes of applying the section 4501(d) netting rule*—(i) *In general.* This paragraph (n)(8) lists the sole circumstances in which an issuance or provision of stock by the section 4501(d) covered corporation to its employee is disregarded for purposes of paragraph (n) of this section. The transfers of stock described in § 58.4501–4(f)(1) through (9) are not issuances or provisions of stock by a section 4501(d) covered corporation to its employees and therefore are not relevant to the section 4501(d) netting rule.

(ii) *Stock contributions to an employer-sponsored retirement plan.* Any stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, contributed to an employer-sponsored retirement plan, any stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, treated as contributed to an employer-sponsored retirement plan under paragraph (m)(3) of this section, and any stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, sold to a leveraged or non-leveraged ESOP, is disregarded for purposes of this paragraph (n).

(iii) *Net exercises and share withholding.* Stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, withheld by a section 4501(d) covered corporation to satisfy the exercise price of a stock option issued to an employee, or to pay any withholding obligation, is disregarded for purposes of paragraph (n) of this section. For example, stock of an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, withheld by a section 4501(d) covered corporation to pay the exercise price of a stock option, to satisfy an employer's income tax withholding obligation under section 3402 of the Code, to satisfy an employer's withholding obligation under section 3102 of the Code, or to

satisfy an employer's withholding obligation for State, local, or foreign taxes, is disregarded for purposes of this paragraph (n) to an employee.

(iv) *Settlement other than in stock.* Settlement of an option contract with respect to an applicable foreign corporation or a covered surrogate foreign corporation, as applicable, using any consideration other than stock of the applicable foreign corporation or covered surrogate foreign corporation, as applicable, (including cash) is disregarded for purposes of this paragraph (n).

(v) *Instrument not in the legal form of stock*—(A) *Generally disregarded.* Except as provided in paragraph (n)(8)(v)(B) of this section, the issuance or provision by a section 4501(d) covered corporation of an instrument that is not in the legal form of stock but is treated as stock for Federal income tax purposes (*non-stock instrument*) is disregarded for purposes of the section 4501(d) netting rule.

(B) *Certain instruments treated as issued*—(*1*) *In general.* Subject to paragraphs (n)(8)(v)(B)(2), (3), and (4) of this section, if there is a section 4501(d)(1) repurchase or section 4501(d)(2) repurchase of a non-stock instrument, the issuance or provision of the instrument is regarded for purposes of the section 4501(d) netting rule at the time of such section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, provided that the issuance or provision was by the section 4501(d) covered corporation to its employees. For purposes of the stock repurchase excise tax regulations, the delivery of stock pursuant to the terms of a non-stock instrument is treated as a section 4501(d)(1) repurchase or a section 4501(d)(2) repurchase, as applicable, of the non-stock instrument in exchange for an issuance or provision of the stock that is delivered.

(*2*) *Issuances or provisions before the initiation date or after the cessation date.* Any non-stock instrument issued or provided by the section 4501(d) covered corporation before the initiation date or after the cessation date is not regarded for purposes of the section 4501(d) netting rule.

(*3*) *Identification of an instrument not in the legal form of stock.* The section 4501(d) covered corporation must identify the section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, as applicable, of a non-stock instrument on the return on which the stock repurchase excise tax must be reported for the section 4501(d) covered corporation's taxable year in which the section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, as applicable, occurs (*repurchase year*) in order for the issuance or provision to be regarded under paragraph (n)(8)(v)(B)(*1*) of this section.

(*4*) *Consistency requirement.* In the repurchase year of a non-stock instrument (tested non-stock instrument), the issuance or provision of the non-stock instrument is not regarded under paragraph (n)(8)(v)(B)(*1*) of this section unless the section 4501(d) covered corporation reports or has reported the section 4501(d)(1) repurchase or section 4501(d)(2) repurchase of all other comparable non-stock instruments repurchased or acquired within the five taxable years ending on the last day of the repurchase year in a consistent manner. A comparable non-stock instrument is a non-stock instrument that has substantially similar economic terms as the tested non-stock instrument, regardless of whether the comparable non-stock instrument and the tested non-stock instrument have the same legal form. A comparable non-stock instrument is reported in a consistent manner if it is or was timely reported on the return on which the stock repurchase excise tax must be reported that is or was due for the first full quarter after the close of the repurchase year for such comparable non-stock instrument. Notwithstanding the first sentence of this paragraph (n)(8)(v)(B)(*4*), the issuance or provision of the tested non-stock instrument will be regarded if the section 4501(d) covered corporation demonstrates to the satisfaction of the IRS that the section 4501(d) covered corporation's failure to timely report the repurchase or acquisition of the comparable non-stock instruments was due to reasonable cause (within the meaning § 1.6664–4 of this chapter) and not willful neglect. In determining whether this failure to report was due to reasonable cause and not willful neglect, the IRS will consider all the facts and circumstances, including the steps the section 4501(d) covered corporation took to comply with its Federal tax reporting and payment obligations.

(5) Fair market value of the instrument. The amount of the reduction for purposes of computing the section 4501(d) covered corporation's section 4501(d) excise tax base for a taxable year under this section for the issuance or provision of a non-stock instrument is equal to the lesser of the fair market value of the instrument when the instrument was issued or provided within the meaning of paragraph (n)(7) of this section or the fair market value of the instrument at the time of the section 4501(d)(1) repurchase or section 4501(d)(2) repurchase, as applicable.

(o) *Rules applicable before* April 13, 2024—(1) *Acquisitions of applicable foreign corporation stock.* If an applicable specified affiliate of an applicable foreign corporation acquires stock of the applicable foreign corporation from a person that is not the applicable foreign corporation or another specified affiliate of such applicable foreign corporation—

(i) The applicable specified affiliate is treated as a covered corporation with regard to the acquisition; and

(ii) The acquisition is treated as a repurchase of stock of a covered corporation by a covered corporation.

(2) *Funding rule.* For purposes of applying section 4501(d)(1), an applicable specified affiliate is treated as acquiring stock of an applicable foreign corporation if the applicable specified affiliate funds by any means (including through distributions, debt, or capital contributions) the acquisition or repurchase of stock of the applicable foreign corporation by the applicable foreign corporation or a specified affiliate that is not also an applicable specified affiliate, and such funding is undertaken for a principal purpose of avoiding the stock repurchase excise tax. For purposes of the preceding sentence, the fair market value of stock treated as acquired by the applicable specified affiliate is limited to the amount funded by the applicable specified affiliate. This paragraph (o)(2) applies with respect to a funding that occurs on or after December 27, 2022, provided that the covered purchase occurs after December 31, 2022, and on or before April 12, 2024. *See* paragraph (r)(2) of this section.

(3) *Per se rule.* A principal purpose described in paragraph (o)(2) of this section is deemed to exist if the applicable specified affiliate funds by any means, other than through distributions, the applicable foreign corporation or a specified affiliate that is not also an applicable specified affiliate, and such funded entity acquires or repurchases stock of the applicable foreign corporation within two years of the funding.

(4) *Repurchases or acquisitions of covered surrogate foreign corporation stock.* If a covered surrogate foreign corporation repurchases its stock, or if a specified affiliate of the covered surrogate foreign corporation acquires stock of the covered surrogate foreign corporation—

(i) The expatriated entity with respect to the covered surrogate foreign corporation is treated as a covered

corporation with respect to the repurchase or acquisition; and

(ii) The repurchase or acquisition is treated as a repurchase of stock of a covered corporation by the covered corporation.

(5) *Definitions solely for purposes of paragraph (o)*—(i) *Application of definitions in §§ 58.4501–1(b) and 58.4501–7(b)(2).* Solely for purposes of this paragraph (o), any term used but not defined in this paragraph (o) has the meaning provided in § 58.4501–1(b) or paragraph (b)(2) of this section (other than paragraph (b)(2)(xiii) of this section), as applicable.

(ii) *Definition of applicable specified affiliate.* Solely for purposes of this paragraph (o), the term *applicable specified affiliate* means a specified affiliate of an applicable foreign corporation, other than a foreign corporation or a foreign partnership (unless the partnership has a domestic entity as a direct or indirect partner).

(6) *Early application of rules of this section other than paragraph (o). See* paragraph (r)(3) of this section regarding a section 4501(d) covered corporation's ability to choose to apply all the rules of this section (other than paragraphs (o) and (r)(1) and (2) of this section) to transactions occurring after December 31, 2022.

(p) *Section 4501(d)(1) examples.* The following examples illustrate the application of the rules in this section relating to section 4501(d)(1). For purposes of the following examples, unless otherwise stated: Corporation FZ is an applicable foreign corporation; each entity has a calendar taxable year, has no direct or indirect owner that is a domestic entity, and is not related to any other entity; each corporation's only outstanding stock is a single class of common stock; the functional currency (within the meaning of section 985 of the Code) of any entity is the U.S. dollar; any repurchase or acquisition of the stock of an applicable foreign corporation is from a person who is not the applicable foreign corporation or a specified affiliate of the applicable foreign corporation; no stock is transferred to any employee; for examples that expressly provide that stock is transferred to any employee, such transfer is made in connection with the employee's performance of services in its capacity as an employee of the transferor, and the employee is treated as the beneficial owner of the stock for Federal income tax purposes on the date of the transfer; there are no covered fundings or covered purchases; and the section 4501(d) statutory exceptions are inapplicable.

(1) *Example 1: The section 4501(d) netting rule with respect to a single applicable specified affiliate*—(i) *Facts.* Corporation FZ owns all the outstanding stock of Corporation US1, a domestic corporation. Each of Employee M and Employee P is an employee of Corporation US1. On February 1, 2025, Corporation US1 purchases 100 shares of stock of Corporation FZ when the fair market value of each share is $8x. On May 15, 2025, Corporation US1 transfers to Employee M 50 shares of stock of Corporation FZ when the fair market value of each share is $5x. On November 1, 2025, Corporation US1 transfers to Employee P 30 shares of stock of Corporation US1 when the fair market value of each share is $9x.

(ii) *Analysis.* Corporation US1's purchase of 100 shares of stock of Corporation FZ on February 1, 2025, is a section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xxii)(A) of this section. Corporation US1 is a section 4501(d) covered corporation with respect to the section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xv)(A) of this section. For purposes of computing Corporation US1's section 4501(d) excise tax base for its 2025 taxable year, the fair market value of the 100 shares of stock of Corporation FZ subject to the section 4501(d)(1) repurchase is $800x. *See* paragraph (l) of this section. Accordingly, the section 4501(d)(1) repurchase increases Corporation US1's section 4501(d) excise tax base for the 2025 taxable year by $800x. 50 shares of Corporation FZ stock are treated as issued or provided to Employee M on May 15, 2025. *See* paragraph (n) of this section. Therefore, Corporation US1's section 4501(d) excise tax base for its 2025 taxable year is reduced by $250x (50 shares x $5x per share = $250x). *See* paragraph (c)(3)(i)(C) of this section. Corporation US1's section 4501(d) excise tax base for its 2025 taxable year is not reduced by the transfer of stock of Corporation US1 to Employee P because the section 4501(d) excise tax base with respect to Corporation US1 can only be reduced by the fair market value of stock of Corporation FZ issued or provided by Corporation US1 to employees of Corporation US1. *See* paragraph (n) of this section. Accordingly, Corporation US1's section 4501(d) excise tax base with respect to these transactions for its 2025 taxable year is $550x ($800x repurchase − $250x issuance = $550x).

(2) *Example 2: The section 4501(d) netting rule with respect to multiple applicable specified affiliates*—(i) *Facts.* Corporation FZ owns all the outstanding stock of both Corporation US1, a domestic corporation, and Corporation US2, a domestic corporation. Employee T is an employee of Corporation US2. On February 1, 2025, Corporation US1 purchases 100 shares of stock of Corporation FZ when the fair market value of each share is $8x. On May 15, 2025, Corporation US2 transfers to Employee T 50 shares of stock of Corporation FZ when the fair market value of each share is $5x.

(ii) *Analysis.* Corporation US1's purchase of 100 shares of stock of Corporation FZ on February 1, 2025, is a section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xxii)(A) of this section. Corporation US1 is a section 4501(d) covered corporation with respect to the section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xv)(A) of this section. For purposes of computing Corporation US1's section 4501(d) excise tax base for its 2025 taxable year, the fair market value of the 100 shares of stock of Corporation FZ subject to the section 4501(d)(1) repurchase is $800x. *See* paragraph (l) of this section. Accordingly, the section 4501(d)(1) repurchase increases Corporation US1's section 4501(d) excise tax base for the 2025 taxable year by $800x. Corporation US1's section 4501(d) excise tax base for its 2025 taxable year is not reduced by the transfer of stock of Corporation FZ to Employee T, an employee of Corporation US2, because the section 4501(d) excise tax base with respect to Corporation US1 can only be reduced by the fair market value of stock of Corporation FZ issued or provided by Corporation US1 to employees of Corporation US1. *See* paragraph (n) of this section.

(3) *Example 3: A single covered funding and covered purchase*—(i) *Facts.* Corporation FZ owns all the outstanding stock of Corporation US1, a domestic corporation. On March 1, 2024, Corporation US1 makes a distribution with respect to its stock of $600x to Corporation FZ. A principal purpose of the distribution is to fund a covered purchase. On May 15, 2026, Corporation FZ repurchases 100 shares of its stock when the fair market value of each share is $8x.

(ii) *Analysis.* Because a principal purpose of the distribution by Corporation US1 to Corporation FZ is to fund a covered purchase, the distribution of $600x is a covered funding. *See* paragraph (e)(1) of this section. The repurchase by Corporation FZ of its stock is an AFC repurchase and therefore a covered purchase. *See* paragraph (b)(2)(vii) of this section. The entire amount of the covered purchase, or $800x, is the allocable amount of the covered purchase. *See* paragraph (e)(5) of this section. The entire amount of the covered funding, or $600x, is allocated to the allocable amount of the covered purchase because the amount of the covered funding is less than the amount of the covered purchase. *See* paragraph (e)(7)(iii) of this section. The amount of stock of Corporation FZ acquired in the covered purchase that is treated as acquired by Corporation US1 is equal to the amount of covered fundings allocated to the allocable amount of the covered purchase, or $600x (which represents 75 of the 100 shares of stock repurchased). *See* paragraph (e)(4) of this section. Corporation US1 is treated as acquiring stock of Corporation FZ in a section 4501(d)(1) repurchase on May 15, 2026. *See* paragraphs (b)(2)(xxii)(B) and (k)(4) of this section. Corporation US1 is a section 4501(d) covered corporation with respect to the section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xv)(A) of this section. For purposes of computing Corporation US1's section 4501(d) excise tax base, the fair market value of the 75 shares of stock of Corporation FZ subject to the section 4501(d)(1) repurchase is $600x. *See* paragraph (l) of this section. Accordingly, the section 4501(d)(1) repurchase by Corporation US1 increases its section 4501(d) excise tax base for the 2026 taxable year by $600x.

(4) *Example 4: Multiple covered fundings and a single covered purchase*—(i) *Facts.* The

facts are the same as in paragraph (p)(3)(i) of this section (*Example 3*), except that Corporation FZ also owns all the stock of Corporation FB, a foreign corporation. In addition, on April 15, 2024, Corporation FB makes a distribution with respect to its stock of $1,000x to Corporation FZ. Further, on October 15, 2024, Corporation US1 makes another distribution with respect to its stock of $400x to Corporation FZ. A principal purpose of the October 15, 2024, distribution is also to fund a covered purchase.

(ii) *Analysis.* Because a principal purpose of the distributions by Corporation US1 to Corporation FZ is to fund a covered purchase, each of the March 1, 2024, distribution of $600x and the October 15, 2024, distribution of $400x is a covered funding. *See* paragraph (e)(1) of this section. The repurchase by Corporation FZ of its stock is an AFC repurchase and therefore a covered purchase. *See* paragraph (b)(2)(vii) of this section. The entire amount of the covered purchase, or $800x, is the allocable amount of the covered purchase. *See* paragraph (e)(5) of this section. Further, the allocable amount of the covered purchase is treated as made first from the covered fundings. With respect to the covered fundings, the March 1, 2024, distribution by Corporation US1 is treated as funding the allocable amount of the covered purchase before the October 15, 2024, distribution by Corporation US1. *See* paragraphs (e)(6) and (e)(7)(iv) of this section. Accordingly, the entire amount of the March 1, 2024, distribution, or $600x, and $200x of the October 15, 2024, distribution is allocated to the allocable amount of the covered purchase. The amount of stock of Corporation FZ acquired in the covered purchase that is treated as acquired by Corporation US1 is equal to the amount of covered fundings allocated to the allocable amount of the covered purchase, or $800x (which represents the 100 shares of stock repurchased). *See* paragraph (e)(4) of this section. Corporation US1 is treated as acquiring stock of Corporation FZ in a section 4501(d)(1) repurchase on May 15, 2026. *See* paragraphs (b)(2)(xxii)(B) and (k)(4) of this section. Corporation US1 is a section 4501(d) covered corporation with respect to the section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xv)(A) of this section. For purposes of computing Corporation US1's section 4501(d) excise tax base, the fair market value of the 100 shares of stock of Corporation FZ subject to the section 4501(d)(1) repurchase is $800x. *See* paragraph (l) of this section. Accordingly, the section 4501(d)(1) repurchase by Corporation US1 increases its section 4501(d) excise tax base for the 2026 taxable year by $800x.

(5) *Example 5: The rebuttable presumption*—(i) *Facts.* Corporation FZ owns all the outstanding stock of Corporation US1, a domestic corporation. Corporation US1 owns all the outstanding stock of Corporation FD, a foreign corporation. On March 1, 2024, Corporation US1 makes a capital contribution of $600x to Corporation FD. On May 15, 2024, Corporation FD acquires 100 shares of the stock of Corporation FZ when the fair market value of each share is $8x. The facts and circumstances do not clearly establish that there was not a principal purpose of avoiding the section 4501(d) excise tax as described in paragraph (e)(1) of this section.

(ii) *Analysis.* A principal purpose described in paragraph (e)(1) of this section is presumed to exist because Corporation FD is a downstream relevant entity and the capital contribution by Corporation US1 to Corporation FD occurs within two years of a covered purchase by Corporation FD. *See* paragraph (e)(2) of this section. Because the facts and circumstances do not clearly establish that there was not a principal purpose with respect to the March 1, 2024, capital contribution of avoiding the section 4501(d) excise tax as described in paragraph (e)(1) of this section, the presumption is not rebutted. *See* paragraph (e)(2) of this section. Accordingly, the capital contribution of $600x is a covered funding. *See* paragraph (e)(1) of this section. The acquisition by Corporation FD of the stock of Corporation FZ is an acquisition of stock of an applicable foreign corporation by a relevant entity and therefore a covered purchase. *See* paragraph (b)(2)(vii) of this section. The entire amount of the covered purchase, or $800x, is the allocable amount of the covered purchase. *See* paragraph (e)(5) of this section. The entire amount of the covered funding, or $600x, is allocated to the allocable amount of the covered purchase because the amount of the covered funding is less than the amount of the covered purchase. *See* paragraph (e)(7)(iii) of this section. The amount of stock of Corporation FZ acquired in the covered purchase that is treated as acquired by Corporation US1 is equal to the amount of covered fundings allocated to the allocable amount of the covered purchase, or $600x (which represents 75 of the 100 shares of stock repurchased). *See* paragraph (e)(4) of this section. Corporation US1 is treated as acquiring stock of Corporation FZ in a section 4501(d)(1) repurchase on May 15, 2024. *See* paragraphs (b)(2)(xxii)(B) and (k)(4) of this section. Corporation US1 is a section 4501(d) covered corporation with respect to the section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xv)(A) of this section. For purposes of computing Corporation US1's section 4501(d) excise tax base, the fair market value of the 75 shares of stock of Corporation FZ subject to the section 4501(d)(1) repurchase is $600x. *See* paragraph (l) of this section. Accordingly, the section 4501(d)(1) repurchase by Corporation US1 increases its section 4501(d) excise tax base for the 2024 taxable year by $600x. Other covered fundings, if any, could be allocated to the remaining $200x of stock of Corporation FZ that Corporation FD acquired.

(6) *Example 6: Indirect funding subject to rebuttable presumption*—(i) *Facts.* Corporation FZ owns all the outstanding stock of each of Corporation US1, a domestic corporation and Corporation FB, a foreign corporation. Corporation US1 owns all the outstanding stock of Corporation FY, a foreign corporation. Corporation FY owns all the outstanding stock of Corporation FD, a foreign corporation. On March 1, 2024, Corporation US1 makes a loan of $1,000x to Corporation FB. On March 15, 2024, Corporation FB makes a loan of $900x to Corporation FD. The facts and circumstances do not clearly establish that there was not a principal purpose of avoiding the section 4501(d) excise tax as described in paragraph (e)(1) of this section. On May 15, 2024, Corporation FD acquires 100 shares of the stock of Corporation FZ when the fair market value of each share is $8x.

(ii) *Analysis.* A principal purpose described in paragraph (e)(1) of this section is presumed to exist because Corporation FD is a downstream relevant entity and the March 1, 2024, loan by Corporation US1 to Corporation FB occurs within two years of a covered purchase by Corporation FD. *See* paragraph (e)(2) of this section. Because the facts and circumstances do not clearly establish that there was not a principal purpose of avoiding the section 4501(d) excise tax as described in paragraph (e)(1) of this section, the presumption is not rebutted. *See* paragraph (e)(2) of this section. Accordingly, the March 1, 2024, loan is a covered funding. *See* paragraph (e)(1) of this section. The acquisition by Corporation FD of the stock of Corporation FZ is an acquisition of stock of an applicable foreign corporation by a relevant entity and therefore a covered purchase. *See* paragraph (b)(2)(vii) of this section. The entire amount of the covered purchase, or $800x, is the allocable amount of the covered purchase. *See* paragraph (e)(5) of this section. $800x of the covered funding is allocated to the allocable amount of covered purchase because the allocable amount of the covered purchase is less than the amount of the covered funding. *See* paragraph (e)(7)(iii) of this section. The amount of stock of Corporation FZ acquired in the covered purchase that is treated as acquired by Corporation US1 is equal to the amount of covered fundings allocated to the allocable amount of the covered purchase, or $800x (which represents the 100 shares of stock repurchased). *See* paragraph (e)(4) of this section. Corporation US1 is treated as acquiring stock of Corporation FZ in a section 4501(d)(1) repurchase on May 15, 2024. *See* paragraphs (b)(2)(xxii)(B) and (k)(4) of this section. Corporation US1 is a section 4501(d) covered corporation with respect to the section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xv)(A) of this section. For purposes of computing Corporation US1's section 4501(d) excise tax base, the fair market value of the 100 shares of stock of Corporation FZ subject to the section 4501(d)(1) repurchase is $800x. *See* paragraph (l) of this section. Accordingly, the section 4501(d)(1) repurchase by Corporation US1 increases its section 4501(d) excise tax base for the 2024 taxable year by $800x.

(7) *Example 7: Indirect funding*—(i) *Facts.* Corporation FZ owns all the outstanding stock of two foreign corporations, Corporation FB and Corporation FE, and all the outstanding stock of two domestic corporations, Corporation US1 and Corporation US2. On March 1, 2024, Corporation US1 makes a loan of $700x to Corporation FZ. On April 1, 2024, Corporation FZ makes a loan to Corporation FB of $1,100x. On May 15, 2024, Corporation FE makes a loan of $900x to Corporation FB. On June 1, 2024, Corporation US2 makes a

loan of $800x to Corporation FZ. A principal purpose of each of the March 1, 2024, loan by Corporation US1 and the June 1, 2024, loan by Corporation US2 is to fund a covered purchase. On December 1, 2024, Corporation FB acquires 100 shares of stock of Corporation FZ when the fair market value of each share is $8x.

(ii) *Analysis.* Because a principal purpose of each of the March 1, 2024, loan by Corporation US1 and the June 1, 2024, loan by Corporation US2 is to fund a covered purchase, each of those loans is a covered funding. *See* paragraph (e)(1) of this section. The acquisition by Corporation FB of stock of Corporation FZ is an acquisition of stock of an applicable foreign corporation by a relevant entity and therefore a covered purchase. *See* paragraph (b)(2)(vii) of this section. The entire amount of the covered purchase, or $800x, is the allocable amount of the covered purchase. *See* paragraph (e)(5) of this section. The March 1, 2024, loan by Corporation US1 and the June 1, 2024, loan by Corporation US2 are treated as funding the allocable amount of the covered purchase before the May 15, 2024, loan by Corporation FE. *See* paragraph (e)(5) of this section. Further, the March 1, 2024, loan by Corporation US1 is treated as funding the allocable amount of the covered purchase before the June 1, 2024, loan by Corporation US2. *See* paragraph (e)(7)(iv) of this section. Accordingly, the entire amount of the March 1, 2024, loan, or $700x, and $100x of the June 1, 2024, loan is allocated to the allocable amount of the covered purchase. The amount of stock of Corporation FZ acquired in the covered purchase that is treated as acquired by Corporation US1 is the amount of covered fundings by Corporation US1 allocated to the allocable amount of the covered purchase, or $700x (which represents the 87.5 shares of stock repurchased). The amount of stock of Corporation FZ acquired in the covered purchase that is treated as acquired by Corporation US2 is equal to the amount of covered fundings by Corporation US2 allocated to the allocable amount of the covered purchase, or $100x (which represents the 12.5 shares of stock repurchased). *See* paragraph (e)(4) of this section. Corporation US1 and Corporation US2 are each treated as acquiring stock of Corporation FZ in a section 4501(d)(1) repurchase on December 1, 2024. *See* paragraphs (b)(2)(xxii)(B) and (k)(4) of this section. Each of Corporation US1 and Corporation US2 is a section 4501(d) covered corporation with respect to its portion of the section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xv)(A) of this section. For purposes of computing Corporation US1's section 4501(d) excise tax base, the fair market value of the 87.5 shares of stock of Corporation FZ subject to the section 4501(d)(1) repurchase is $700x. For purposes of computing Corporation US2's section 4501(d) excise tax base, the fair market value of the 12.5 shares of stock of Corporation FZ subject to the section 4501(d)(1) repurchase is $100x. *See* paragraph (l) of this section. Accordingly, the section 4501(d)(1) repurchase by Corporation US1 increases its section 4501(d) excise tax base for the 2024 taxable year by $700x, and the section 4501(d)(1) repurchase by Corporation US2 increases its section 4501(d) excise tax base for the 2024 taxable year by $100x.

(8) *Example 8: A foreign partnership that is an applicable specified affiliate*—(i) *Facts.* Partnership FP is a foreign partnership in which Corporation FZ, Corporation FB, a foreign corporation, and Corporation US1, a domestic corporation, are partners. Corporation FZ owns 70 percent of the capital interests and profits interests of Partnership FP; Corporation FB owns 20 percent of the capital interests and profits interests of Partnership FP; and Corporation US1 owns 10 percent of the capital interests and profits interests of Partnership FP. On March 1, 2024, Partnership FP purchases 100 shares of stock of Corporation FZ when the fair market value of each share is $8x.

(ii) *Analysis.* Corporation US1 is a domestic entity. *See* paragraph (b)(2)(x) of this section. Corporation US1 is a direct partner with respect to Partnership FP for purposes of section 4501(d)(1) because Corporation US1 directly owns an interest in Partnership FP and is not a de minimis domestic entity partner with respect to Partnership FP. *See* paragraphs (h)(2)(i) and (h)(5) of this section. Accordingly, Partnership FP is an applicable specified affiliate of Corporation FZ because Corporation FZ owns more than 50 percent of the capital interests or profits interests of Partnership FP, and Corporation US1, a domestic entity, is a direct partner of Partnership FP. Partnership FP's purchase of 100 shares of stock of Corporation FZ is a section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xxii)(A) of this section. Partnership FP is a section 4501(d) covered corporation with respect to the section 4501(d)(1) repurchase. *See* paragraph (b)(2)(xv)(A) of this section. For purposes of computing Partnership FP's section 4501(d) excise tax base, the fair market value of the 100 shares of stock of Corporation FZ subject to the section 4501(d)(1) repurchase is $800x. *See* paragraph (l) of this section. Accordingly, the section 4501(d)(1) repurchase increases Partnership FP's section 4501(d) excise tax base for the 2024 taxable year by $800x.

(9) *Example 9: A foreign partnership that is not an applicable specified affiliate*—(i) *Facts.* The facts are the same as in paragraph (p)(8)(i) of this section (*Example 8*), except that Corporation FZ owns 76 percent of the capital interests and profits interests of Partnership FP; Corporation FB owns 20 percent of the capital interests and profits interests of Partnership FP; and Corporation US1 owns 4 percent of the capital interests and profits interests of Partnership FP.

(ii) *Analysis.* Corporation US1 is not a direct or indirect partner with respect to Partnership FP for purposes of section 4501(d)(1) because Corporation US1 qualifies as a de minimis domestic entity partner. *See* paragraph (h)(5) of this section. Partnership FP is not an applicable specified affiliate of Corporation FZ because Partnership FP has no direct or indirect domestic entity partner. Accordingly, Partnership FP's purchase of 100 shares of stock of Corporation FZ is not treated as a section 4501(d)(1) repurchase.

(10) *Example 10: A foreign partnership that is directly owned by foreign corporations and is an applicable specified affiliate*—(i) *Facts.* Corporation FZ owns all the outstanding stock of Corporation US1, a domestic corporation. Corporation US1 owns all the outstanding stock of Corporation FB, a foreign corporation. Partnership FP is a foreign partnership in which Corporation FB and Corporation FE, a foreign corporation, are partners. Corporation FB owns 80 percent of the capital interests and profits interests of Partnership FP, and Corporation FE owns 20 percent of the capital interests and profits interests of Partnership FP.

(ii) *Analysis.* Corporation US1 is a domestic entity. *See* paragraph (b)(2)(x) of this section. Corporation US1 owns an interest in Partnership FP indirectly through Corporation FB, a foreign corporation that Corporation US1 controls within the meaning of paragraph (h)(3) of this section. Corporation US1 does not qualify as a de minimis domestic entity partner with respect to Partnership FP. *See* paragraph (h)(5) of this section. Corporation US1 is thus an indirect partner with respect to Partnership FP for purposes of section 4501(d)(1). *See* paragraph (h)(2)(ii)(B) of this section. Accordingly, Partnership FP is an applicable specified affiliate of Corporation FZ because Corporation FZ indirectly owns more than 50 percent of the capital interests or profits interests of Partnership FP and Corporation US1, a domestic entity, is an indirect partner of Partnership FP.

(q) *Section 4501(d)(2) examples.* The following examples illustrate the application of the rules in this section relating to section 4501(d)(2). For purposes of the following examples, unless otherwise stated: Corporation FZ is a covered surrogate foreign corporation; each domestic entity is an expatriated entity within the meaning of section 7874(a)(2)(A) with respect to Corporation FZ and is not a member of a U.S. consolidated group; there are not any expatriated entities with respect to Corporation FZ other than as described in the facts; a reference to ownership refers to direct ownership; any repurchase or acquisition of stock is during a taxable year that includes at least a portion of the applicable period with respect to Corporation FZ under section 7874(d)(1); each entity has a calendar taxable year; each corporation's only outstanding stock is a single class of common stock; the functional currency (within the meaning of section 985) of any entity is the U.S. dollar; no stock is transferred to any employee; for examples that expressly provide that stock is transferred to any employee, such transfer is made in connection with the employee's performance of services in its capacity as an employee of the transferor, and the employee is treated as the beneficial owner of the stock for Federal income tax purposes on the date of the transfer; and the section 4501(d) statutory exceptions are inapplicable.

(1) *Example 1: The section 4501(d) netting rule with respect to an expatriated entity*—(i) *Facts.* Corporation FZ owns all the outstanding stock of Corporation US1, a domestic corporation. Employee M is an employee of Corporation FZ, and Employee P is an employee of Corporation US1. On February 1, 2024, Corporation US1 purchases 100 shares of stock of Corporation FZ when the fair market value of each share is $8x. On May 15, 2024, Corporation FZ transfers to Employee M 50 shares of stock of Corporation FZ when the fair market value of each share is $5x. On November 1, 2024, Corporation US1 transfers to Employee P 30 shares of stock of Corporation US1 when the fair market value of each share is $9x. On December 15, 2024, Corporation FZ purchases 90 shares of its stock when the fair market value of each share is $12x.

(ii) *Analysis.* Each of Corporation US1's purchase of 100 shares of stock of Corporation FZ and Corporation FZ's purchase of 90 shares of its stock is a section 4501(d)(2) repurchase. *See* paragraph (b)(2)(xxiii) of this section. Corporation US1 is a section 4501(d) covered corporation with respect to the section 4501(d)(2) repurchases. *See* paragraph (b)(2)(xv)(B) of this section. For purposes of computing Corporation US1's section 4501(d) excise tax base, the fair market value of the 100 shares of stock of Corporation FZ subject to the section 4501(d)(2) repurchase on February 1, 2024, is $800x, and the fair market value of the 90 shares of stock of Corporation FZ subject to the section 4501(d)(2) repurchase on December 15, 2024, is $1,080x. *See* paragraph (l) of this section. The section 4501(d)(2) repurchases thus increase Corporation US1's section 4501(d) excise tax base for the 2024 taxable year by $1,880x ($800x + $1,080x). Corporation US1's section 4501(d) excise tax base for its 2024 taxable year is not reduced by the fair market value of the stock of Corporation FZ transferred to Employee M or the fair market value of the stock of Corporation US1 transferred to Employee P because the section 4501(d) excise tax base with respect to Corporation US1 can only be reduced by the fair market value of stock of Corporation FZ issued or provided by Corporation US1 to employees of Corporation US1. *See* paragraph (n) of this section. Accordingly, Corporation US1's section 4501(d) excise tax base with respect to these transactions for its 2024 taxable year is $1,880x.

(2) *Example 2: Section 4501(d)(2) repurchase from the covered surrogate foreign corporation or another specified affiliate of the covered surrogate foreign corporation*—(i) *Facts.* Corporation FZ owns all the outstanding stock of each of Corporation US1, a domestic corporation, Corporation FB, a foreign corporation, and Corporation FE, a foreign corporation. On February 1, 2024, Corporation US1 purchases 100 shares of stock of Corporation FZ from Corporation FB when the fair market value of each share is $8x. On December 15, 2024, Corporation FZ contributes 90 shares of its stock to Corporation FE when the fair market value of each share is $12x.

(ii) *Analysis.* Each of Corporation US1's purchase of 100 shares of stock of Corporation FZ and Corporation FZ's transfer of 90 shares of its stock is a section 4501(d)(2) repurchase. *See* paragraph (b)(2)(xxiii) of this section. Corporation US1 is a section 4501(d) covered corporation with respect to the section 4501(d)(2) repurchases. *See* paragraph (b)(2)(xv)(B) of this section. For purposes of computing Corporation US1's section 4501(d) excise tax base, the fair market value of the 100 shares of stock of Corporation FZ subject to the section 4501(d)(2) repurchase on February 1, 2024, is $800x, and the fair market value of the 90 shares of stock of Corporation FZ subject to the section 4501(d)(2) repurchase on December 15, 2024, is $1,080x. *See* paragraph (l) of this section. Accordingly, Corporation US1's section 4501(d) excise tax base with respect to these transactions for its 2024 taxable year is $1,880x.

(3) *Example 3: Liability with respect to multiple expatriated entities*—(i) *Facts.* Corporation FZ owns all the outstanding stock of each of Corporation US1, a domestic corporation, and Corporation US2, a domestic corporation. Employee M is an employee of Corporation US1, and Employee P is an employee of Corporation US2. On February 1, 2024, Corporation US1 purchases 100 shares of stock of Corporation FZ when the fair market value of each share is $8x. On May 15, 2024, Corporation US2 purchases 40 shares of stock of Corporation FZ when the fair market value of each share is $9x. On October 15, 2024, Corporation FZ repurchases 50 shares of its stock when the fair market value of each share is $7x. On November 1, 2024, Corporation US1 transfers to Employee M 30 shares of stock of Corporation FZ when the fair market value of each share is $9x. On November 20, 2024, Corporation US2 transfers to Employee P 30 shares of stock of Corporation FZ when the fair market value of each share is $8x. Corporation US1 pays the entire amount of section 4501(d) excise tax that it owes with respect to all section 4501(d)(2) repurchases relating to Corporation FZ and its specified affiliates that occur during Corporation US1's 2024 taxable year and fulfills its filing obligations for its 2024 taxable year with respect to such section 4501(d)(2) repurchases.

(ii) *Analysis.* Each of Corporation US1's purchase of 100 shares of stock of Corporation FZ, Corporation US2's purchase of 40 shares of stock of Corporation FZ, and Corporation FZ's repurchase of 50 shares of its stock is a section 4501(d)(2) repurchase. *See* paragraphs (b)(2)(xxiii) and (d)(2)(i) of this section. Each of Corporation US1 and Corporation US2 is a section 4501(d) covered corporation with respect to the section 4501(d)(2) repurchases. *See* paragraph (b)(2)(xv)(B) of this section. For purposes of computing the section 4501(d) excise tax base for each of Corporation US1 and Corporation US2, the fair market value of the 100 shares subject to the section 4501(d)(2) repurchase on February 1, 2024, is $800x; the fair market value of the 40 shares of stock of Corporation FZ subject to the section 4501(d)(2) repurchase on May 15, 2024, is $360x; and the fair market value of the 50 shares of stock of Corporation FZ subject to the section 4501(d)(2) repurchase on October 15, 2024, is $350x. *See* paragraph (l) of this section. The section 4501(d)(2) repurchases thus increase each of Corporation US1's and Corporation US2's section 4501(d) excise tax base for the 2024 taxable year by $1,510x ($800x + $360x + $350x). 30 shares of Corporation FZ stock are treated as issued or provided to Employee M on November 1, 2024. *See* paragraph (n) of this section. Therefore, Corporation US1's section 4501(d) excise tax base is reduced for its 2024 taxable year by the fair market value of the 30 shares of stock of Corporation FZ transferred on November 1, 2024, or $270x ($9x per share x 30 shares = $270x). *See* paragraph (c)(3)(i)(C) of this section. Corporation US1's section 4501(d) excise tax base for its 2024 taxable year is not reduced by the fair market value of the stock of Corporation FZ that Corporation US2 transferred to Employee P because the section 4501(d) excise tax base with respect to Corporation US1 can only be reduced by the fair market value of stock of Corporation FZ issued or provided by Corporation US1 to employees of Corporation US1. *See* paragraph (n) of this section. Accordingly, Corporation US1's section 4501(d) excise tax base with respect to these transactions for its 2024 taxable year is $1,240x ($1,510x − $270x). Because Corporation

US1 pays the entire amount of section 4501(d) excise tax that it owes with respect to all section 4501(d)(2) repurchases that occur during Corporation US1's 2024 taxable year relating to Corporation FZ and its specified affiliates and fulfills its filing obligations for its 2024 taxable year with respect to such section 4501(d)(2) repurchases, Corporation US2 is not liable for section 4501(d) excise tax with respect to such section 4501(d)(2) repurchases. *See* paragraph (d)(2)(ii) of this section.

(r) *Applicability dates*—(1) *In general.* Except as provided in paragraphs (e)(1) and (r)(3) of this section, the provisions of this section (other than paragraph (o) of this section) apply to transactions that occur after April 12, 2024.

(2) *Rules applicable before* April 13, 2024. Except as provided in paragraphs (o)(2) and (r)(3) of this section, the rules in paragraph (o) of this section apply to transactions that occur after December 31, 2022, and on or before April 12, 2024.

(3) *Early application.* A section 4501(d) covered corporation may choose to apply all the rules of this section (other than paragraphs (o), (r)(1), and (r)(2) of this section) to transactions occurring after December 31, 2022, subject to paragraph (e)(1) of this section. A section 4501(d) covered corporation may choose to apply the rules of this section (other than paragraphs (o) and (r)(1) and (2) of this section) pursuant to the immediately preceding sentence only if the section 4501(d) covered corporation and all other section 4501(d) covered corporations with respect to the same applicable foreign corporation or covered surrogate foreign corporation, as applicable, consistently apply all the rules of this section (other than paragraphs (o) and (r)(1) and (2) of this section) as described in the immediately preceding sentence.

Subpart B [Reserved]

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 13 and 17
Endangered and Threatened Wildlife and Plants; Enhancement of Survival and Incidental Take Permits; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

[Docket No. FWS–HQ–ES–2021–0152; FF09E41000 245 FXES111609C0000]

RIN 1018–BF99

Endangered and Threatened Wildlife and Plants; Enhancement of Survival and Incidental Take Permits

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish Wildlife Service (Service), revise the regulations concerning the issuance of enhancement of survival and incidental take permits under the Endangered Species Act of 1973, as amended. The purposes of these revisions are to: clarify the appropriate use of enhancement of survival permits and incidental take permits; clarify our authority to issue these permits for non-listed species without also including a listed species; simplify the requirements for enhancement of survival permits by combining safe harbor agreements and candidate conservation agreements with assurances into one agreement type; and incorporate portions of our five-point policies for safe harbor agreements, candidate conservation agreements with assurances, and habitat conservation plans into the regulations to reduce uncertainty. We also made technical and administrative revisions to the regulations. The regulatory changes are intended to reduce costs and time associated with negotiating and developing the required documents to support the applications. We anticipate that these improvements will encourage more individuals and companies to engage in these voluntary programs, thereby generating greater conservation results overall.

DATES: This final rule is effective May 13, 2024.

Information Collection Requirements: If you wish to comment on the information collection requirements in this rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication of this rule in the **Federal Register**. Therefore, comments should be submitted to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, (see ''Information Collection'' section below under **ADDRESSES**) by May 13, 2024.

ADDRESSES: Public comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available on the internet at *https://www.regulations.gov* in Docket No. FWS–HQ–ES–2021–0152.

Information Collection Requirements: Written comments and suggestions on the information collection requirements should be submitted within 30 days of publication of this document to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or *Info_Coll@fws.gov* (email). Please reference OMB Control Number 1018–0094 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Bradley Shoemaker, Chief, Branch of Recovery and Conservation Planning, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone: 703–358–2307. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The purposes of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), are to provide a means to conserve the ecosystems upon which listed species depend, to develop a program for the conservation of listed species, and to achieve the purposes of certain treaties and conventions. Moreover, the ESA states that it is the policy of Congress that the Federal Government will seek to conserve endangered and threatened species and use its authorities to further the statutory purposes (16 U.S.C. 1531(c)(1)). The ESA's implementing regulations are in title 50 of the Code of Federal Regulations (CFR).

Generally, ESA section 10(a) allows the Service to issue permits. The 1982 ESA amendments restructured section 10(a) to provide a mechanism for issuance of permits to non-Federal entities to authorize take of listed species that would otherwise be prohibited under section 9. Section 10(a)(1)(A) provides for the issuance of enhancement of survival permits associated with conservation actions that are beneficial to the species. Section 10(a)(1)(B) was added to allow for the issuance of incidental take permits to authorize take that is incidental to, but not the purpose of, carrying out otherwise lawful activities.

In 1999, we promulgated regulations (at 50 CFR 17.22(c) and (d) and 50 CFR 17.32(c) and (d)) and finalized policies regarding safe harbor agreements (SHAs) and candidate conservation agreements with assurances (CCAAs) to incentivize the use of enhancement of survival permits to further species recovery and conservation (64 FR 32706, 32717, and 32726; June 17, 1999).

We published minor corrections to the SHA and CCAA regulations later in 1999 (64 FR 52676, September 30, 1999) and again in 2004 (69 FR 24084, May 3, 2004). In 2016, we revised the CCAA regulations (at §§ 17.22(d) and 17.32(d); 81 FR 95053, December 27, 2016) and policy (81 FR 95164, December 27, 2016) to simplify the net conservation benefit standard as part of the issuance criteria.

Section 10(a)(1)(B) allows for the issuance of incidental take permits provided the application meets the statutory issuance criteria (16 U.S.C. 1539(a)(2)(A)(i)–(iv)). In 1985, we promulgated regulations under section 10(a)(1)(B) (at 50 CFR 17.22(b) and 17.32(b); 50 FR 39681, September 30, 1985). In 1996 we issued guidance in the form of the Habitat Conservation Planning and Incidental Take Permitting Processing Handbook (61 FR 63854, December 2, 1996). We published an addendum to the handbook, known as the ''five-point policy,'' in 2000 (65 FR 35242, June 1, 2000), and we published a revised Habitat Conservation Planning and Incidental Take Permitting Processing Handbook in 2016 (81 FR 93702, December 21, 2016).

This final rule changes the implementing regulations for ESA section 10 related to enhancement of survival permits supported by SHAs and CCAAs (§§ 17.22(c) and (d) and 17.32(c) and (d)) and to incidental take permits supported by habitat conservation plans (§§ 17.22(b) and 17.32(b)). This rulemaking also changes relevant portions of 50 CFR part 13 (which applies to all Service permits) and part 17 (which applies to all Service permits under the ESA) to incorporate provisions that are necessary to implementing §§ 17.22 and 17.32, excluding §§ 17.22(a) and 17.32(a). This rulemaking modifies ESA section 10(a)(1)(A) and (B) regulations to

improve, clarify, and expedite the Service's administration of those provisions (again, excluding §§ 17.22(a) and 17.32(a)). This rulemaking does not affect other permits issued under the ESA, such as import or export permits.

The regulatory changes in this final rule will reduce the time it takes for applicants to prepare and develop the required documents to support applications for section 10(a) permits issued under §§ 17.22(b) and (c) and 17.32(b) and (c), thus accelerating permit issuance and conservation implementation. This goal will be accomplished by:

- clarifying the appropriate permit mechanism for authorizing take;
- simplifying our permitting options under section 10(a)(1)(A) by combining CCAAs and SHAs into one agreement type and allowing the option to return to baseline;
- providing additional flexibility under section 10(a)(1)(B) for the Service to issue permits for non-listed species only, without requiring that a listed species also be covered by the permit; and
- clarifying the requirements for complete applications under the provisions at both ESA section 10(a)(1)(A) and (B).

We expect these changes to reduce the costs and time associated with negotiating and developing the required documents to support the applications. We anticipate that these improvements will encourage more individuals and companies to engage in these voluntary programs, thereby generating greater conservation results overall.

The regulatory changes in this final rule clarify under which statutory provision it is appropriate for the Service to authorize the proposed take, either through an enhancement of survival permit (section 10(a)(1)(A)) or incidental take permit (section 10(a)(1)(B)). The statutory language in the ESA clearly reflects Congress's intent that take for scientific purposes or to enhance the propagation or survival of the affected species should be authorized under section 10(a)(1)(A) through an enhancement of survival permit. By contrast, take that is incidental to, but not the purpose of, the carrying out of otherwise lawful activities is to be authorized under section 10(a)(1)(B) through an incidental take permit. Consistent with congressional intent, when we determine under which permit authority to authorize a take, we must first consider the nature and purpose of the activities causing the take.

We clarify in the final rule that enhancement of survival permits authorize take of covered species, above the baseline condition, when the conservation actions in the associated conservation agreement are of the nature of improving the condition of the species or the amount or quality of its habitat to provide a net conservation benefit to the covered species (*e.g.,* beneficial actions that address threats to the covered species, establish new wild populations, or otherwise benefit the covered species). In contrast, incidental take permits authorize take that is incidental to otherwise lawful activities (*e.g.,* resource extraction, commercial and residential development, and energy development), and the conservation actions in the associated conservation plan are of the nature of minimizing and mitigating the impacts of the anticipated incidental take for the covered species. Maintaining this distinction between these two permit types will ensure that take is authorized under the proper statutory authority, reduce confusion for applicants, expedite the permitting process, and maximize conservation of listed and at-risk species.

This final rule clarifies that the Service may issue enhancement of survival permits and incidental take permits for non-listed species without including a listed species on the permit. Immediately upon permit issuance, the permittee will begin implementing the conservation commitments for the non-listed covered species. However, the take authorization will not go into effect until such time as the non-listed covered species is listed as either endangered or threatened, provided the permittee is complying with the permit and properly implementing the agreement or plan. This approach is consistent with both (1) enhancement of survival permits currently issued for non-listed species under 50 CFR 17.22(d) or 17.32(d) and supported by a CCAA; and (2) incidental take permits currently issued under 50 CFR 17.22(b) or 17.32(b) and supported by a conservation plan that includes both listed and non-listed species. Our approach furthers the statutory purposes of the ESA by encouraging conservation of fish and wildlife before species become depleted to the point that they require listing. This final rule simplifies the ESA section 10(a)(1)(A) regulations by covering both listed and non-listed species for enhancement of survival permits under §§ 17.22(c) and 17.32(c), and by rescinding the CCAA regulations under §§ 17.22(d) and 17.32(d) (which are incorporated into §§ 17.22(c) and 17.32(c)).

We are clarifying the language in both §§ 17.22(b) and (c) and 17.32(b) and (c) to emphasize that our authority extends to authorizing take that would otherwise be prohibited under section 9 of the ESA, rather than to authorize the applicant's proposed conservation and ongoing land management activities or the otherwise lawful activities that may result in take of a covered species. In other words, the issuance of enhancement of survival or incidental take permits does not authorize the covered activities themselves; rather, it authorizes only the take of covered species resulting from those activities. This clarification is specified in §§ 17.22(b)(1) and 17.32(b)(1) for regulations related to section 10(a)(1)(B) permits and at §§ 17.22(c)(1) and 17.32(c)(1) for regulations related to section 10(a)(1)(A) permits. We further clarify what constitutes a complete application for enhancement of survival and incidental take permits and that the Service will process an application when we have determined it to be complete.

With respect to ESA section 10(a)(1)(A), the regulatory changes in this final rule combine the SHA and CCAA into one type of conservation agreement, called a conservation benefit agreement. We use the term ''conservation benefit agreement'' or ''conservation agreement'' to describe the supporting document required for an enhancement of survival permit. This rule simplifies the process for new conservation agreements developed in support of enhancement of survival permit applications. This rule also establishes that applicants for an enhancement of survival permit have the option to return the property to baseline conditions. We define ''baseline condition'' to mean the population estimates and distribution or habitat characteristics across the enrolled property that currently sustain seasonal or permanent use by the covered species at the time a conservation agreement is executed by the Service and the property owner or by a programmatic permit holder and the property owner. Allowing applicants to choose whether to return to baseline condition provides more flexibility in the agreement and may increase participation. In addition, we clarify that the Service may issue enhancement of survival permits that authorize both incidental and purposeful take that may result from implementing beneficial actions under the conservation agreement, such as reintroducing a species to a covered property or capturing and relocating a covered species that has dispersed to an adjacent property not subject to the

agreement. After the effective date of this final rule, the Service will no longer implement the SHA and CCAA policies.

With respect to ESA section 10(a)(1)(B), the regulatory changes in this final rule incorporate aspects of the five-point policy for incidental take permits and guidance from the 2016 Habitat Conservation Planning Handbook to reduce confusion and streamline the permitting process. Clarifications include a description of the requirements for a complete incidental take permit application and revisions to the corresponding incidental take permit issuance criteria. We use the term ''habitat conservation plan'' or ''conservation plan'' to describe the supporting document required for an incidental take permit.

Nothing in these revisions to the regulations is intended to require that any previous permits issued under ESA section 10(a)(1)(A) or (B) be reevaluated when this rule is effective. For applications in process and published in the **Federal Register** prior to the effective date of this rule, applicants will not be required to meet the new regulatory requirements. However, applications for new permits, renewals, or amendments received after the date specified above in **DATES** are subject to the revisions in this final rule.

This Rulemaking Action

Part 13 of title 50 of the Code of Federal Regulations sets forth general permitting regulations that apply to all permits issued by the Service. This rule amends 50 CFR part 13 to address the specific revisions in 50 CFR 17.22 and 17.32 and clarifies how the Service administers permits under §§ 17.22 and 17.32. This final rule rescinds §§ 17.22(d) and 17.32(d); the references in part 13 to those paragraphs are removed and modified to reference the remaining paragraphs (*i.e.,* references to § 17.22(b) through (d) are changed to § 17.22(b) and (c), and references to § 17.32(b) through (d) are changed to § 17.32(b) and (c)).

Clarification of ESA Section 10(a)(1)(A) and (B)—Purpose

Section 10(a)(1)(A) of the ESA authorizes the issuance of permits, under certain terms and conditions, for any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species. In 1999, the Service further clarified in §§ 17.22(c) and (d) and 17.32(c) and (d) and the SHA and CCAA policies that conservation actions to enhance the survival of affected species would be authorized under ESA section 10(a)(1)(A) enhancement of survival permits. The permit is intended to incentivize voluntary conservation by authorizing take of covered species that may result from implementing the approved conservation agreement (formerly SHA or CCAA) and providing assurances that the Service will not in the future require an increased commitment or impose additional restrictions on the permittee's current management and use of land, water, or financial resources. As a result, a property owner may continue ongoing activities and implement beneficial conservation measures without concern that their activities may be curtailed by increasing populations or distribution of a listed species or a species that may become listed in the future. Therefore, property owners managing or improving habitat that could be used by a species that is listed or could be listed, or establishing new populations of such species, have an incentive to continue their activities without fear of being subjected to increased regulatory burdens in the future. In general, take associated with working lands (*e.g.,* agriculture and silviculture) that are managed in a sustainable fashion to improve conditions for listed and at-risk species, may be appropriate under this authority depending upon the proposed covered activities.

The authority granted under ESA section 10(a)(1)(B) allows the Service to issue permits to authorize take that would otherwise be prohibited by section 9(a)(1)(B), provided the taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Under section 10(a)(1)(B), the impacts of the take associated with the otherwise lawful activities must be minimized and mitigated to the maximum extent practicable, *i.e.,* the nature of the associated conservation plan is a mitigation plan to minimize and offset the adverse impacts to the species that are incidental to otherwise lawful activities. The purpose is to provide a means for ESA compliance when otherwise lawful activities may result in incidental take of listed species. In contrast, under section 10(a)(1)(A), the primary purpose is to incentivize voluntary conservation of listed and at-risk species.

Take Authorization for Non-Listed Species Under ESA Section 10(a)(1)(A) and (B)—Authorities and Rationale

The Service currently issues both enhancement of survival and incidental take permits that cover take of listed as well as non-listed species if they become listed in the future. These permits are issued upon the Service's approval of the application, and implementation of the conservation measures for the non-listed species begins upon issuance of the permit. If a non-listed species becomes listed, the take authorization becomes effective upon the date of listing, provided that the permittee is in full compliance with the enhancement of survival or incidental take permit. This approach is supported by the House of Representatives Report on the Endangered Species Act Amendments of 1982, which reflects that Congress contemplated that non-listed species could be covered in conservation plans. H.R. Rep No. 97–835 (Sept. 17, 1982), at 30 (''Although the conservation plan is keyed to the permit provisions of the Act which only apply to listed species, the Committee intends that conservation plans may address *both listed and unlisted* species.'') (emphasis added).

On June 17, 1999, the Service published the CCAA Policy (64 FR 32726) and implementing regulations at 50 CFR 17.22(d) and 17.32(d) (64 FR 32706) under ESA section 10(a)(1)(A) for issuing enhancement of survival permits for non-listed species. The Service further revised this policy and the regulations in 2016 (81 FR 95053 and 95164; December 27, 2016). Since the initial policy and regulations were published, the Service has issued 69 enhancement of survival permits for non-listed species in association with a CCAA; 62 of these continue to be implemented.

Clarifying in the regulations that we can issue permits that address only non-listed species under ESA section 10(a)(1)(B) is consistent with congressional intent to provide long-term regulatory assurances and builds on the success demonstrated by the CCAA program. Recognizing our ability to authorize take of non-listed species under section 10(a)(1)(B) if they become listed under the ESA, alone or combined with listed species, will help to ensure that take is authorized under the appropriate permit authority depending upon whether it is associated with beneficial conservation actions or incidental to otherwise lawful activities. This clarification reduces confusion and eliminates debate regarding the appropriate permit authority by which take should be authorized, thereby allowing the planning efforts to be focused on the permitting mechanism that is applicable to the project purpose. We acknowledge that the 2016 Habitat Conservation Planning Handbook reflects current policy, stating that applicants must include at least one ESA-listed species in a conservation plan. We plan to update the handbook accordingly to remove this requirement.

Clarifications

Service Authority Extends To Authorizing Take, Not Authorizing the Activities

Existing language in § 17.22(b)(1) and (c)(1) and § 17.32(b)(1) and (c)(1) refers to authorizing activities that are prohibited. The ESA prohibits take of listed species, not the activities that cause take. Therefore, in this final rule we clarify that, under these authorities, the Service authorizes take and not the underlying activities themselves. This change will reduce confusion among applicants and the interested members of the public who review and provide comments on permit applications.

Expediting the Development of Conservation Agreements and Conservation Plans

One of the common concerns expressed by applicants for permits under section 10(a)(1)(A) or (B) is the amount of time and resource investment it takes to develop the necessary documents to support the applications. The application process for an enhancement of survival permit or incidental take permit is divided into three phases: (1) preapplication (project proponent or property owner decides whether to apply for a permit); (2) conservation agreement or plan development and submission of a complete application to the Service; and (3) application processing (the Service processes the complete application and makes a permit decision).

While the Service has successfully implemented measures to ensure the efficient processing of permit applications once they are deemed complete, we have not been as successful with expediting the preapplication and conservation agreement or plan development phases, despite the updated guidance provided respectively in the 2016 Habitat Conservation Planning Handbook and current SHA and CCAA regulations, policies, and guidance. This outcome may be due to several factors, such as the size and complexity of the proposed project; number of species for which take is sought; and, in some cases, challenges to the interpretation of our regulations, policies, and guidance. Resolving issues that arise during development of the conservation agreement or plan often requires the expenditure of a significant amount of time and resources by both the applicant and the Service. This situation can result in delays to the applicant's project implementation and limit the Service's ability to provide timely assistance to other applicants.

To provide clarity, reduce confusion, and save time, both for applicants and the Service, this final rule clarifies the current regulations and revises the requirements for permit applications in § 17.22(b)(1) and (c)(1) and § 17.32(b)(1) and (c)(1) by codifying portions of the 2016 Habitat Conservation Planning Handbook, five-point policy, SHA policy, and CCAA policy, as applicable. These clarifications address the requirements that an applicant must meet for the Service to: (1) determine that an application is complete, (2) publish the receipt of a complete application, (3) begin processing the application, and (4) make a permit decision consistent with section 10 of the ESA.

This final rule refines the incidental take permit issuance criteria under § 17.22(b)(2) and § 17.32(b)(2) for plans permitted under ESA section 10(a)(1)(B) to align with the statute, existing policy, and practice. These revisions, along with the revised requirements for a complete application, will lead to more efficient permit application processing and decision-making and provide a better record supporting our permit decision. The issuance criteria for conservation agreements permitted under ESA section 10(a)(1)(A) will remain unchanged, although we clarify the meaning of ''net conservation benefit'' in the definitions section at § 17.3. The revisions in this final rule related to issuance criteria in parts 13 and 17 are limited to enhancement of survival and incidental take permits issued under §§ 17.22 and 17.32, excluding §§ 17.22(a) and 17.32(a), and do not affect other permits issued under the ESA, such as import or export permits, or permits issued under other statutes.

Permit Renewal and Amendment Processes

The regulatory changes in this final rule clarify that permit renewals and amendments, or a combination thereof, are subject to the current laws and regulations. The application must be evaluated under current policies and guidance in place at the time of the decision on the renewal or amendment. For amendments to enhancement of survival or incidental take permits, the scope of the Federal decision extends only to the requested amendment, not to the previously approved permit or unchanged portions of the conservation agreement or plan. The terms of the original permit, including the take authorization and assurances, remain in effect. The proposed amendment is the only change that is considered. Providing these clarifications will reduce confusion and reassure permittees applying for renewals and amendments that the Service will not reconsider all provisions of their existing permits and conservation agreements or plans, thereby expediting development of a complete application and processing of that application.

Changes From the Proposed Rule

Based on comments we received on the proposed rule (88 FR 8380, February 9, 2023), and to provide clarifications, we include the changes described below to the proposed regulations. Other than these revisions, we are finalizing the rule as proposed:

1. In the preamble to this final rule and in 50 CFR part 13, we made editorial corrections to clarify that this rule pertains only to ESA section 10(a) permits issued under 50 CFR 17.22 and 17.32.

2. In the preamble, we made edits to further clarify and address confusion regarding the appropriate provision of ESA section 10(a) under which the Service will authorize take.

3. In § 17.3, we made the following changes:

a. Added ''across'' to the definition of ''baseline condition'' to reflect that we evaluate the baseline for the entire area to be enrolled in the agreement. We also addressed situations in which the species and habitat are already adequately managed to the benefit of the species and explained how the landowner can achieve a net conservation benefit.

b. Revised the definition of ''changed circumstances'' to add ''effects of climate change'' as an example of a changed circumstance.

c. To reduce confusion, we revised the definition of ''covered species'' by substituting the term ''at-risk'' for ''reasonable potential to be considered for listing'' and explaining what at-risk means in the definition.

d. Clarified the definition of ''net conservation benefit'' by stating the improvements in the condition must be expected to result from implementation of the conservation agreement. We also clarified that maintenance of good quality habitat and addressing future threats under the control of the property owner would qualify as meeting the net conservation benefit standard.

e. Revised the definition of ''property owner'' to reflect that owners have ''rights'' to water or other natural resources, not actual ownership of those resources and added Tribal laws and regulations ''sufficient to carry out the proposed activities, subject to applicable State and Federal laws and regulations.''

4. In §§ 17.22(b)(1)(ii) and 17.32(b)(1)(ii), to reduce confusion regarding covered species, we removed the phrase ''of the individuals to be taken.''

5. In §§ 17.22(b)(1)(viii) and 17.32(b)(1)(viii), for consistency with the five-point policy (65 FR 35242, June 1, 2000), we clarified that the appropriate scope of the effectiveness and compliance monitoring programs for incidental take permits should be commensurate with the scope and duration of the operating conservation program and proposed project impacts.

6. In §§ 17.22(b)(3) and 17.32(b)(3), we added a reference to ''§§ 17.22(b)(1)(xi) and 17.32(b)(1)(xi)'' to clarify that we have the authority to include additional permit conditions, if necessary.

7. In § 17.22(b)(5)(i)–(iii) and § 17.32(b)(5)(i)–(iii), we corrected an oversight that had omitted these sections.

8. In the regulations at §§ 17.22(c)(5) and 17.32(c)(5), we corrected a reference that had indicated that assurances extend only to neighboring landowners in § 17.22(c)(5)(ii). We corrected this reference to § 17.22(c)(5)(i) to indicate that assurances apply to all enhancement of survival permittees and participating property owners.

9. For consistency throughout §§ 17.22(c) and 17.32(c), where we used the term ''enrolled land,'' we replaced it with ''enrolled property'' where appropriate.

Summary of Comments and Responses

In our proposed rule to revise the regulations for ESA section 10(a)(1)(A) and (B) published on February 9, 2023 (88 FR 8380), we requested public comments. By the close of the public comment period on April 10, 2023, we received 71 public comments on our proposed rule. We received comments from various sources, including individual members of the public, States, Tribes, industry organizations, corporations, permittees, applicants, legal foundations and firms, and environmental organizations. In general, we received a wide range of comments, often multiple pages, that ranged from full support of the changes to general opposition. However, most commenters either expressed support and provided recommendations to further improve the regulations or expressed opposition to the proposed regulations but included suggestions to make the changes acceptable.

We reviewed all public comments prior to developing this final rule but did not incorporate or respond to comments that are not relevant to or are beyond the scope of this rulemaking action. Summaries of the substantive comments and our responses are provided below. We combined similar comments where appropriate. They are organized as comments specific to: both conservation benefit agreements and habitat conservation plans; conservation benefit agreements; habitat conservation plans; and required determinations.

Comments Regarding Conservation Benefit Agreements and Habitat Conservation Plans

Comment 1: Several commenters requested that company affiliates, associates, subsidiaries, corporate families, and assigns of an applicant be included in the definition of ''applicant'' and be covered by incidental take and enhancement of survival permits, and they requested that we explain the rationale for exclusion.

Response: These entities are excluded from the definition of ''applicant'' because we must be able to specifically identify the permittee and determine if the permittee is eligible to hold a permit under § 13.21. In addition, if the permit is issued, we must be able to specifically identify who is responsible for any permit violations that may occur.

Comment 2: Two commenters requested that we add language to recognize that an entity with the power of eminent domain is a proper applicant for an incidental take permit even where all or portions of the permit area are not owned or controlled by the entity with the power of eminent domain at the time the Service processes the permit application. In addition, one of the commenters suggested that, where the Service has concerns about an applicant's ability to implement a habitat conservation plan despite the applicant possessing the power of eminent domain, the Service may include a permit condition indicating the incidental take permit will not be effective (*i.e.,* will not authorize incidental take) unless and until requisite ownership or control of the permit area has been obtained by the applicant.

Response: This comment is outside the scope of the proposed regulation revisions, and the requested changes would not further our goals of reducing confusion and streamlining the permitting process. However, we will consider providing additional guidance on this topic in the next update to the Habitat Conservation Planning Handbook.

Comment 3: Several commenters stated they oppose the rule because it judges projects based on their implied purpose rather than their conservation outcomes. They further asserted that the subjective interpretation of ''primary purpose'' of the agreement is likely to make most projects ineligible for conservation agreements, regardless of whether the projects would benefit species conservation.

Response: We considered different ways to articulate how we intend to determine under which permit authority to authorize the requested take. The purposes of section 10(a)(1)(A) and section 10(a)(1)(B) are inherently different. The former is to issue enhancement of survival permits that authorize take associated with conservation agreements and ongoing land management activities that provide a net conservation benefit to the covered species. The latter is to issue permits that authorize take that is incidental to, but not the purpose of, carrying out otherwise lawful activities where the impacts to the covered species must be minimized and mitigated. To determine the appropriate permit authority, we intend to look at the nature and purpose of the proposed activities and the anticipated outcomes of the take. For an enhancement of survival permit, the purpose and anticipated conservation outcome of the covered activity must be to provide a benefit to the species covered by the permit, *i.e.,* to improve the condition of a species, the amount or quality of its habitat, or both. Conversely, for an incidental take permit, the purpose and anticipated outcome of the covered activity is to carry out otherwise lawful activities that are likely to result in incidental take that is harmful to the species and requires mitigation (*e.g.,* activities that convert habitat to other uses). Thus, using the primary purpose and anticipated conservation outcome of the project provides a straightforward method for applicants to determine which type of permit to pursue and is consistent with Congress's intent in creating the two different types of permits.

It is unclear what the commenter means by ''implied purpose,'' but the Service anticipates that applicants will provide sufficient information to allow us to evaluate each project's primary purpose and intended conservation outcome. We will consider the circumstances on a case-by-case basis to decide which permit type is appropriate for the project.

Comment 4: One commenter asserted there were two flaws in the proposed distinction between incidental take and enhancement of survival permits: (1) the distinction would push more projects into incidental take permits, which would have a negative effect on

endangered species conservation because of the lower conservation standard of these permits, and (2) the process for obtaining an incidental take permit is inefficient, which would result in delays for a larger number of projects if more were pushed to these permits. The commenter further asserted that the high price tag of developing habitat conservation plans, which on average is greater than $1 million, would effectively eliminate the incentive for voluntary conservation within the private sector.

Response: There are inherent differences in the conservation standards between enhancement of survival permits (requiring a net conservation benefit) and incidental take permits (requiring minimization and mitigation to the maximum extent practicable). This difference is due to the intended purpose of the authorized take under each type of permit. However, conservation for listed and non-listed species can be achieved through both conservation agreements and conservation plans. Providing a clear distinction in the regulations under which statutory provision we will authorize take is critical to the proper implementation of both voluntary conservation programs. We acknowledge that the costs of developing conservation plans can be significant, but we do not view that issue as an appropriate basis for issuing an enhancement of survival permit for a project that is not primarily aimed at conservation and involves incidental take. The regulatory revisions are also intended to create efficiencies in the negotiation and permitting processes that will benefit applicants for both permit types. We also intend to explore additional measures to improve the efficiency of the incidental take permitting process, and we will consider new policies or updates to the Habitat Conservation Planning Handbook to implement such measures.

Comment 5: One commenter suggested the Service should provide additional clarification and explanation regarding the types of activities that may be covered by an enhancement of survival permit as compared to an incidental take permit.

Response: While certain types of activities are clearly more appropriate for an incidental take permit versus an enhancement of survival permit, such as housing developments and new infrastructure development, it is not possible to list all the different types of activities that could be covered by each permit type. To determine the appropriate permit authority, we will consider, on a case-by-case basis, the applicant's purpose for seeking a permit and the anticipated conservation outcome of the activity. We intend to provide additional guidance on this topic in our respective handbooks.

Comment 6: One commenter stated that the Service goes beyond our statutory authority to require project proponents to utilize incidental take permits. The commenter stated that, where a project proponent seeks to implement voluntary conservation measures (*e.g.,* preserving habitat, implementing operational controls, or funding research) for non-listed species—species for which the take prohibition does not apply—the Service should not dictate the type of conservation agreement to use.

Response: Whether to pursue a permit is voluntary, but once applicants make that choice, our responsibility is to determine both that applicants are pursuing the appropriate permit and whether an application under the appropriate permit authority is complete. With the changes we are making to our regulations, the appropriate permit (incidental take versus enhancement of survival) does not depend on the species an applicant is seeking to include, whether a listed or non-listed species. Rather, it depends on the primary purpose and anticipated conservation outcome of the project and the proposed covered activities for which take authorization is requested.

Comment 7: Some commenters stated that it is broadly beneficial to provide more clarity about the application of enhancement of survival and incidental take permits but requested that we clarify how the primary purpose of activities will be determined and ensure that the standard does not inadvertently limit the ability of agricultural producers to seek enhancement of survival permits for their activities.

Response: The type of applicant does not dictate which type of permit is appropriate for the activity. We will consider the project information provided by potential applicants and work with them on a case-by-case basis to determine their primary purpose for requesting a permit, the anticipated conservation outcomes of their project, the activities for which they are seeking take coverage, and the associated plan or agreement. This clarification does not restrict or limit eligible applicants for enhancement of survival permits. In general, take associated with working agricultural lands that are managed in a sustainable fashion to improve conditions for listed and at-risk species may be appropriate for permitting through a conservation agreement, depending upon the proposed covered activities.

Comment 8: One commenter requested that we clarify that energy project proponents continue to have the flexibility to choose between either an enhancement of survival or incidental take permit depending on the primary purpose of the covered activity.

Response: Energy project proponents, as well as other project applicants, should seek assistance from the Service early in the preapplication and project planning phase to ensure the appropriate permit is pursued. When deciding under which permit authority to authorize take, we consider the primary purpose of the project and anticipated conservation outcomes, regardless of the identity of the applicant.

Comment 9: One commenter asserted that for some renewable energy projects an enhancement of survival permit may provide a regulatory mechanism to seek coverage while the applicant is researching, developing, or testing a novel mitigation technology or technique. The commenter further stated that the last 20 years of such advancements in renewable energy show promise, but that mitigation technology remains a nascent industry, and the Service is uniquely situated to provide a regulatory incentive for renewable energy companies to further invest in such technologies and techniques. For these reasons, the commenter recommends that we ensure sufficient flexibility in our regulations so that renewable energy development activities are not prohibited under enhancement of survival permits, especially related to listed species and the investment in minimization research and development. Some commenters recommended that the Service allow research as a mitigation option, while others objected to the recommendation, stating that it would authorize take without properly mitigating the impacts of the taking. However, commenters stated that if research is allowed as mitigation, the regulations should clarify that both the research and the informed conservation must be requirements of the associated incidental take permit and the mitigation must offset the impacts of the taking, not just inform future conservation.

Response: As stated in our mitigation policy, research that is directly linked to reducing threats or that provides a quantifiable benefit to the species may be appropriate when: (a) the major threat to a resource is something other than habitat loss, (b) the Service can reasonably expect the outcome of

research or education to offset the impacts, or (c) the proponent commits to using the results of the research to mitigate impacts. Research should be included as part of a mitigation package only when other reasonable options for mitigation have been fully exhausted. In general, energy development projects do not have a primary purpose of habitat and species conservation and should seek incidental take permits.

Comment 10: Several commenters urged us to clarify and explain what type of activities may be covered by an enhancement of survival permit as opposed to an incidental take permit. The commenters further stated that, because we intend to combine SHAs and CCAAs into a single type of conservation agreement to support the issuance of an enhancement of survival permit, we should also clarify the full scope of activities, formerly covered by a CCAA, that would be eligible for inclusion in a conservation agreement. One commenter also stated that it is unclear whether all the activities currently covered by a CCAA and associated permit would still be eligible for inclusion in a conservation agreement.

Response: Because of the extent of variability among projects, it is not possible for us to categorize all the types of activities that might be covered by an enhancement of survival permit as opposed to an incidental take permit. With the changes we are making to these regulations, it is possible that some activities affecting non-listed species that are included in existing CCAAs may in the future be found more appropriate for authorization though an incidental take permit. But, as previously stated, we would consider the purpose for applying for a permit, the anticipated conservation outcome, and covered activities to determine which permit is appropriate.

Comment 11: A commenter asserted that applicants seeking an enhancement of survival permit may propose a variety of activities for incidental take authorization. They stated that the ''primary purpose'' of the conservation agreement may not be solely to ''benefit the covered species'' but could include a variety of other purposes depending on the needs and objectives of the applicant. The commenter suggested that instead of requiring a ''primary purpose'', the objective of enhancement of survival permits should be ''providing a benefit to the covered species'' irrespective of the primary purpose of the conservation agreement. Another commenter suggested adding the language shown here in brackets: Enhancement of survival permits authorize take of covered species, above the baseline condition, when the primary purpose of the associated conservation agreement is to implement beneficial actions that address threats to the covered species, establish new wild populations, or otherwise benefit the covered species; [or where the land or water management actions covered by the conservation agreement benefit the species even though the primary purpose of those actions may not be conservation].

Response: Because both conservation agreements and plans may provide a benefit to the covered species, providing such a benefit is not a sufficient basis to distinguish between them. Rather, it is appropriate to consider the primary purpose and the anticipated conservation outcomes in the context of conservation agreements to further the statutory purpose of section 10(a)(1)(A), enhancing the propagation or survival of the species. We have clarified in the preamble that the conservation actions in the associated conservation agreement or plan will be used to determine the appropriate permitting authority. We have also clarified that take from both proposed conservation activities and ongoing land management can be authorized under enhancement of survival permits. Additionally, as discussed in response to comment 4, both conservation agreements and plans can provide conservation benefits to listed and non-listed species even though the standards under each authority are different.

Comment 12: One commenter believes that conservation agreements will primarily apply to activities designed to enhance the survival of the species and not, as some past CCAAs have allowed, to provide take protections for economic activities that could incidentally take the species. The commenter indicated that we should clarify this issue in the regulations and on the corresponding application forms.

Response: Clarifying in the regulations that a conservation plan can be developed without inclusion of a listed species will allow incidental take permits to be pursued where previously enhancement of survival permits were deemed the only option because of the former policy that incidental take permits applications must include at least one listed species. Basing the distinction between incidental take and enhancement of survival permits on the primary project purpose and anticipated conservation outcome will ensure that take is authorized under the appropriate authority. We will include additional guidance in our handbooks to further address this issue.

Comment 13: Several commenters asserted that renewable energy projects serve a conservation purpose and are vital to addressing climate change, which is causing long-term impacts on species. The commenters stated that renewable energy projects may have short-term or immediate impacts on species, but such impacts are likely offset by the long-term benefits that these projects collectively create. They further stated that, where opportunities exist to recognize these benefits, expediting permits for projects that address climate change will provide a greater incentive for implementing renewable energy projects.

Response: We acknowledge that many renewable energy projects will reduce greenhouse gas emissions and the otherwise-anticipated harmful effects of climate change on species and the environment. The regulatory changes in this rule are intended to help streamline the regulatory process for all applicants, including proponents of renewable energy projects, and decrease the time for permit approval and issuance. When reviewing a plan or agreement, we consider its duration to determine if the issuance criteria and standards can be met during that timeframe.

Comment 14: One commenter suggested that the issuance criteria (50 CFR 17.22(c)(1)) be amended to expressly require that the purpose of the proposed conservation agreement must be to provide a conservation benefit for the species through enhancing its propagation or survival.

Response: It is not necessary to add this language to § 17.22(c)(1) because the issuance criteria at §§ 17.22(c)(2)(ii) and 17.32(c)(2)(ii) already require that ''the implementation of the terms of the conservation agreement is reasonably expected to provide a net conservation benefit.''

Comment 15: Several commenters were concerned that the proposed rule appeared no longer to apply ''no surprises'' assurances to enhancement of survival permits according to current practice. They stated that we should retain the existing ''no surprises'' assurance regulations for conservation agreements and plans and apply them to incidental take and enhancement of survival permits. The commenters asserted that, while the Service states that the well-established ''no surprises'' assurances will continue to apply, the proposed regulatory revisions suggest otherwise. Several commenters pointed out that the proposal appears to inadvertently omit the existing language on ''no surprises'' assurance in § 17.22(b)(5) and (c)(5), as well as in § 17.32(b)(5) and (c)(5). The commenters

stated that, assuming that this was an inadvertent omission, we should correct the error when finalizing the rule by reinserting subparagraphs (i), (ii), and (iii) in §§ 17.22(b)(5) and 17.32(b)(5).

Response: As stated in the proposal, we intend to retain ''no surprises'' assurances for both permit types. In this final rule, for enhancement of survival permits we revised § 17.22(c)(5) and § 17.32(c)(5) so that the assurances apply to § 17.22(c)(5) and § 17.32(c)(5) in their entirety, not just to each paragraph (c)(5)(ii). Regarding incidental take permits, the proposed regulatory revisions do not alter the protections provided by the ''no surprises'' rule, but there was an inadvertent omission in §§ 17.22(b)(5) and 17.32(b)(5), which we corrected.

Comment 16: Several commenters stated that the assurances referenced in new §§ 17.22(c)(5) and 17.32(c)(5) should apply to all sections of § 17.22(c)(5), and not just paragraph (c)(5)(ii). Another commenter stated that the proposed definition of ''changed circumstances'' appears to limit the application of the current no surprises assurances to conservation plans and incidental take permits, thus leaving out conservation agreements and enhancement of survival permits.

Response: We revised the references in §§ 17.22(c)(5) and 17.32(c)(5), so that the assurances apply not just to neighboring property owners, but to all property owners who participate in a conservation agreement. Additionally, we did not intend to limit the no surprises assurances to conservation plans. Although we deleted the requirement for a changed circumstances section in a conservation agreement, these concepts are incorporated into the monitoring and adaptive management portions of the agreement.

Comment 17: Several commenters supported the proposed clarification that we authorize the incidental take and not the underlying otherwise lawful activity and land use. One commenter stated that, in the introductory language of 50 CFR 17.22, § 17.22(a)(1), and all other places in § § 17.22 and 17.32 where a ''permit for an activity'' is described, the language should be revised to ''permit for take associated with a covered activity.'' The commenter also stated that all references to an ''activity'' may need to be changed to a ''covered activity.''

Response: We did not propose any changes to §§ 17.22(a) or 17.32(a). Rather, the proposed revisions were limited to §§ 17.22(b) and (c) and 17.32(b) and (c). Therefore, we are not making any changes to §§ 17.22(a) or 17.32(a) in this final rule.

Comment 18: One commenter asserted that, if a permittee proceeds with the activities that would otherwise be unlawful under the ESA, then the Service is in effect authorizing those activities by issuing the permit and the Service's scope must analyze the impacts of the covered activities under the National Environmental Policy Act (NEPA).

Response: As we explain in the regulatory language, the permit does not authorize the covered activities themselves, and the Service does not have the authority to approve the activities. Rather, the permit authorizes take that may be associated with the activities and which would otherwise be prohibited under section 9 of the ESA. Therefore, the Federal action is the decision whether to issue a permit that authorizes take, and the appropriate scope of our analysis under NEPA includes the direct and indirect effects of the permitting decision (*i.e.,* authorizing take of the covered species) on the human environment.

Comment 19: One commenter stated that the proposed regulations indicate that the scope of authorization in section 10(a)(1) of the ESA is limited to the take of covered species, which should mean that the National Historic Preservation Act (NHPA) is not triggered, especially because the permits are for non-Federal actions. The commenter asserted, however, that the Service likely does not interpret the proposed text this way, as doing so could cause confusion. The commenter indicated that if we expect incidental take and enhancement of survival permits to be an NHPA trigger, we should not say the scope of authorization is limited to species take.

Response: Because the action of issuing a permit is a Federal undertaking as defined in 36 CFR 800.16(y), we are subject to section 106 compliance under the National Historic Preservation Act. Clarifying that the scope of our permit authorizes the take, not the activities causing the take, ensures that the area of potential effect is appropriately determined.

Comment 20: One commenter stated that the regulations should limit section 10 enhancement of survival permits to activities that actually enhance the survival or propagation of a species. The commenter shared an example where capturing the animal is necessary for its own benefit and protection and to assist its conservation in the wild. The commenter further asserted that purposeful take that is not expected to directly benefit the animal being taken should not be allowed under the regulations because that activity does not enhance the survival or propagation of the species.

Response: Any purposeful take that is authorized through an enhancement of survival permit must directly benefit the covered species and be necessary to provide for its conservation through implementation of the conservation agreement. The commenter's example is a situation where it might be appropriate for the Service to authorize purposeful take that is necessary to implement a conservation agreement.

Comment 21: One commenter asserted that the Service needs a means to track take and that we should require a standardized self-reporting duty that all parties can understand and meaningfully comply with. Another commenter suggested we develop procedures for monitoring compliance with incidental take permits and for tracking cumulative take to ensure excessive take allowances are not granted.

Response: For all incidental take and enhancement of survival permits, we require that permittees report take that occurs during their annual reporting period. We are developing mechanisms to collect this information when permittees submit their annual reports through the online ePermits system, which we will incorporate into our internal project tracking system—ECOSphere—where the data will be available to all Service biologists for use in conservation decision-making.

Comment 22: One commenter stated that the required conservation agreement elements do not include a section on take or assurances provided to property owners and the regulation does not clearly describe how these elements are incorporated into the conservation agreement and permitting process for an enhancement of survival permit. The commenter also asserted that we did not address the duration for conservation agreements and requested that we define these elements and incorporate them into the agreement or permit.

Response: The assurances for conservation agreements are included in 50 CFR 17.22(c)(5) and 17.32(c)(5). In addition, duration of agreements is included under §§ 17.22(c)(4) and 17.32(c)(4). Both assurances and the agreement duration are elements that are included in every conservation agreement.

Comment 23: One commenter stated that the proposed changes regarding the appropriate use of monitoring data in the renewal or amendment process are vague. The commenter asserted that,

while the proposed regulation emphasizes using monitoring data to evaluate the effectiveness of mitigation, in practice this has often just involved monitoring a conservation crediting site. The commenter requested, given the interest in accounting for landscape-scale effects and the recent Presidential memo on ecological connectivity, that we include language to encourage monitoring habitat occupancy near the site of habitat loss whenever possible, which could include using environmental DNA techniques. The commenter asserted that an enhancement of survival permit for the neighboring property could be used to justify monitoring and management of habitat to understand if a landscape-effect due to a nearby take has occurred.

Response: We agree that information on the species and habitat located near a plan or agreement area would be useful in an overall assessment of the status of the species, but we cannot require that a permittee monitor areas beyond those covered by a permit. In addition, using the neighboring property owner provisions of an enhancement of survival permit supported by a conservation agreement for this purpose is not appropriate as neighboring property owners are not required to monitor their property for the species.

Comment 24: One commenter stated that the Service's regulations should strengthen the monitoring obligations before and after permits are issued to ensure compliance with the ESA. The commenter further asserted that the regulations should require the Service to assess baseline conditions, including both available habitat and estimated population and distribution, and independently monitor the condition of the covered species and habitat throughout the duration of the permit.

Response: For both conservation plans and agreements, we require that baseline conditions for the covered species be determined before we approve the plan or agreement and issue the associated permit. In addition, monitoring over the duration of the conservation plan or agreement is required to determine if the mitigation or conservation measures have been implemented and whether they are effective (biological monitoring). Depending on the species, the baseline determination and monitoring may include surveys for individuals to estimate population and distribution on the enrolled property or may only include inventorying the habitat conditions. Some species are difficult to survey, and habitat may be used as a surrogate if appropriate.

Comment 25: One commenter recommended as a condition of permit issuance that we expressly require all enhancement of survival and incidental take permittees to carry out adequate monitoring commensurate with the scope of their activities. The commenter suggested that, in some cases, for small, short-term habitat conservation plans (*e.g.,* covering a residential home on a small property), this monitoring might be minimal; however, in all cases the regulations should require reporting actual take of protected species. Conversely, another commenter recommended that we not impose burdensome monitoring requirements as conditions of enhancement of survival permits, because such requirements are costly, deter participation, and ultimately do not increase species conservation.

Response: Both permit types have compliance and effectiveness monitoring requirements. These requirements are based on the covered species and the goals and objectives of the agreements and plans. The type and amount of required monitoring is commensurate with the activities covered and does not go beyond what is needed to determine whether: the plan or agreement is being properly implemented, the biological goals for the covered species are being met, and take authorization has not been exceeded.

Comment 26: One commenter noted that habitat conservation plan requirements include a monitoring component to measure the effectiveness and progress of the conservation plan in achieving its goals (to be codified at 50 CFR 17.22(b)(1)(viii)). The commenter noted, however, that the Service has not included language on the appropriate scope of any compliance monitoring for a habitat conservation plan. The commenter asserted that the original five-point policy states, ''Monitoring measures should be commensurate with the scope and duration of the project and the biological significance of its effects.'' The commenter stated that including this language into regulations will ensure that any monitoring requirements are proportionate to the project impacts. The commenter further explained that this additional language will ensure that monitoring programs under habitat conservation plans will be commensurate with the duration of the habitat conservation plan and impacts of the take.

Response: In the final rule, we added ''The scope of the monitoring program should be commensurate with the scope and duration of the conservation program and the project impacts.''

Comment 27: Several commenters stated that, for both quantification of take and monitoring purposes, the Service should continue to allow applicants to rely on surrogates (a similarly affected species of habitat or ecological conditions) and make explicit in the final rule that surrogate species are acceptable when biologically meaningful results are attainable by such a method.

Response: We currently allow the use of surrogates for monitoring purposes, depending on the species, and will continue to do so. While we are not adding language to the regulations, we discuss the appropriate use of surrogates in our handbooks.

Comment 28: One commenter stated that we should include more explicit integration of climate change considerations and recommended that we require a climate strategy section either within the goals and objectives or its own standalone section within any agreement or habitat conservation plan, with explicit links to how the impacts of climate change can be addressed through adaptive management of the agreement in question. The commenter asserted that a standalone section would allow for applicants to properly account for and integrate climate resiliency in their plans and agreements at the start. Another commenter recommended that we revise the proposed definition of ''changed circumstances'' to include climate change within the examples listed. Another commenter suggested that the adaptive management program in the conservation plan should consider mitigation focused on addressing climate impacts or other stressors affecting listed species.

Response: While it is important to consider the current and possible future effects of climate change on a species, we are not revising the regulations to include a requirement for a standalone climate change section in a plan or agreement. We provide guidance on incorporating climate change into plans and agreements in our handbooks. We note that the conservation strategy and adaptive management program in the conservation plan can include measures to address the effects of climate change to ensure the plan meets its biological goals and objectives.

Comment 29: Two commenters stated that the Service should have the authority and discretion to consider and provide mitigation and conservation credit for prior and continuing conservation measures. The commenters asserted that the regulations should clarify that the Service can consider and provide mitigation and conservation credit when a plan or agreement is

amended to add a covered species, or when a new plan or agreement incorporates and builds on prior and continuing conservation measures used in existing plans and agreements for conservation of a newly covered species on the same covered land.

Response: For enhancement of survival permits, when we evaluate the baseline in the conservation agreement, we take into consideration the current condition of the species and its habitat, either of which could be attributed to prior or ongoing conservation measures. We also review ongoing conservation when selecting the conservation measures that a property owner will implement to determine if they will need to adopt new conservation measures or amend current measures to achieve the net conservation benefit. Likewise, if an enhancement of survival permit is amended to include a new species, we will determine if any additional conservation measures are needed to provide the net conservation benefit for the new species.

For both enhancement of survival and incidental take permits, if a permittee seeks an amendment to add a new species to the permit, we must establish the environmental baseline for that species at the time of the requested amendment through our intra-Service section 7 consultation. The prior and ongoing actions, including conservation gained through implementation of the existing conservation plan or agreement, would be accounted for in the baseline. The baseline will also include the past and present impacts of all Federal, State, or other private actions in the plan or agreement area. Therefore, previous and on-going beneficial actions are considered when making our enhancement of survival and incidental take permit issuance decisions.

Comment 30: Several commenters were concerned about the definition of ''covered species,'' particularly the meaning of ''reasonable potential to be considered for listing.'' They asserted that we did not provide any information on what ''reasonable potential'' means or how it will be determined, and further asserted that we are creating an alternative approach to a listing determination that is outside the ESA.

Response: We revised the definition of ''covered species'' in this final rule, removing ''reasonable potential to be considered for listing'' and replacing it with the term ''at-risk species,'' which is defined.

Comment 31: Some commenters recommended that the Service provide language to ensure State-managed non-listed species are not included in the definition of ''covered species'' because that would subject State management of these non-listed species to unacceptable levels of uncertainty.

Response: We are not excluding State-managed species from the definition of ''covered species.'' We work closely with State agencies when developing conservation agreements and plans and will consider any concerns expressed by States during that process. Furthermore, it is the applicant's decision whether to include species not listed under the ESA, rather than later seek an amendment if the species is listed.

Comment 32: Several commenters stated that, without a listing under the ESA, direct and indirect regulation of non-listed species is beyond the legal authority of the Service. Several other commenters supported our proposal to include only non-listed species as covered species in a plan or agreement. They stated that this change may help preclude the listing of at-risk species and allow applicants to seek regulatory certainty through an incidental take permit well before a species may become listed.

Response: We clarified in the preamble that we have the authority to issue incidental take and enhancement of survival permits for non-listed species. This process provides more options for entities to voluntarily be proactive and obtain regulatory certainty, allowing them to continue their covered activities without interruption if a species becomes listed. The ESA does not prohibit take of non-listed species. Therefore, the take authorization through an incidental take or enhancement of survival permit will not go into effect until that species is listed.

Comment 33: Several commenters stated that we failed to address the most costly and burdensome requirements for incidental take and enhancement of survival permits. They asserted that the conservation agreement requirements, including (a) detailed information and defined outcomes of the conservation measures, (b) measurable biological goals and objectives of the conservation measures, (c) the baseline condition of the property to be enrolled, (d) the net conservation benefit resulting from the conservation measures, (e) detailed monitoring, and (f) the ability for the Service to include other unknown requirements for issuance, are too onerous and costly.

Response: The requirements are to ensure that we can make the necessary findings for issuance of the permit and approval of the associated agreement or plan. The biological goals and objectives must be measurable for us to determine that the conservation measures or mitigation are achieving their purpose. The monitoring requirements are necessary to determine if the conservation measures or mitigation are being properly implemented and are achieving the intended result. The purpose of a conservation agreement is to provide a net conservation benefit to the covered species, and we must have the necessary information, such as the baseline condition and monitoring information, to be able to make that determination.

Comment 34: Many commenters requested that the final rule include reasonable timeframes for application processing stating that, otherwise, the proposed streamlining of the revised regulations will not be realized. Several commenters suggested application processing and permit decision timeframes comparable to those performed under section 7 of the ESA. They further stated that, while the section 10 durations do not necessarily need to replicate those existing for section 7 consultations, communicating expected timeframes for review would help to ''generate and share products quickly.'' To realize the time and cost savings benefits envisioned, one commenter stated that implementation of this rule must be simple and straightforward for both non-Federal applicants and Service staff alike.

Response: We will develop timelines on a project-by-project basis based on coordination between the applicant and the Service early in the development of the conservation plan or agreement. We recognize an applicant's need for transparency and consistency with respect to the Service's decision-making timelines and the importance of reliable timelines in the overall development of a conservation plan or agreement. We reiterate our commitment to timely review of applications and permit decision making. We will consider whether to incorporate general timeline goals into our handbooks.

Comment 35: In addition to deadlines for application processing and permit decisions, many commenters requested the adoption of deadlines for the various stages of plan and agreement negotiation, especially for the stage related to the Service's determination on whether an application is complete. Other commenters asserted that a lack of deadlines causes the process to move too slowly.

Response: We are committed to timely review of applications and permit decision making, given our resources. We will continue to evaluate our process for determining whether an application is complete and will

consider developing timelines in our handbooks.

Comment 36: One commenter suggested that we clarify permit duration by adding a reference in the final rulemaking that states, ''including time necessary to establish or restore habitat conditions.'' Another commenter stated that the duration of permits language does not provide applicants, permittees, participants, and enrollees regulatory certainty or transparency as to the duration of a permit and stated we should incorporate regulatory text that clarifies ''permit durations'' to provide regulatory certainty and repropose the rule to provide the opportunity for informed comments.

Response: We find it is unnecessary to add the suggested language because the duration of an agreement or plan already incorporates the time needed to achieve habitat establishment or restoration as outlined in the agreement or plan. Because each plan and agreement is unique, we cannot apply a generic timeframe for permits and their associated agreement or plan in the regulations. The duration of the permit must be sufficient for the permittee to fulfill the commitments of the plan or agreement. For instance, the duration of an enhancement of survival permit must be long enough to achieve the net conservation benefit, and the timeframe for this to occur must be discussed and mutually agreed upon during the development of the conservation agreement with the property owner.

Comment 37: Several commenters recommended that we prepare guidance documents and templates for the respective permit applications and conservation agreements and plans. The commenters stated that these documents should be developed in collaboration with stakeholders, including landowners, to ensure their usefulness and applicability. Another commenter suggested we create a template with boilerplate language and an online submission platform.

Response: In 2016, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service jointly finalized the Habitat Conservation Planning and Incidental Take Permit Processing Handbook. The draft was published in the **Federal Register**, and the final document included revisions based on comments received from the public. We will update the handbook after finalizing these regulations. A draft handbook for conservation agreements will be developed and published in the **Federal Register** for public comment. While the primary purpose is to provide guidance to Service staff, the handbooks will also be publicly available for stakeholder use. We will consider templates when we develop the handbooks. We have online submission of applications through ePermits.

Comment 38: One commenter asserted that we should provide guidance that requires plans to have measurable goals for species recovery in terms of both habitat quantity and quality and species population numbers.

Response: For conservation plans, the five-point policy (65 FR 35242, June 1, 2000) and 2016 Habitat Conservation Planning Handbook include guidance on developing appropriate biological goals and objectives. We require measurable biological goals and objectives for conservation strategies, if appropriate. We also require measurable goals for conservation agreements, which are based on the covered species. However, it may not be possible to specify measurable goals for both habitat and species population numbers. For example, with species where monitoring individuals is difficult, we would use habitat as a surrogate for population numbers.

Comment 39: Several commenters asserted that we were adding new incidental take permit issuance criteria that would explicitly allow the Service to add terms and conditions beyond what an applicant has in their habitat conservation plan. The commenters stated that the requirements for additional measures usually arise at the end of the permitting process when the applicant has completed their conservation plan, delaying the issuance of the permit. The commenters further stated that the Service should remove or narrow this language and work with permittees early in the habitat conservation plan development process where additional measures may be appropriate.

Response: In general, the Service has the authority to require permit conditions not included in the conservation plan. Section 10(a)(2)(B)(v) of the ESA provides the authority to include as permit conditions any other measures that are necessary or appropriate for purposes of the plan (see section 10(a)(2)(A)(iv)). However, we did not add new incidental take permit issuance criteria through the proposed regulatory revisions. Rather, we incorporated the language from former §§ 17.22(b)(2)(ii) and 17.32(b)(2)(ii) into §§ 17.22(b)(2)(i) and 17.32 (b)(2)(i), which may have caused confusion. Additionally, while we have the statutory authority to require additional measures, we rarely exercise this authority without the consent of the applicant.

Comment 40: Several commenters supported our inclusion of a definition for ''programmatic plan'' or ''agreement'' in the regulations. Another commenter stated the Service should expand and further the programmatic approach to section 10 permits and conservation agreements and plans to address and mitigate the significant time and cost burdens for individual landowners.

Response: We utilize programmatic agreements where appropriate and where we have an entity that is willing to be the permit holder for the agreement. Because this entity must have the resources to implement the permit and associated programmatic plan or agreement, the number of programmatic agreements and plans that have been finalized has been limited.

Comment 41: One commenter stated that, although we included a definition for programmatic permitting, the proposed rule did not provide additional explanation as to the procedures that would promote and incentivize the use of programmatic permits. Another commenter suggested that we should propose regulatory text explaining how programmatic habitat conservation plans and incidental take permit processes work.

Response: Given the complexity and variability of programmatic plans and agreements, it is not feasible to include the suggested explanation in the regulations. Rather, the appropriate place to explain the development process, advantages, and other details regarding programmatic plans and agreements is in our handbooks.

Comment 42: Several commenters asserted that the regulations should include a condition that the Service must involve State wildlife agencies in the development and approval of conservation agreements and conservation plans within their respective States and concurrence on species to be covered under those agreements and plans. One commenter requested that we consult with State agencies when establishing baseline conditions for enhancement of survival permittees.

Response: While we decline to include a requirement in the regulations that we must involve State wildlife agencies in the development and approval of conservation agreements and plans, we encourage applicants to work with State wildlife agencies during development of agreements and plans. In addition, we often involve States in developing conservation agreements, particularly in discussions to determine baseline conditions and monitoring requirements to demonstrate that the

agreement achieves a net conservation benefit. Likewise, we closely coordinate with State wildlife agencies during our review of plans and agreements. Each of our handbooks contains a section dedicated to coordination with States, underscoring the importance of this collaboration.

Comment 43: Some commenters were concerned that additional take authorizations may be required by States and possibly other regulatory entities and suggested that we include a statement in 50 CFR 17.2 indicating that take authorization provided in part 17 is for ESA-related take only. The commenters also asserted that all sections in 50 CFR 17.22 and 17.32 for permits should have a paragraph on permit conditions, that includes a condition to obtain, if required, State take authorization for the State-listed species. The commenters also stated that the Service should amend 50 CFR 17.22 and 17.32 to include a requirement for permit applicants to obtain any necessary State authorizations before being federally approved. In addition, several commenters requested continued involvement in such evaluations and recommended that the Service consider including language in the rule to account for State involvement in the species and habitat evaluation processes.

Response: Because not all States have a permitting process or require permits for all species that could be covered in an enhancement of survival or incidental take permit (*e.g.,* insects), we decline to include this recommendation in the final regulations. It is common practice for the Service to recommend coordination with State wildlife agencies, Tribes, and stakeholders as applicants are developing their plans or agreements. The issuance of an incidental take or enhancement of survival permit does not absolve an applicant from obtaining other required State, Tribal, and local permits.

Comment 44: One commenter suggested that we add the following language to § 17.22(c)(6): ''Implementation of the terms of a conservation benefit agreement must be consistent with applicable State, local, or Tribal government laws and regulations.''

Response: We decline to add this language to our regulations, which is unnecessary given that applicants must certify on the application that they are operating consistent with other Federal, State, and Tribal laws. However, we added ''Tribal'' to the definition of ''property owner,'' as follows: ''sufficient to carry out the proposed activities, subject to applicable State, Tribal, and Federal laws and regulations.''

Comment 45: Several commenters assert that streamlining the process for developing conservation agreements and plans, expanding outreach capacity both within and outside of the Service to work with landowners, and providing dedicated support for the long-term implementation of these agreements by nongovernmental organizations and other third-parties are among the most significant actions that the Service could take to expand the reach of these tools and advance proactive conservation and species recovery on private land.

Response: The goal of our regulation changes is to streamline and provide more clarity on permits and their associated plans and agreements, which should increase conservation on non-Federal lands. Outreach to communities, property owners, local and State government, other Federal agencies, and Tribes is part of our work to promote and increase the use of these tools.

Comment 46: Several commenters stated that, while the final rule may help streamline procedures and encourage consistency in review and approval of permit applications, review and approvals can be delayed regardless of streamlining if there are insufficient personnel or funding to assist applicants in preparation and review of applications. The commenters did not foresee a major reduction in workload for the Service as a result of the proposed rule changes. To ensure successful implementation of a final rule, they requested that we allocate dedicated funds to facilitate and support voluntary conservation planning by supporting at least one full-time equivalent habitat conservation planning staff person across each region to support applicants and facilitate review of section 10 permit applications.

Response: We recognize the importance of having staff dedicated to support the work on these permits and associated plans and agreements, and we have staff in each of our regional offices whose primary job is to work on enhancement of survival and incidental take permit applications. In addition, we anticipate that the changes to the regulations will result in more efficiencies and shorten the time it takes for our staff to review and finalize permits, plans, and agreements.

Comment 47: Several commenters asserted that we need more staff to timely process incidental take and enhancement of survival permit applications or suggested, alternatively, that we need to be more efficient in processing permit applications, including empowering field offices to streamline planning and permitting.

Response: Currently we delegate enhancement of survival and incidental take permits that qualify for categorical exclusion under NEPA (*e.g.,* low-effect) to our field offices, thus shortening the review process for those plans and agreements. We expect the revisions to these regulations to make the process more efficient by clarifying what is needed for a complete application. We will evaluate additional ways to streamline our processes and consider incorporating those processes in our handbooks.

Comment 48: A commenter asserted that the proposed rule only codifies existing guidance—specifically, the 2016 Habitat Conservation Planning Handbook, five-point policy, SHA policy, and CCAA policy—and thus does not appear to substantively change the existing permit application process, which is currently lengthy and burdensome. The commenter states support for the Service codifying guidance and standardizing practices across applications and regions, as doing so will help resolve ambiguities and challenges arising from different interpretation of Service regulations. However, the commenter asserted that such codification, without further amendments, will not change the amount of time and resources needed to obtain a section 10 permit and will not significantly ameliorate the extent to which this investment of time and resources discourages members of the regulated community from applying for such permits.

Response: The purpose of the regulatory revisions to §§ 17.22 and 17.32 is to clarify and codify long-held policy and guidance into the regulations. We acknowledge that these revisions do not fundamentally change the section 10 permit application processes, but we conclude they will improve plan and agreement negotiations, expediting the process and addressing, at least in part, the commenter's concerns about the investment of time and resources by applicants.

Comment 49: Several commenters indicated that the section 10 permitting is a burdensome process that involves significant time and costs to draft, negotiate, and receive approval for either conservation agreements or habitat conservation plans. They asserted that, although we stated this proposal aims to clarify and simplify the process, we did not identify or provide

mechanisms and support to reduce the administrative burdens and costs that often serve as barriers to individual landowners participating in conservation agreements or plans.

Response: We conclude that the changes and the clarifications provided in this final rule will improve the process for developing plans and agreements. We received several recommendations to further improve the process that we are considering and may incorporate into our handbooks.

Comments That Apply to Enhancement of Survival Permits Supported by Conservation Agreements

Comment 50: One commenter suggested revising the definition of ''baseline'' by adding the following language at the end of the definition: ''The Service shall determine baseline condition after consulting with the landowner, using the best available science and ecological modeling practices.''

Response: Because we work closely with landowners when developing conservation agreements and use the best available science to select the most appropriate methods to determine the baseline of a property, including the suggested language in the regulations is unnecessary.

Comment 51: One commenter stated that we should clarify that take from a potential return to baseline will factor into our issuance determinations and that we will consider impacts to the overall population of the covered species in our analysis. Another commenter sought clarification to the issuance criteria at § 17.22(c)(2)(ii) and suggested adding the following language: ''When making a decision to approve a conservation benefit agreement, the Service shall include sufficient conditions to ensure that the overall population of the covered species will not be reduced if the land is ultimately returned to baseline conditions.'' The commenter asserted that this modification makes it clear that we will fully account for take from a potential return to baseline when we issue enhancement of survival permits, thereby reducing potential confusion for all parties.

Response: When we issue an enhancement of survival permit under a conservation agreement, we conduct an intra-service section 7 consultation, and part of that consultation considers the impacts of the permitted take to the overall population of the species including take from a potential return to baseline.

Comment 52: One commenter requested that we repropose the rule to include information on how ''baseline conditions'' should be determined under our new definition for ''baseline'' and to provide a cost impact analysis for this required determination.

Response: Because each species and area covered by a conservation agreement is unique, we cannot describe how baseline will be determined for each species. We use the best available scientific information to identify the appropriate method for determining baseline for a species on a property. For some species it may be possible to conduct surveys to count individuals, but for other species we may use habitat conditions as the best method to describe baseline conditions. In addition, we cannot provide a cost estimate for determining baseline because that determination will vary by species and size and location of the agreement area.

Comment 53: Two commenters requested that we revise the definition of ''baseline'' by replacing ''could'' with ''currently sustains'' to more accurately reflect existing conditions of the enrolled land. One commenter asserted that in the definition we should focus on species status and enrolled land conditions as they presently exist. The commenter further asserted that, in the definition of ''baseline,'' the addition of the word ''could'' creates uncertainty and potential disagreement on the description of the baseline, the determination of net conservation benefit above baseline, and the lawful return to baseline. The commenter stated that baseline is an empirical description of the starting condition of habitat and species range and size, and that forecasting, estimating, or debating over habitat or population characteristics is not needed to determine baseline. Another commenter stated that the baseline condition of a landowner's property should be determined using actual conditions on the ground at the time of the agreement rather than hypothetical scenarios.

Response: To clarify that baseline condition is the starting condition of the property to be enrolled in a conservation agreement, we revised the definition of ''baseline'' by changing ''could'' to ''currently sustains.''

Comment 54: Another commenter recommended that we add ''across'' to the definition of ''baseline'' to maximize participation and processing efficiency as shown here: ''Baseline condition means population estimates and distribution or habitat characteristics across the enrolled land.'' The commenter asserted that the regulations should focus on habitat conditions across the entirety of the enrolled land rather than on specific stands or tracts.

Response: The baseline for a property to be enrolled in a conservation agreement includes the species population estimates or habitat evaluation for the entire property. To ensure that this concept is clear, we added the word ''across'' to the definition of ''baseline.''

Comment 55: One commenter stated that the baseline condition should be based on the time when the permit application is deemed technically complete rather than at the time when the Service executes the document.

Response: The baseline condition is based on when surveys or habitat evaluations are completed and agreed upon by the property owner. Baseline is part of the draft agreement available for public comment when we announce receipt of the associated permit application in the **Federal Register**; therefore, the baseline should not change after public comments are received. In addition, the baseline is unlikely to change between that time and when we issue the permit and sign the agreement, because the Service rarely encounters substantial delays in processing enhancement of survival permits after publishing the notice of availability in the **Federal Register**.

Comment 56: One commenter asserted that the term ''ongoing activities'' in the definition of ''net conservation benefit'' can be misleading and recommended that we replace it with ''property management actions,'' defined as actions that are conducted as part of property operations, maintenance, modernization, or as otherwise authorized by Service consultation. The commenter also suggested the inclusion of ''otherwise authorized by Service consultation'' as a means to allow other activities that are unforeseen at the time the permit is approved but aligned with the intent of actions included in the ''property management actions'' or similar definition.

Response: We used the term ''ongoing activities'' to limit the activities that would be covered by an enhancement of survival permit. ''Property management actions'' would be too broad because, as proposed by the commenter, new activities under the term ''modernization'' could be included that would not be appropriate to be covered by the permit, such as inclusion of a new pipeline. To issue an enhancement of survival permit associated with a conservation agreement, the Service must find that the covered activities in the conservation agreement provide a

net conservation benefit to the covered species.

Comment 57: One commenter recommended that we modify the definition of ''baseline condition'' and the description in the preamble to include scenarios where habitat does not currently exist but would be established under the conditions of a conservation agreement.

Response: We find it unnecessary to revise the definition of ''baseline condition'' to include such scenarios because that term refers to the conditions on the property at the time the conservation agreement is developed, not a desired future state. A property need not have habitat for the covered species at the time the agreement is developed. The agreement would include conservation measures aimed at creating species habitat over the duration of the agreement.

Comment 58: One commenter asserted that the definition of ''baseline condition'' or guidance on its application should ensure that an applicant may establish baseline conditions using a landscape or macro framework rather than a habitat element or micro perspective.

Response: Baseline condition is established for the entire property covered by a conservation agreement. Using a landscape approach may be appropriate for some properties, but that approach would be determined on a case-by-case basis.

Comment 59: One commenter encouraged us to clarify the role of an applicant's choice to return a property to baseline condition. The commenter requested that State agencies be thoroughly consulted, particularly for non-listed species in which States retain a primary jurisdictional interest, when determining the processes by which an assessment of baseline conditions will be made, conditions monitored over the duration of a permit and agreement and beneficial conservation measures preserved after the end of the permit period and a return to baseline.

Response: The regulations allow the applicant to make this choice about returning a property to baseline. States are important partners in species conservation, and we will involve State wildlife agencies when we develop conservation agreements, including discussing how we will determine the baseline condition of a property for the covered species.

Comment 60: One commenter suggested adding a sentence to § 17.22(c)(8), ''Discontinuance of permit activity,'' to clarify that a permittee cannot return the property to baseline until the permit has expired. The commenter suggested adding the sentence: ''A permittee may not return their property to baseline condition until after the agreed upon permit duration has expired.''

Response: A property owner may return the property to baseline conditions at the end of the agreement and prior to permit expiration, if this option is identified in the conservation agreement prior to issuance of the permit. Alternatively, a property owner may choose no longer to participate in the conservation agreement and can return the property to baseline condition just prior to giving up their permit. For any listed species covered by the agreement and permit, the permit must still be in place for the property owner to return to baseline. We determine that it is unnecessary to include the suggested language in the regulations and will provide additional guidance on this concept in our handbook.

Comment 61: Several commenters stated that the newly proposed definition of ''net conservation benefit'' omits an important pathway for providing net conservation benefits through maintaining existing habitat conditions and continuing management that is beneficial to species. They asserted that we should revise the definition of ''net conservation benefit'' and related application criteria to provide for maintenance as well as improvement in baseline conditions. They further stated that we should acknowledge and incorporate the language in existing CCAA policy that includes circumstances where the species and habitat are already adequately managed when assessing whether the condition of the covered species or the amount or quality of its habitat is reasonably expected to be greater at the end of the agreement period than at the beginning.

Response: We revised the definition of net conservation benefit to make it clear that, in circumstances where a property already contains suitable habitat for the species and the conservation measures include a commitment by the property owner to maintain and manage that habitat, the property would meet the net conservation benefit requirement and could qualify for inclusion in a conservation agreement.

Comment 62: One commenter asserted that projects with long-term climate benefits should be able to meet the definition of net conservation benefit. They also stated that the definition of net conservation benefit should be drafted in a way that acknowledges that the climate change benefits of a project should be considered in the assessment and supports creative mitigation solutions to climate change.

Response: The duration of an agreement must be long enough to provide a net conservation benefit to the covered species. While some projects may provide long-term climate benefits, the projects may not provide these benefits during the timeframe of a conservation agreement. However, we could evaluate whether these types of projects provide a specific net conservation benefit to the species on a case-by-case basis.

Comment 63: One commenter asserted that the proposed definition of ''net conservation benefit'' fails to emphasize the need for improved survival of the covered species. The commenter asserted that, by focusing on improved habitat conditions, we give away assurances without getting effective conservation. Another commenter stated that the definition of net conservation benefit is not adequate and that we should clarify that the specific activity authorized must benefit the species. The commenter further stated that the definition should clarify that net conservation benefit must be sufficient to contribute to the recovery of covered species in the wild and increase the long-term survivability of such species.

Response: The definition of ''net conservation benefit'' provides for an improvement of the covered species, either through a direct benefit to individuals (*e.g.,* reintroduction) or by creating or enhancing habitat. Conservation agreements provide for effective conservation by implementing specific measures aimed to improve the status of the species; previously issued CCAAs have been shown to improve species status such that listing is not warranted.

Comment 64: Another commenter asserted that, while the proposed definition of ''net conservation benefit'' refers to the species' status, the proposed regulation considers only each covered species' existing baseline condition on the enrolled land. The commenter stated that this approach is too restrictive and that the regulations should also anticipate and encourage improvements to species' existing baseline conditions on areas impacted by covered activities, including through spillover of recovered populations onto adjacent or other lands.

Response: The net conservation benefit determination is made for the property that is enrolled in a conservation agreement based on the conservation measures that the property

owner agrees to implement and taking into consideration the ongoing activities for which we authorize take through the permit. We do not consider adjacent land or other land that is beyond the area covered by the agreement.

Comment 65: One commenter recommended that we remove the language ''the amount or quality of its habitat'' because, in many cases, benefits to habitat will reasonably be expected to improve the status of the species and, where they do not, there would be no ''net conservation benefit.''

Response: While we agree that benefits to habitat will result in improvements to the status of the species, we are retaining this language to make it clear that the net conservation benefit can be achieved through habitat creation or improvement.

Comment 66: One commenter suggested that we recommend specific conservation metrics when defining net conservation benefit and that these metrics might include changes in habitat area, habitat connectivity, and expected change in abundance, for example.

Response: While conservation agreements will include metrics to monitor and determine effectiveness of the conservation measures such as those suggested by the commenter, we did not specifically list these in the regulations. However, we will discuss metrics related to net conservation benefit further in our handbook.

Comment 67: One commenter suggested that, although a quantitative target seems unworkable given the variability of species and agreements at issue, we should include a qualitative target such as a meaningful or substantial improvement, which could be helpful while still allowing reasonable flexibility.

Response: We are not including the suggested language because it is subjective and could be open to interpretation. However, we will include more explanation on this issue in our handbook.

Comment 68: One commenter asserted that we could further clarify the definition of ''net conservation benefit'' by adding language specifically confirming that the improvement in condition must be expected to result from the specific conservation measures implemented. The commenter stated that, although it is suggested by the proposed language, further clarification is needed to tie the improvement in condition to the specific conservation measures. The commenter asserted that this tie could be accomplished by inserting the phrase ''because of the implementation of the specific conservation measures'' immediately after ''that'' the second time it appears, so that the language would read ''that, because of the implementation of the specific conservation measures, the condition of the covered species . . . .''

Response: We have revised the definition of ''net conservation benefit'' by adding the word ''conservation'' to make it clearer that the improvements to the species' status or habitat on the enrolled property is a result of implementing the agreed-to conservation measures.

Comment 69: Another commenter suggested a revision to the definition of ''net conservation benefit'' to require a showing of improvement in the condition of species already present on the relevant property, unless the nature of, or knowledge about, the species makes such a showing unreasonably difficult. They suggested the following language: ''. . . or, as appropriate for each covered species not resident on the property or each resident species for which species status is not determinable with a reasonable level of effort, the amount or quality of its habitat.''

Response: We decline to add the suggested language because it is not necessary as improvement of the species is already incorporated into the definition and is a requirement of a conservation agreement either by directly improving the population of the species or by improving the habitat of the species on the property. However, further explanation on how to determine baseline, and thus a net conservation benefit, will be included in our handbook.

Comment 70: One commenter asserted that we need to clarify how adverse impacts to covered species from ongoing land or water use activities and conservation measures will be determined. They stated that this clarification is especially important if we intend to calculate adverse impacts and then apply them as an offset to the benefits of a conservation agreement.

Response: The adverse impacts to the covered species from implementation of the conservation measures or ongoing land or water use activities would be based on the biology of the specific species. Monitoring can help to inform this impact using species surveys or habitat evaluation. Additionally, while implementation of the conservation measures could have some short-term impacts, these measures will ultimately benefit the species.

Comment 71: One commenter stated that we should indicate that net conservation benefits are determined based on all voluntary actions by the applicant that benefit the species, whether new or continued, and not just new actions to be taken under the application.

Response: When we determine whether a conservation agreement meets the net conservation benefit requirement, we look at all the beneficial actions that the property owner is taking on their property, whether they are continuing actions or implementing new measures. We decline to revise the regulations to include this clarification, but we will discuss this issue further in our handbook.

Comment 72: One commenter proposed that the neighbor requirement for applicants under § 17.22 (c)(1)(vii)) read as follows: ''A description of the enrollment process to provide neighboring property owners incidental take coverage under paragraph (c)(5)(ii) of this section with an agreement to supply proof that there has been a reasonable effort to give neighbors notice of the application, if applicable, or any other measures developed to protect the interests of neighboring property owners.'' Another commenter asserted that the proposal should be revised to guarantee this protection to neighboring landowners. The commenter stated that it could be done by changing ''may'' to ''shall'' and minimizing the burdens imposed on neighboring landowners to obtain this protection.

Response: We decline to include the suggested addition to the neighboring property provisions because neighboring property owner provisions are not a requirement of a conservation agreement. The neighboring property provision may be unnecessary in situations where the species are not very mobile or if suitable habitat is not located on the property adjacent to the enrolled property in the conservation agreement. Requiring that every agreement include neighboring property owner provisions will create unnecessary work in some cases.

Comment 73: One commenter suggested that we define neighboring property owners based on the biology of the species that the permit will cover and not just in regard to immediately adjacent neighboring property owners or a neighboring property owner's proximity to the permitholder. The comment asserted that a species-specific definition will ensure that all ''neighbors'' within a species' range will be covered.

Response: We find that it is not necessary to adopt this suggestion because, when we include neighboring property owner provisions in an

enhancement of survival permit, we already consider the biology of the species to help determine which properties would be appropriate to include. For instance, it may not be appropriate to include all neighboring property owners within the species' range because the species' dispersal capabilities may be limited and suitable habitat may not exist on all proximate properties.

Comment 74: One commenter supported the proposed changes that clarified considerations for extending incidental take coverage to neighboring property owners. The commenter noted that the proposed rule suggests enrollment procedures for adjacent landowners should be contained in the agreement and stated that the method of providing incidental take coverage to neighboring lands as written is flexible and intended to be tailored to the specific agreements and needs of adjacent property owners. Another commenter opposed the provision allowing the Service to authorize incidental take coverage for owners of properties adjacent to properties covered by the conservation agreement.

Response: Including neighboring property owner provisions is an important concept that can help to encourage more property owners to participate in a conservation agreement. Knowing that their neighbors can be covered for take that might occur as a result of the species expanding beyond the boundaries of the property enrolled in an agreement can be an incentive for enrollment, thus increasing the conservation for listed and at-risk species under the ESA.

Comment 75: One commenter stated that the Service should revise the phrase in the definition of ''property owner'' from ''owners of water or other natural resources'' to ''owners of rights to water or other natural resources.''

Response: We agree that water and other natural resources are not owned and have revised the regulation to ''owners of *rights* to water or other natural resources.''

Comment 76: Several commenters noted that we removed ''a person with a fee simple, leasehold, or'' from the definition of ''property owner'' and that we did not explain the purpose or need for this revision, or why these entities are specifically being excluded as property owners. The commenters recommended that we specifically include in the definition ''permit and lease holders of the enrolled property'' as these entities may be the property managers of such estates.

Response: We removed the specific references to a person with a ''fee simple'' or ''leasehold'' property interest to simplify the definition of ''property owner.'' The revised definition is sufficiently broad to include persons with fee simple or leasehold interests. The threshold requirement to qualify as a property owner is the legal ability to implement the agreement.

Comment 77: One commenter stated that we used the term ''enrolled land'' multiple times in the proposed rule, but we have approved CCAAs in the past that include other property interests, including water rights. The commenter suggested that we clarify that those other property interests are covered by the final regulations and requested that we consistently refer to ''property'' throughout the rule, except where a narrower scope is specifically intended.

Response: We have changed several references from ''enrolled land'' to ''enrolled property'' as appropriate in § 17.22 in paragraphs (c)(1)(iv), (v), and (viii), (c)(2)(ii), and (c)(4) and in § 17.32 in paragraphs (c)(1)(iv), (v), (viii), (c)(2)(ii), and (c)(4).

Comment 78: Many commenters supported the proposal to combine CCAAs and SHAs into one agreement type. Commenters stated that this change will simplify the permit process and will also provide applicants that had previously applied for a CCAA with the option of returning a property to baseline conditions, which under current regulations is an option available only to SHA applicants. Other commenters opposed combining CCAAs and SHAs, stating that CCAAs and SHAs should have different standards for non-listed and listed species. They asserted that the regulations as proposed will set a higher regulatory hurdle for conservation agreements for candidate species (meant to avoid a listing) by formalizing requirements that are as stringent as post-listing agreements (designed to aid in the recovery of a listed species). The commenters stated that combining the two agreements will make it more onerous, burdensome, and costly for applicants, permittees, participants, and enrollees to overcome the higher regulatory hurdles (a recovery standard) to conserve candidate species.

Response: We analyze the same factors to decide whether to list a species as we do to decide whether to downlist or delist; we do not have different standards for these determinations. Agreements for non-listed species have the same requirements as for listed species: They must provide a net conservation benefit by addressing the threats to the species on the enrolled property or otherwise improving the status of the species.

Comment 79: One commenter wanted to know if all programmatic agreements established prior to a listing automatically continue post-listing and, if so, whether property owners must enroll by a deadline, or whether enrollment continues indefinitely. The commenter also asserted that if enrollments continued post-listing, landowners would not have incentives to enroll prior to listing because they could wait until post-listing and still get the same assurances against further restrictions on land or resource use.

Response: Programmatic agreements that are established prior to a covered species becoming ESA-listed can continue to allow enrollment of new property owners under the agreement post-listing. A property owner may want to enroll prior to a species listing so that ongoing covered activities on the property can continue seamlessly should the species be listed. If a property owner waits until a species is listed, enrollment will be delayed until the application is completed.

Comment 80: One commenter stated that conservation agreements, as proposed, have the potential to reduce timeframes and resources needed to develop and implement the agreements. However, the commenter suggested that additional details regarding how agreements will be executed pre- and post-listing are needed. Further, the commenter asked for clarification about whether a conference opinion that accompanies an enhancement of survival permit supported by a conservation agreement prior to listing would be converted to a biological opinion upon listing.

Response: Conservation agreements that are developed prior to a species being listed will continue seamlessly, as outlined in the agreement, if the species is listed. For non-listed species covered by an agreement and permit, a conference opinion would be completed because permit issuance is a Federal action requiring a section 7 consultation. If the species was subsequently listed under the ESA, we would convert the conference opinion into a biological opinion.

Comment 81: One commenter stated that the proposed definition of ''goals and objectives'' is insufficient to ensure that the goals can be met and measured.

Response: Each agreement is unique; therefore, we cannot specify what specific goals and objectives need to be included. However, in general, the goals and objectives need to be measurable through monitoring and must help determine if the net conservation benefit is being achieved. Additional guidance will be included in the handbook.

Comment 82: Two commenters encouraged the Service to clarify how it will handle SHAs or CCAAs that are under development at the time this regulation is finalized. They asserted that, given the time and resources necessary to prepare these applications, SHAs and CCAAs that are in the final stages of the process should not have to restart under a new regulatory framework.

Response: We provided notice to those entities that were working on a CCAA or SHA prior to the finalization of these regulations. The CCAAs or SHAs that have already been noticed in the **Federal Register** and are in the final stages of permitting do not have to be revised provided they meet issuance criteria.

Comment 83: One commenter sought clarity on whether this regulation alters our policy on candidate conservation agreements (CCAs), which do not include an enhancement of survival permit or provide assurances.

Response: The revision to our section 10 regulations does not alter our policy on CCAs. While we do not issue permits in conjunction with CCAs, they remain an important conservation tool for non-listed species.

Comments That Apply to Incidental Take Permits Supported by a Conservation Plan

Comment 84: Many commenters expressed their support for codifying in the regulations that incidental take permits may be issued for non-listed species without listed species included on the permits. The commenters stated that the provision will provide additional flexibility to further the statutory purpose of the ESA by encouraging voluntary conservation of species before they are listed. Conversely, some commenters expressed concern that a provision to include only non-listed species in incidental take permits oversteps the Service's authority by blurring the line between State and Federal authority. Some commenters suggested that we require concurrence or approval from States before issuing such incidental take permits.

Response: Allowing for incidental take permits to be issued for non-listed species does not diminish or replace the State's authorities. Further, we will continue to encourage applicants to include State, Tribal, and other Federal partners in the development and implementation of conservation plans to ensure consistency with other authorities.

Comment 85: Several commenters were confused by the proposed language included in § 17.22(b)(1)(v)(A) where it states that the habitat conservation plan must explain the conservation measures that will be taken to minimize and mitigate the impacts of the incidental take for all covered species commensurate with the taking. They interpreted this language to mean that the requirement is to fully offset impacts to covered species, contrary to the ESA issuance criteria because of guidance provided in the 2016 Habitat Conservation Planning Handbook.

Response: The text at § 17.22(b)(1) includes a list of information that must be included in a conservation plan, consistent with the requirements of section 10(a)(2)(A) of the ESA. The commenters conflated the requirements in section 10(a)(2)(A) with the statutory issuance criteria in section 10(a)(2)(B). For a conservation plan, the revised regulations clarify that the applicant must describe the measures that the applicant will take to minimize and mitigate the impact of the taking commensurate with the taking. We use the term commensurate to mean in proportion to. The example the commenters referenced from the handbook is taken out of context. However, we will reevaluate the example used during the upcoming handbook update to reduce confusion.

Comment 86: Several commenters asserted that the rule appears to inappropriately shift conservation plan permitting development to the Service when ESA section 10 permits are entirely voluntary and led by the applicant.

Response: The decision to apply for a section 10 permit is voluntary. Once the decision is made to seek a permit, the applicant is required to comply with the statute and regulations and develop the plan or agreement consistent with policy and guidance. For incidental take permits, that includes participating in negotiations with the Service to ensure the conservation plan meets the statutory requirements of ESA section 10(a)(2)(A)(i)–(iv). The statutory text of the ESA requires a conservation plan to include ''such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.'' This language demonstrates Congress' intent to provide the Service with the authority to require that applicants include appropriate measures in a conservation plan and reflects an expectation that we will work with applicants on plan development.

Comment 87: Several commenters asserted that the application completeness standard is equivalent to determining whether the application and its supporting plan meet the statutory issuance criteria. They stated that this front-loading of the process gives the Service undue leverage in negotiating the terms and conditions of an incidental take permit and violates existing policy that the incidental take permit application process is applicant-driven. Other commenters suggested that, while the language does attempt to clarify when applications are complete, it gives the Service subjective authority to determine when an application is complete resulting in perpetual indecision for applicants.

Response: The application process is considered applicant-driven because it is the applicant's decision whether to seek a permit. Once an applicant decides to seek a permit and applies for an incidental take permit, developing a conservation plan is a prerequisite to issuance of the permit and therefore the conservation plan is an application requirement. Through the conservation plan, the applicant demonstrates to the Service how the applicant intends to meet the incidental take permit issuance criteria. For the Service to determine that the incidental take permit application is complete, the supporting conservation plan must include all the required information as set forth in ESA section 10(a)(2)(A) and the regulations in §§ 17.22(b)(1) and 17.32(b)(1) and be consistent with Service policy and guidance. The level of detail in the conservation plan must be sufficient for the Service to conduct our required analyses (*e.g.,* NEPA and ESA section 7) and to determine whether the application meets permit issuance criteria set forth in ESA section 10(a)(2)(B). The Service will not deem an application complete or begin processing the application until these requirements are met. The Service's determination that the application is complete, however, does not guarantee that we will determine that the application meets the incidental take permit issuance criteria. Additional guidance on this subject will be included in the update to the handbook.

Comment 88: Many commenters suggested that we should address the inordinate length of time required to process ESA section 10 permits, asserting that the length of time for the Service to deem an application complete is often one of the key complaints raised by applicants. The commenters further asserted that we do not clearly specify the requirements for a complete application. The commenters stated that, in practice, an application is not complete until the Service deems it so, which typically involves lengthy negotiations between

the Service and the applicant, particularly with respect to habitat conservation plans. They further stated that the requirements for a complete application, as provided in the current and proposed regulations, are not predictable. The commenters stated that the requirements for a complete application should be clearly set forth in the regulations and transparent to applicants.

Response: An incidental take permit application will not be deemed complete until we have determined that the applicant's supporting conservation plan includes all the required information as set forth in ESA section 10(a)(2)(A) and the regulations in §§ 17.22(b)(1) and 17.32(b)(1) and is consistent with current policy and guidance. In addition, the conservation plan must include a level of detail sufficient for us to conduct our required analyses (*e.g.,* NEPA and ESA section 7) and to determine whether the application meets permit issuance criteria as set forth in section 10(a)(2)(B). In addition to providing guidance in an update to the handbook, we will also consider developing a policy to outline a more formal process to determine whether an application is complete, along with a potential timeline, to provide more predictability.

Comment 89: Several commenters stated that the statute does not contain a reference to processing complete applications and does not give the Service the ability to deem applications incomplete and withhold processing them. Others asserted that the Service should instead process the application as is and formally deny the permit.

Response: An incidental take permit application and the related conservation plan must include the necessary information required by the statute and regulations. Only after that information is provided can we evaluate the application and associated conservation plan. The conservation plan must contain sufficient detail for us to determine whether the application meets the issuance criteria set forth in ESA section 10(a)(2)(B). Processing an incomplete application is inefficient and ineffective.

Comment 90: Several commenters recommended that we could incentivize participation in the incidental take permit program by addressing disincentives related to the length and expense of the process. The commenters asserted that we could adopt mechanisms to resolve key areas of dispute that frequently arise during permit negotiations and that can become very protracted and lead to significant applicant frustration. Some commenters suggested adopting dispute resolution processes similar to other Federal agencies or developing an internal elevation process through the chain-of-command within the Service to resolve disputes.

Response: We will explore options and consider developing a policy to incorporate dispute resolution into the conservation planning process.

Comment 91: Several commenters stated that we do not have the authority to add permit terms not agreed to by an incidental take permit applicant.

Response: Both the statute in section 10(a)(2)(A)(iv) and 10(a)(2)(B)(v) and the regulations in §§ 17.22(b)(1)(xi) and 17.32(b)(1)(xi) provide the Service with the authority to add terms and conditions, but this authority is rarely exercised without the consent of the applicant.

Comment 92: One commenter raised concerns that we changed the requirements for funding assurance to accounting of funding to be consistent with the handbook. The commenter also asserted that guidance provided in chapter 9 of the handbook includes impractical financial analysis requirements that were added without the opportunity for public comment.

Response: Based on lessons learned, we made this change in the regulations to clarify that funding assurances described in the conservation plan must include a detailed accounting of how the applicant intends to fund plan implementation over the permit term. Some applicants mistakenly believed that providing an assurance, which is simply a promise of funding, was sufficient. The guidance in chapter 9 of the handbook provides many examples and possible options to meet the funding assurance requirements, and the public was provided an opportunity to comment. The draft Habitat Conservation Planning Handbook was published in the **Federal Register** on June 28, 2016, and requested that public comments be received by August 29, 2016 (81 FR 41986). The final handbook was published on December 21, 2016 (81 FR 93702).

Comment 93: One commenter stated that projects federalized either through Federal funding or mechanisms similar to Federal Highway Administration delegations should be entitled to enroll in programmatic habitat conservation plans and take advantage of the streamlining opportunity those plans provide.

Response: During development of programmatic conservation plans, we encourage applicants to consider streamlining opportunities by coordinating with other Federal and State permitting agencies to participate in the plan. If this streamlined enrollment opportunity is not included in an existing programmatic plan, the permittee may amend the plan and request to amend the permit to add the activities that were not analyzed in the original programmatic plan.

Comment 94: One commenter suggested that we include in the regulations a requirement that all habitat conservation plans include a determination as to whether they contribute to species recovery under the ESA or merely avoid jeopardy.

Response: The statutory language in the permit issuance criteria in ESA section 10(a)(2)(B) states that ''the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.'' Therefore, the statute does not place the burden of recovery on applicants. Rather, the applicable standard is that our issuance of the incidental take permit cannot reduce the species' likelihood of recovery in the wild. However, in our set of findings, which is part of the permit decision process, we may consider including a statement explaining how our issuance of the permit contributes to the recovery goals for the species.

Comment 95: One commenter suggested that we define ''maximum extent practicable'' in the regulations or revise the handbook to state that what an applicant has proposed in a habitat conservation plan represents the most that the applicant can practicably accomplish and thus satisfies the maximum extent practicable criteria. Another commenter states that the maximum extent practicable standard does not require applicants to fully offset the impacts from the taking.

Response: Chapter 9.5 of the handbook provides guidance on how the maximum extent practicable standard can be met. The revised regulations do not require applicants to fully offset the impact of the taking and do not change the maximum extent practicable standard.

Comment 96: Several commenters recommended that the Service allow research as a mitigation option for incidental take permits to encourage additional participation in conservation plans. Other commenters objected to allowing research as mitigation, stating that doing so would authorize take without properly mitigating the impacts of the taking. To address this concern, these commenters recommended that, if research is allowed as mitigation, the regulations should clarify that both the research and the informed conservation must be requirements of the associated

incidental take permit and the mitigation must offset the impacts of the taking, not just inform future conservation.

Response: As stated in our mitigation policy, research that is directly linked to reducing threats or that provides a quantifiable benefit to the species may be appropriate under certain circumstances.

Comment 97: One commenter stated that a specific reference to ''climate change'' should be added to the examples provided in the definition of ''changed circumstances.''

Response: We added ''effects of climate change'' in the list of examples in the definition of ''changed circumstances.''

Comment 98: One commenter stated that the Service's proposed regulatory changes to ''unforeseen circumstances'' omits the existing regulatory requirement that the Service cannot impose, without the permittee's consent, additional conservation or mitigation measures upon an incidental take permit permittee who is properly implementing their habitat conservation plan.

Response: The revised regulations do not include revisions regarding ''changed'' or ''unforeseen circumstances.'' We inadvertently omitted retention of current §§ 17.22(b)(5)(i)–(iii) and 17.32(b)(5)(i)–(iii) in the proposed rule; this final rule corrects that error, so those paragraphs, which were missing from the proposed rule, will be retained via this final rule.

Comments on the Rulemaking Required Determinations

The following comments pertain to our analyses in the preamble to the proposed rule in the Required Determinations portion, in which we addressed several statutes and Executive orders that govern the Federal rulemaking process.

Comment 99: In regard to our determination under the Regulatory Flexibility Act (RFA), one commenter requested that we provide to the public for review and comment all the information developed throughout this process that led to our decision that the proposed regulatory revisions would not have a significant economic impact on a substantial number of small entities.

Response: The information that we used to determine that the regulations will not have a significant economic impact is outlined in the proposed rule. As set forth in that document, we determined that we were not required to conduct an RFA analysis because this rule would not significantly change the way that we currently implement the section 10 program or expand the reach of species protections.

Comment 100: One commenter expressed concern regarding statutory mandates, particularly the RFA and the National Environmental Policy Act (NEPA), asserting that we in essence exempted ourselves from compliance. The commenter stated that an RFA analysis would have demonstrated that many regulated entities cannot afford the permit application process or to sustain the performance levels required to participate in such agreements over the long term. The commenter asserted that not performing these analyses contributes to the Service's failure to comprehend the need for more affordable conservation activities that can substantially contribute to species recovery and conservation without causing financial hardship for those who participate.

Response: We complied with all regulatory requirements in promulgating this rule. Regarding the RFA, we are not required to conduct an RFA analysis because we determined that this rule will not have a significant economic effect on a substantial number of small entities. To the extent that the regulatory revisions affect the documents required to support a permit application, they clarify the requirements for those documents but do not impose additional requirements that would result in significant increased costs to small entities. In regard to NEPA, we determined that a categorical exclusion from NEPA requirements applies to this rulemaking action because, when the Service processes an application for an enhancement of survival or incidental take permit, the decision is subject to the NEPA process at that time.

In terms of creating more affordable opportunities for individuals to voluntarily participate in conservation, property owners can reduce costs by participating in a programmatic agreement instead of seeking to establish an agreement for an individual property.

Comment 101: Several commenters stated that we must complete a NEPA analysis on the proposed rule, including issuing an environmental assessment or environmental impact statement that analyzes the impacts of the proposed action and alternatives, or determining that a categorical exclusion applies to this rulemaking.

Response: As stated in the preamble to the proposed rule and also in this final rule, we have complied with NEPA by determining that the rule is covered by a categorical exclusion found at 43 CFR 46.210(i). We explained this determination in an environmental action statement that is posted in the docket for this rule.

Comment 102: In regard to our request for comments specific to the Paperwork Reduction Act, one commenter provided recommendations regarding clarifying the form titles for the application forms, specifically to revise the form titles regarding applications for amendments. The commenter was also concerned that the language for justifying an amendment is not consistent with the No Surprises Rule.

Response: The form titles will not be revised because there are not separate forms for amendments. Each form (3–200–54, 3–200–56, 3–200–59, and 3–200–60) can be used either to apply for a new permit or to amend or renew a permit as specified within Section E of each form. Additionally, we have removed the inconsistent language from our description of the forms.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 provides that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with E.O. 13563, and in particular the requirement of retrospective analysis of existing rules to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Required Determinations

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act

(SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or their designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have determined that this rule would not have a significant economic impact on a substantial number of small entities for the following reasons.

The rule revises the implementing regulations to clarify existing statutory requirements that govern the Service's processing of applications for ESA section 10(a) permits. The rule does not significantly change the way that we currently implement the section 10 program or expand the reach of species protections. To the extent that the revisions relate to the documents required to support a permit application, the revisions clarify the requirements for those documents but do not impose additional requirements that would result in significant increased costs to small entities. Even if some increased costs are associated with meeting requirements in the rule, we anticipate that those costs will be offset by the revisions that streamline and clarify the application and decision-making process, which will save applicants and permittees time and money. Therefore, no external entities, including small businesses, small organizations, or small governments, will experience significant economic impacts from this rule. Because we certify that this rule will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) On the basis of information contained in the Regulatory Flexibility Act section above, this rule would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A small government agency plan is not required. As explained above, small governments will not be affected because the rule does not impose additional requirements on any city, county, or other local municipality.

(b) This rule will not produce a Federal mandate on State, local, or Tribal governments or the private sector of $100 million or greater in any year; that is, this rule is not a ''significant regulatory action''' under the Unfunded Mandates Reform Act. This rule will impose no obligations on State, local, or Tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. This rule does not constitute a ''taking'' of private property interests, nor will it directly affect private property. A takings implication assessment is not required because this rule: (1) will not effectively compel a property owner to suffer a physical invasion of property; and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule substantially advances a legitimate government interest (conservation and recovery of endangered species, threatened species, and non-listed species of conservation concern) and will not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this rule will have significant federalism effects and have determined that a federalism summary impact statement is not required. This rule pertains only to those entities voluntarily applying for a permit under section 10 of the ESA and will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This rule will not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This rule clarifies the needs associated with development of the required documents to support an application for a permit under section 10 of the ESA.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' and the Department of the Interior's manual at 512 DM 2, we considered the possible effects of this rule on federally recognized Indian Tribes. We will continue to collaborate/coordinate with Tribes on issues related to federally listed species and their habitats, and we will provide notification of this rule to federally recognized Tribes prior to publication. See Joint Secretarial Order 3206 (''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,'' June 5, 1997).

Paperwork Reduction Act of 1995 (PRA)

This rule contains existing and new information collections. All information collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB has reviewed and approved the information collection requirements associated with permit applications, reports, and related information collections associated with native endangered and threatened species and assigned the OMB Control Number 1018–0094 (expires 02/29/2024, and in accordance with 5 CFR 1320.10, an agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB).

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provided the general public and other Federal agencies with an opportunity to comment on our proposal to revise OMB Control Number 1018–0094. This input helped us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helped the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

(1) Whether or not the collection of information is necessary for the proper

performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this proposed rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Endangered Species Act (16 U.S.C. 1531 *et seq.*) was established to provide a means to conserve the ecosystems upon which endangered and threatened species depend, to provide a program for the conservation of these endangered and threatened species, and to take the appropriate steps that are necessary to bring any endangered or threatened species to the point where measures provided for under the Act are no longer necessary. Section 10(a)(1)(A) of the ESA authorizes us to issue permits for otherwise prohibited activities in order to enhance the propagation or survival of the affected species. Section 10(a)(1)(B) of the ESA authorizes us to issue permits if the taking is incidental to the carrying out of an otherwise lawful activity. ESA section 10(d) requires that such permits be applied for in good faith and, if granted, will not operate to the disadvantage of endangered species, and will be consistent with the purposes of the Act.

All Service permit applications are tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all applications for permits, such as the name of the applicant and the applicant's address, telephone numbers, if applicable, tax identification number, email address, description of activity being requested under the ESA, and, after the permit has been issued, a report (description of activity that was conducted under that permit). Standardization of general information common to the application forms makes the filing of applications easier for the public and helps to expedite our review.

The information that we collect is the minimum necessary for us to determine if the applicant/permittee meets, or continues to meet, permit issuance requirements. Respondents submit application forms periodically as needed. Submission of reports is generally on an annual basis, but for some activities (such as activities associated with sea turtles), may be on a more frequent basis, as needed (see those specific reporting forms). This information collection request includes minor modifications to the layout and content of the currently approved application forms so that they:

(a) Are easier to understand and complete,

(b) Minimize the number of completed pages the applicant must submit, and

(c) Accommodate future electronic permitting in the Service's new ePermits System.

In addition to the application forms, permit holders must submit the reports in accordance with their permits issued based on 50 CFR part 17. Some Service annual reports associated with permits are in the 3–202 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. In some cases, we developed specific information collection forms to facilitate and standardize the reporting and review, and to facilitate development of electronic forms and electronic reporting and retrieval of that information.

Annual reporting of permit compliance is required in most cases under the authority of section 10(a)(1)(A) and 10(a)(1)(B) of the ESA and its implementing regulations in 50 CFR part 17. These reports allow us to evaluate the proper implementation of the conservation agreement or plan, ensure take authorization has not been exceeded, formulate further research, and develop and adjust management and recovery plans for the species.

The proposed revisions to existing and new reporting and/or recordkeeping requirements identified below require approval by OMB:

(1) *(REVISED) Application—FWS Form 3–200–54,* ''*Enhancement of Survival Permits Associated with Conservation Benefit Agreements*''—This application can be used for a single species or multiple species. Agreements may vary widely in size, scope, structure, and complexity, and in the activities they address. We revised this application form to align with the regulation revisions, which includes referencing one ''conservation benefit agreement'' instead of the two prior agreement types, adding a question asking if the applicant requests to return to baseline upon permit expiration, clarifying language regarding amendments, and adding clarifying language regarding authorized agents.

(2) *(NEW) Application Amendments—Enhancement of Survival Permits (FWS Form 3–200–54)*—Permittees may request amendments to a permit, or the Service may amend a permit for just cause upon a written finding of necessity. Amendments comprise changes to the permit authorization or conditions. This includes, but is not limited to, an increase or decrease in the estimated amount of take or changes in ownership of a project. The permittee must apply for amendments to the permit by submitting a description of the modified activity and the changed impacts. These are considered substantive amendments and incur a fee. Permittees do not require a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the permitted activity when approval of the location is a qualifying condition of the permit.

(3) *(NEW) Permit Transfers—Enhancement of Survival Permits*—Permits issued under these regulations may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permitted, the deceased permittee's legal representative and the proposed transferee. Transferring permits does not incur a fee.

(4) *(REVISED) Conservation Benefit Agreement*—As part of the application process associated with Form 3–200–54, applicants must submit a conservation benefit agreement. A conservation benefit agreement must include the following:

i. *Conservation Measures*—A complete description of the conservation measure or measures, including the location of the activity or activities to be covered by the permit and their intended outcome for the covered species.

ii. *Covered Species*—The common and scientific names of the covered

species for which the applicant will conduct conservation measures and may need authorization for take.

iii. *Goals and Objectives*—The measurable biological goals and objectives of the conservation measures in the agreement.

iv. *Enrollment Baseline*—The baseline condition of the property or area to be enrolled.

v. *Net Conservation Benefit*—A description of how the measures are reasonably expected to improve each covered species' existing baseline condition on the enrolled property and result in a net conservation benefit as defined at § 17.3.

vi. *Monitoring*—The steps the applicant will take to monitor and adaptively manage to ensure the goals and objectives of the agreement are met, the responsibilities of all parties are carried out, and the agreement will be properly implemented.

vii. *Neighboring Property Owners*—A description of the enrollment process to provide neighboring property owners take coverage under 50 CFR 17.22(c)(5)(ii) or 17.32(c)(5)(ii), if applicable.

viii. *Return to Baseline Condition*—The applicant's choice between including authorization to return enrolled property to baseline condition or forgoing that authorization. For applicants seeking authority to return to baseline condition, a description of steps that may be taken to return the property to baseline condition and measures to reduce the effects of the take to the covered species.

ix. *Additional Actions*—Any other measures that the Director may require as necessary or appropriate in order to meet the issuance criteria in 50 CFR 17.22(c)(2) or 17.32(c)(2) or to avoid conflicts with other Service conservation efforts.

(5) *(REVISED) Application—FWS Form 3–200–56, ''Incidental Take Permits Associated with Habitat Conservation Plans*''—Those who believe their otherwise-lawful activities will result in the ''incidental take'' of a listed wildlife species may choose to seek a permit. The purpose of the incidental take permit is to exempt non-Federal entities—such as States, local governments, businesses, corporations, and private landowners—from the prohibitions of section 9. The permittee also has assurances from the Service through the ''No Surprises'' regulation. We made several revisions to the application form to be consistent with the regulations, which include clarifying amendments and removing any language regarding implementing agreements.

(6) *(NEW) Application Amendments—Incidental Take (FWS Form 3–200–56)*—Amendments to a permit may be requested by the permittee, or the Service may amend a permit for just cause upon a written finding of necessity. Amendments comprise changes to the permit authorization or conditions. This includes, but is not limited to, an increase or decrease in the requested amount of take or changes in ownership of a project. The permittee must apply for amendments to the permit by submitting a description of the modified activity and the changed impacts. These changes are considered substantive and incur a fee. A permittee is not required to obtain a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the covered activity when approval of the location is a qualifying condition of the permit.

(7) *(NEW) Permit Transfers—Incidental Take*—Permits issued under these regulations may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permitted, the deceased permittee's legal representative and the proposed transferee. Transferring permits does not incur a fee.

(8) *(REVISED) Habitat Conservation Plan*—As part of the application process, applicants are also required to submit a habitat conservation plan with their completed Form 3–200–56. A habitat conservation plan must include the following:

i. *Project Description*—A complete description of the project including purpose, location, timing, and proposed covered activities.

ii. *Covered Species*—As defined in § 17.3, common and scientific names of species sought to be covered by the permit, as well as the number, age, and sex of those individuals, if known.

iii. *Goals and Objectives*—The measurable biological goals and objectives of the conservation plan.

iv. *Anticipated Take*—Expected timing, geographic distribution, type and amount of take, and the likely impact of take on the species.

v. *Conservation Program,* that explains the:

- Conservation measures that will be taken to minimize and mitigate the impacts of the incidental take for all covered species commensurate with the taking;
- Roles and responsibilities of all entities involved in implementation of the conservation plan;
- Changed circumstances and the planned responses in an adaptive management plan; and
- Procedures for dealing with unforeseen circumstances.

vi. *Conservation Timing*—The timing of mitigation relative to the incidental take of covered species.

vii. *Permit Duration*—The rationale for the requested permit duration.

viii. *Monitoring*—Monitoring of the effectiveness of the mitigation and minimization measures, progress towards achieving the biological goals and objectives, and permit compliance.

ix. *Funding Needs and Sources*—An accounting of the costs for properly implementing the conservation plan and the sources and methods of funding.

x. *Alternative Actions*—The alternative actions to the taking the applicant considered and the reasons why such alternatives are not being used.

xi. *Additional Actions*—Other measures that the Director requires as necessary or appropriate, including those necessary or appropriate to meet the issuance criteria or other statutory responsibilities of the Service.

(9) *(REVISED) Form 3–200–59, ''Recovery Permit Application Form*''—This application form is used to apply for a permit for any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species.

The data acquired from the issuance of recovery permits is valuable to the decisions that the Service and its partners make regarding land acquisition, land management, consultations under section 7 of the ESA, recovery plans, and downlisting or delisting.Data from these federally issued permits is used on a landscape level. Without recovery permits, our basic knowledge about the abundance, stability, and resiliency of populations, habitat use and requirements, geographic ranges, and diseases of federally listed species would be much more limited. Regulations at 50 CFR 13.25(a) and (b) prohibit permit transfers for this permit type.

We revised Form 3–200–59 to fix typos, incorporate references to ePermits, and update links to the Service website.

(10) *(REVISED) Form 3–200–60, Interstate Commerce Application Form*''—This application form is used to apply for an interstate commerce permit that allows for take otherwise prohibited by section 9 of the ESA. Interstate commerce permits authorize the

purchase and sale of listed species across State lines. For wildlife, the buyer obtains interstate commerce permits are obtained by the buyer; for plants, the seller obtains the permits. Regulations at 50 CFR 13.25(a) and (b) prohibit permit transfers for this permit type.

We revised Form 3–200–60 to fix typos, incorporate references to ePermits, update links to the Service website, and add information in section E (question A7) to ensure that applicants provide information necessary for the permit decision as required by regulation.

(11) *(NEW) Application Amendments (FWS Forms 3–200–59 and 3–200–60)*—The permittee may request amendments to a permit. Amendments comprise changes to the permit authorization or conditions. Amendments include, but are not limited to, an increase or decrease in the estimated amount of take, changes in species or numbers of species requested, or a change in the geographic location where take is authorized. The permittee must apply for amendments to the permit by submitting a description of the modified activity and the changed impacts. These are considered substantive amendments and incur a fee. A permittee is not required to obtain a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee must notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the permitted activity when approval of the location is a qualifying condition of the permit.

(12) *(REVISED) Form 3–2530, ''California/Nevada/Klamath Basin, OR, Recovery Permit Annual Summary Report Form''*—We propose to change the ''TE'' field to ''permit number'' on each page of the form.

We also propose to renew the existing information collection requirements identified below:

(1) *Annual Reports (Enhancement of Survival Permit Associated with Conservation Benefit Agreements)*—Annual reports associated with conservation benefit agreements are non-form requirements and are required by Federal permitting regulations under 50 CFR 13.45, unless otherwise specified in the permit. Reports contain information regarding the implementation of conservation measures and the amount of take that may have occurred during the reporting year, both of which are essential to ensuring compliance with the permit. Permittees may submit the information in any format they choose.

(2) *Notifications (Take)*—Private landowners who have an enhancement of survival permit (and accompanying conservation benefit agreement) must notify us if their land management activities incidentally take a listed or candidate species covered under their permit.

(3) *Notifications (Change in Property Owner)*—We issue enhancement of survival permits to the landowners, and their name is printed on the permit. If ownership of the property changes, this permit does not automatically transfer to the new property owner. Therefore, we ask the permittee to notify us if there is a change in property ownership so that we may work with the new property owner to determine if they want to continue the agreement and permit and then update the permit as appropriate.

(4) *Annual Reports (Habitat Conservation Plans)*—Annual reports associated with conservation plans are non-form requirements and are required by Federal permitting regulations under 50 CFR 13.45, unless otherwise specified in the permit. Reports contain information regarding the implementation of the habitat conservation plan, including carrying out the minimization and mitigation measures and the amount of take that has occurred, both of which are essential to ensuring compliance with the permit. Permittees may submit the information in any format they choose.

(5) *Annual Reports (Recovery and Interstate Commerce)*—Annual reports associated with recovery permits are non-form requirements, except for a few species where there are taxa-specific OMB-approved reporting forms. Interstate commerce permits require reports upon the receipt of wildlife. Interstate commerce's annual sales of plants also require reports. Both the recovery permits and interstate commerce permits require reporting as required by Federal permitting regulations under 50 CFR 13.45, unless otherwise specified in the permit. Recovery permit reports contain information regarding the activities conducted under the permit and the amount of take that has occurred, both of which are essential to ensuring compliance with the permit. Permittees may submit the information in any format they choose unless an OMB-approved form exists for the species for which they are reporting; otherwise, they may elect to use a taxa-specific form if is available.

(6) *Request to Revise List of Authorized Individuals*—When a new, renewed, or amended permit is issued, the list of authorized individuals (LAI) is typically at the end of a permit on Regional Office letterhead. The LAI captures those expressly authorized to perform otherwise prohibited activities on an active permit.

When a permittee requests changes to the individuals authorized on a permit, the Field Office reviews the qualifications. It then issues an updated standalone LAI with the new and current qualified individuals. Issuance of a standalone LAI is considered an administrative change to maintain an up-to-date list of those authorized for the permit's species/activities. Since there are no revisions to the previously authorized species or geographic localities on the permit itself, the action is purely a streamlining measure for the regions to manage the high volume of personnel changes without issuing an amendment or new permit.

(7) *Notification (Escape of Wildlife)*—If a recovery or interstate commerce permit authorizes activities that include keeping wildlife in captivity, for health and safety reasons, we ask the permittee to immediately notify us if any of the captive wildlife escape.

(8) *Annual Reports Associated with Native Endangered and Threatened Species Under the ESA*—We use the following annual report forms specific to particular species for activities associated with native endangered and threatened species permits under the ESA. The Service designed the forms to facilitate the electronic reporting specifically for each species. The Service will use the reported data to evaluate the success of the permitted project, formulate further research, and develop and adjust management and recovery plans for the species. The data will also inform 5-year reviews and species status assessments conducted under the ESA.

- Form 3–202–55b, ''*U.S. Fish and Wildlife Service Geographic Area: Midwestern Bat Reporting Form*'';
- Form 3–202–55c, ''*U.S. Fish and Wildlife Service Geographic Area: Southeastern Bat Reporting Form*'';
- Form 3–202–55d, ''*U.S. Fish and Wildlife Service Geographic Area: Northeastern Bat Reporting Form*'';
- Form 3–202–55e, ''*U.S. Fish and Wildlife Service Geographic Area: Plains/Rockies Bat Reporting Form*'';
- FWS Form 3–202–55f, ''*Non-Releasable Sea Turtle Annual Report*'';
- FWS Form 3–202–55g, ''*Sea Turtle Rehabilitation*'';
- Form 3–2523, ''Midwest Geographic Area: Freshwater Mussel Reporting Form'';

• Form 3–2526, ''Midwest Geographic Area: Bumble Bee Reporting Form'';
• Form 3–2530, ''California/Nevada/Klamath Basin, OR, Recovery Permit Annual Summary Report Form'';
• Form 3–2532, ''U.S. Fish and Wildlife Service Geographic Area: Alaska Bat Reporting Form'';
• Form 3–2533, ''U.S. Fish and Wildlife Service Geographic Area: Northwestern Bat Reporting Form''; and
• Form 3–2534, ''U.S. Fish and Wildlife Service Geographic Area: Western Bat Reporting Form''.

Copies of the draft forms are available to the public by submitting a request to the Service Information Collection Clearance Officer using one of the methods identified in **ADDRESSES**.

Title of Collection: Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species; 50 CFR parts 10, 13, and 17.

OMB Control Number: 1018–0094.

Form Numbers: FWS Forms 3–200–54, 3–200–56, 3–200–59, 3–200–60, 3–202–55a through 3–202–55g, 3–2523, 3–2526, 3–2530, and 3–2532 through 3–2534.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals; private sector; and State/local/Tribal governments.

Total Estimated Number of Annual Respondents: 5,380.

Total Estimated Number of Annual Responses: 5,380.

Estimated Completion Time per Response: Varies from 30 minutes to 2,080 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 220,660.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports and notifications.

Total Estimated Annual Nonhour Burden Cost: $19,415,460 (primarily associated with application processing and administrative fees).

On February 9, 2023, we published in the **Federal Register** (88 FR 8380) a proposed rule (RIN 1018–BF99) that announced our intention to request OMB approval of the revisions to this collection explained above and the simultaneous renewal of OMB Control No. 1018–0094. In that proposed rule, we solicited comments for 60 days on the information collections in this submission, ending on April 10, 2023. Summaries of comments addressing the information collections contained in this rule, as well as the agency response to those comments, can be found in the *Summary of Comments and Responses* section of this rule, as well as in the information collection request submitted to OMB on the *RegInfo.gov* website. Send your written comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0094 in the subject line of your comments.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the Department of the Interior regulations on Implementation of NEPA (43 CFR 46.10–46.450), and the Department of the Interior Manual (516 DM 8).

We find that the categorical exclusion found at 43 CFR 46.210(i) applies to the regulation changes. At 43 CFR 46.210(i), the Department of the Interior has found that the following categories of actions would not individually or cumulatively have a significant effect on the human environment and are, therefore, categorically excluded from the requirement for completion of an environmental assessment or environmental impact statement:

> Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

This exclusion applies to this rulemaking action because, when the Service processes an application for an enhancement of survival permit or incidental take permit, the decision is subject to the NEPA process at that time.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. The revised regulations are not expected to affect energy supplies, distribution, or use. Therefore, this action is a not a significant energy action, and no statement of energy effects is required.

Authority

We issue this rule under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend parts 13 and 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

■ 1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j–l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

Subpart C—Permit Administration

■ 2. Amend § 13.23 by revising the section heading and paragraph (b) to read as follows:

§ 13.23 Amendments of permits.

* * * * *

(b) *Service amendment.* The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity, provided that the amendment of a permit issued under § 17.22(b) or (c) of this subchapter will be consistent with the requirements of § 17.22(b)(5) or (c)(5) of this subchapter and amendment of a permit issued under § 17.32(b) or (c) of this subchapter will be consistent with the requirements of § 17.32(b)(5) or (c)(5) of this subchapter.

* * * * *

■ 3. Amend § 13.24 by revising the section heading and paragraph (c) introductory text to read as follows:

§ 13.24 Rights of succession by certain persons.

* * * * *

(c) In the case of permits issued under the regulations in this subchapter in § 17.22(b) and (c), § 17.32(b) and (c), or 50 CFR part 22, the successor's authorization under the permit is also subject to our determination that:

* * * * *

■ 4. Amend § 13.25 by revising paragraphs (b) and (c) and the introductory text of paragraph (e) to read as follows:

§ 13.25 Transfer of permits and scope of permit authorization.

* * * * *

(b) Permits issued under the regulations in this subchapter in § 17.22(b) and (c), § 17.32(b) and (c), or 50 CFR part 22 may be transferred to a successor subject to our determination that the proposed transferee:

(1) Meets all of the qualifications under this part for holding a permit;

(2) Has provided adequate written assurances of sufficient funding for the conservation measures, conservation plan, or conservation benefit agreement, and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) Has provided other information that we determine is relevant to the processing of the submission.

(c) In the case of the transfer of property subject to an agreement and permit issued under § 17.22(c) or § 17.32(c) of this subchapter, the Service will transfer the permit to the new owner if the new owner agrees in writing to become a party to the original agreement and permit.

* * * * *

(e) In the case of permits issued under § 17.22(b) and (c) or § 17.32(b) and (c) of this subchapter to a State, Tribal, or local government entity, a person is under the direct control of the permittee where:

* * * * *

■ 5. Amend § 13.28 by revising paragraph (a)(5) to read as follows:

§ 13.28 Permit revocation.

(a) * * *

(5) Except for permits issued under § 17.22(b) and (c) or § 17.32(b) and (c) of this subchapter, the population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

* * * * *

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 6. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

Subpart A—Introduction and General Provisions

■ 7. Amend § 17.2 by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f); and

■ c. Adding a new paragraph (b).

The revision and addition read as follows:

§ 17.2 Scope of regulations.

(a) The regulations of this part apply only to endangered and threatened wildlife and plants, except for § 17.22(b) and (c) and § 17.32(b) and (c), which may apply to wildlife and plant species that are not listed as endangered or threatened if they meet the definition of ''covered species.''

(b) Permits authorized under this part include:

(1) Scientific purposes or enhancement of propagation or survival permits for take associated with research, captive propagation programs, or conservation activities to enhance and recover populations of covered species; and

(2) Incidental take permits for take that is incidental to otherwise lawful activities.

* * * * *

■ 8. Amend § 17.3 by:

■ a. Revising the definition for ''Adequately covered'';

■ b. Adding in alphabetical order definitions for ''Applicant'' and ''Baseline condition'';

■ c. Revising the definition for ''Changed circumstances'';

■ d. Adding in alphabetical order definitions for ''Covered activity'', ''Covered species'', ''Net conservation benefit'', ''Permit area'', ''Permittee'', ''Plan area'', ''Programmatic permit associated with a conservation benefit agreement'', ''Programmatic permit associated with a conservation plan'', and

■ e. Revising the definition for ''Property owner''.

The revisions and additions read as follows:

§ 17.3 Definitions.

* * * * *

Adequately covered means, with respect to species listed pursuant to section 4 of the Act, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act for the species covered by the plan, and, with respect to non-listed species, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act that would apply if the non-listed species covered by the plan were listed. For the Service to cover a species under a conservation plan, it must be identified as a covered species on the section 10(a)(1)(B) permit.

* * * * *

Applicant means the person(s), as defined in the Act, who is named and identified on the application and, by signing the application, assumes the responsibility for implementing the terms of an issued permit. Other parties including, without limitations, affiliates, associates, subsidiaries, corporate families, and assigns of an applicant are not applicants or permittees unless, in accordance with applicable regulations, an application or permit has been amended to include them or unless a permit has been transferred consistent with § 13.25.

* * * * *

Baseline condition means population estimates and distribution or habitat characteristics across the enrolled property that currently sustains seasonal or permanent use by the covered species at the time a conservation benefit agreement is executed by the Service and the property owner, or by a programmatic permit holder and the property owner, under §§ 17.22(c) and 17.32(c) of this part, as applicable.

* * * * *

Changed circumstances are changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by the plan's developers and the Service for which responses can be identified in a conservation plan (*e.g.,* the listing of new species, effects of climate change, or a fire or other natural catastrophic event in areas prone to those events).

* * * * *

Covered activity means an action or series of actions that causes take of a covered species and for which take is authorized by a permit under § 17.22(b) and (c) or § 17.32(b) and (c), as applicable.

Covered species means any species that are included in a conservation plan or agreement and for which take is authorized through an incidental take or enhancement of survival permit.

(1) Covered species include species listed as endangered or threatened.

(2) Covered species may include species that are proposed or candidates for listing, at-risk species, or species that have other Federal protective status. An at-risk species is a non-listed species the status of which is declining and that is at risk of becoming a candidate for listing under the Act; at-risk species may include, but are not limited to, State-listed species, species identified by States as species of greatest

conservation need, or species with State heritage ranks of G1 or G2.

(3) An incidental take or enhancement of survival permit need not include a listed species.

* * * * *

Net conservation benefit means the cumulative benefit provided through implementation of a conservation benefit agreement that is designed to improve the existing baseline condition of a covered species by reducing or eliminating threats, or otherwise improving the status of covered species, minus the adverse impacts to covered species from ongoing land or water use activities and conservation measures, so that the condition of the covered species or the amount or quality of its habitat is reasonably expected to be greater with implementation of the agreement than without it. If the Service determines that the species and habitat are already adequately managed to the benefit of the species, a net conservation benefit will be achieved if the property owner commits to continuing the species' management for a specified period of time, including addressing any likely future threats that are under the property owner's control, with the anticipation that the population will increase, habitat quality will improve, or both.

* * * * *

Permit area means the geographic area where the take permit applies. The permit area must be delineated in the permit and be included within a conservation plan or agreement.

Permittee means the named applicant who has been issued a permit and who assumes responsibility for implementing the permit. Other parties including, without limitation, affiliates, associates, subsidiaries, corporate families, and assigns of a permittee are not permittees unless the permit has been amended or transferred consistent with § 13.25.

Plan area means the geographic area where covered activities, including mitigation, described in the conservation plan associated with an incidental take permit may occur. The plan area must be identified in the conservation plan.

* * * * *

Programmatic permit associated with a conservation benefit agreement means an enhancement of survival permit issued under § 17.22(c) or § 17.32(c), with an accompanying conservation benefit agreement that allows at least one named permittee to extend the incidental take authorization to enrolled property owners who are capable of carrying out and agree to properly implement the conservation benefit agreement.

Programmatic permit associated with a conservation plan means an incidental take permit issued under § 17.22(b) or § 17.32(b), with an accompanying conservation plan that allows at least one named permittee to extend the incidental take authorization to participants who are capable of carrying out and agree to properly implement the conservation plan.

* * * * *

Property owner, with respect to conservation benefit agreements and plans outlined under § 17.22(b) and (c) and § 17.32(b) and (c), means a person or other entity with a property interest (including owners of rights to water or other natural resources) sufficient to carry out the proposed activities, subject to applicable State, Tribal, and Federal laws and regulations.

* * * * *

Subpart C—Endangered Wildlife

■ 9. Amend § 17.22 by:
■ a. Revising the section heading and paragraphs (b), (c), and (d); and
■ b. Removing paragraph (e).

The revisions read as follows:

§ 17.22 Permits for endangered species.

* * * * *

(b)(1) *Application requirements for an incidental take permit.* A person seeking authorization for incidental take that would otherwise be prohibited by § 17.21(c) submits Form 3–200–56, a processing fee (if applicable), and a conservation plan. The Service will process the application when the Director determines the application is complete. A conservation plan must include the following:

(i) *Project description.* A complete description of the project including purpose, location, timing, and proposed covered activities.

(ii) *Covered species.* As defined in § 17.3, common and scientific names of species sought to be covered by the permit, as well as the number, age, and sex, if known.

(iii) *Goals and objectives.* The measurable biological goals and objectives of the conservation plan.

(iv) *Anticipated take.* Expected timing, geographic distribution, type and amount of take, and the likely impact of take on the species.

(v) *Conservation program,* that explains the:

(A) Conservation measures that will be taken to minimize and mitigate the impacts of the incidental take for all covered species commensurate with the taking;

(B) Roles and responsibilities of all entities involved in implementation of the conservation plan;

(C) Changed circumstances and the planned responses in an adaptive management plan; and

(D) Procedures for dealing with unforeseen circumstances.

(vi) *Conservation timing.* The timing of mitigation relative to the incidental take of covered species.

(vii) *Permit duration.* The rationale for the requested permit duration.

(viii) *Monitoring.* Monitoring of the effectiveness of the mitigation and minimization measures, progress towards achieving the biological goals and objectives, and permit compliance. The scope of the monitoring program should be commensurate with the scope and duration of the conservation program and the project impacts.

(ix) *Funding needs and sources.* An accounting of the costs for properly implementing the conservation plan and the sources and methods of funding.

(x) *Alternative actions.* The alternative actions to the taking the applicant considered and the reasons why such alternatives are not being used.

(xi) *Additional actions.* Other measures that the Director requires as necessary or appropriate, including those necessary or appropriate to meet the issuance criteria or other statutory responsibilities of the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether a permit should be issued. The Director will consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4). In making a decision, the Director will consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of covered species' habitat that is involved and the degree to which covered species and their habitats are affected. The Director will issue the permit if the Director finds:

(i) The taking will be incidental to, and not the purpose of, carrying out an otherwise lawful activity.

(ii) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.

(iii) The applicant will ensure that adequate funding for the conservation plan implementation will be provided.

(iv) The applicant has provided procedures to deal with unforeseen circumstances.

(v) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

(vi) The measures and conditions, if any, required under paragraph (b)(1)(xi) of this section will be met.

(vii) The applicant has provided any other assurances the Director requires to ensure that the conservation plan will be implemented.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under the regulations in this section will contain terms and conditions that the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, additional conservation measures, if any, that may be required pursuant to paragraph (b)(1)(xi) of this section, specified deadlines, and monitoring and reporting requirements deemed necessary for determining whether the permittee is complying with those terms and conditions. The Director will rely upon existing reporting requirements to the maximum extent practicable.

(4) *Permit duration and effective date.* In determining the duration of a permit, the Director will consider the duration of the activities for which coverage is requested; the time necessary to fully minimize and mitigate the impacts of the taking; and uncertainties related to the impacts of the taking, success of the mitigation, and external factors that could affect the success of the conservation plan.

(i) Permits issued under this paragraph (b) become effective for listed covered species upon the date the permittee signs the incidental take permit, which must occur within 90 calendar days of issuance. For non-listed covered species, the permit's take authorization becomes effective upon the effective date of the species' listing provided the permittee signed the permit within 90 calendar days of issuance and has properly implemented the conservation plan.

(ii) The permit expires on the date indicated on the face of the permit.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented and the permittee is properly complying with the incidental take permit. The assurances apply only with respect to species covered by the conservation plan. These assurances do not apply to Federal agencies or to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised.

(i) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(ii) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were not provided for in the plan's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the Director determines that the plan is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating a response to unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures:

(1) Are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species; and

(2) Maintain the original terms of the conservation plan to the maximum extent possible.

(3) Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan, without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The factors to be considered by the Director include, but are not limited to, the following:

(1) Size of the current range of the affected species;

(2) Percentage of range adversely affected by the conservation plan;

(3) Percentage of range conserved by the conservation plan;

(4) Ecological significance of that portion of the range affected by the conservation plan;

(5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this section will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity from taking additional actions, at their own expense, to protect or conserve a species included in a conservation plan.

(7) *Permit amendment or renewal.* Any amendment or renewal of an existing permit issued under this part is a new agency decision and is therefore subject to all current relevant laws and regulations. The application will be evaluated based on the current policies and guidance in effect at the time of the amendment or renewal decision. Evaluation of an amendment extends only to the portion(s) of the conservation plan or permit for which the amendment is requested. Amendment or renewal applications must meet issuance criteria based upon the best available commercial and scientific data at the time of the permit decision.

(8) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The Service will deem the permit canceled only upon a determination that such minimization and mitigation measures have been implemented. Upon surrender of the permit, no further take

by the permittee will be authorized under the terms of the surrendered permit.

(9) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except:

(i) The reasons set forth in § 13.28(a)(1) through (4) of this subchapter; or

(ii) If continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied.

(c)(1) *Application requirements for an enhancement of survival permit associated with conservation benefit agreements.* The applicant must submit Form 3–200–54, the processing fee (if applicable), and a conservation benefit agreement. The Service will process the application when the Director determines the application has met all statutory and regulatory requirements for a complete application. A conservation benefit agreement must include the following:

(i) *Conservation measures.* A complete description of the conservation measure or measures, including the location of the activity or activities to be covered by the permit, and their intended outcome for the covered species.

(ii) *Covered species.* The common and scientific names of the covered species for which the applicant will conduct conservation measures and may need authorization for take.

(iii) *Goals and objectives.* The measurable biological goals and objectives of the conservation measures in the agreement.

(iv) *Enrollment baseline.* The baseline condition of the property or area to be enrolled as defined in § 17.3.

(v) *Net conservation benefit.* A description of how the measures are reasonably expected to improve each covered species' existing baseline condition on the enrolled property and result in a net conservation benefit as defined at § 17.3.

(vi) *Monitoring.* The steps the applicant will take to monitor and adaptively manage to ensure the goals and objectives of the conservation benefit agreement are met, the responsibilities of all parties are carried out, and the conservation benefit agreement will be properly implemented.

(vii) *Neighboring property owners.* A description of the enrollment process to provide neighboring property owners take coverage under paragraph (c)(5)(ii) of this section, if applicable, or any other measures developed to protect the interests of neighboring property owners.

(viii) *Return to baseline condition.* The applicant's choice between including authorization to return the enrolled property to baseline condition or forgoing that authorization. For applicants seeking authority to return to baseline condition, a description of steps that may be taken to return the property to baseline condition and measures to reduce the effects of the take to the covered species.

(ix) *Additional actions.* Any other measures that the Director may require as necessary or appropriate to meet the issuance criteria in paragraph (c)(2) of this section or to avoid conflicts with other Service conservation efforts.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether to issue a permit. The Director will consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if the Director finds:

(i) The take will be incidental to an otherwise lawful activity or purposeful if it is necessary for the implementation of the conservation benefit agreement and will be in accordance with the terms of the agreement.

(ii) The implementation of the terms of the conservation benefit agreement is reasonably expected to provide a net conservation benefit to the affected covered species on the enrolled property that is included in the permit and for each individual property within a programmatic conservation benefit agreement, based upon: condition of the species or habitat, effects of conservation measures, and anticipated impacts of any permitted take.

(iii) The direct and indirect effects of any authorized take are unlikely to appreciably reduce the likelihood of survival and recovery in the wild of any listed species.

(iv) Implementation of the terms of the conservation benefit agreement will not conflict with any ongoing conservation or recovery programs for listed species and the covered species included in the permit.

(v) The applicant has shown a capability for and commitment to implementing all terms of the conservation benefit agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) The participating property owner must notify the Service of any transfer of property subject to a conservation benefit agreement, at least 30 calendar days prior to the transfer.

(ii) The permittee must give the Service reasonable advance notice (generally at least 30 calendar days) of when take of any covered species is expected to occur, to provide the Service an opportunity to relocate affected individuals of the species, if possible and appropriate.

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation benefit agreement.

(4) *Permit duration and effective date.* The duration of permits issued under paragraph (c) of this section must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit on the enrolled property.

(i) In determining the duration of a permit, the Director will consider the duration of the planned activities, the uncertainties related to the impacts of the taking, and the positive and negative effects of the planned activities covered by the permit on species covered by the conservation benefit agreement.

(ii) Permits issued under this paragraph (c) become effective for listed covered species upon the date the permittee signs the enhancement of survival permit, which must be within 90 calendar days of issuance. For non-listed covered species, the take authorized through the permit becomes effective upon the effective date of the species' listing provided the permittee signed the permit within 90 calendar days of issuance and has properly implemented the conservation benefit agreement since signing the permit.

(5) *Assurances.* The assurances in paragraph (c)(5)(i) of this section apply only to enhancement of survival permits issued in accordance with paragraph (c)(2) of this section where the conservation benefit agreement is being properly implemented, apply only with respect to species covered by the permit, and are effective until the permit expires. The assurances provided in this section apply only to enhancement of survival permits issued after July 19, 1999.

(i) *Permittee and participating property owners.* The Director and the permittee may agree to revise or modify the conservation measures set forth in a conservation benefit agreement if the Director determines that those revisions or modifications do not change the Director's prior determination that the conservation benefit agreement is reasonably expected to provide a net conservation benefit to the covered

species. However, the Director may not require additional or different conservation measures to be undertaken by a permittee without the consent of the permittee.

(ii) *Neighboring property owners.* The Director may provide take coverage in the enhancement of survival permit for owners of properties adjacent to properties covered by the conservation benefit agreement through enrollment procedures contained in the agreement. The take covered and the method of providing take coverage will be tailored to the specific conservation benefit agreement and needs of adjacent property owners. One method is to have the neighboring property owner sign a certificate that applies the authorization and assurances in the permit to the neighboring property owner. The certificate must:

(A) Establish a baseline condition for the covered species on their property; and

(B) Give permission to the Service, the permittee, or a representative of either to enter the property, with reasonable notice, to capture and relocate, salvage, or implement measures to reduce anticipated take of the covered species.

(6) *Additional actions.* Nothing in this section will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity from taking additional actions, at their own expense, to protect or conserve a species included in a conservation benefit agreement.

(7) *Permit amendment or renewal.* Any amendment or renewal of an existing permit issued under this part is a new agency decision and is therefore subject to all current relevant laws and regulations. The application will be evaluated based on the current policies and guidance in effect at the time of the amendment or renewal decision. Evaluation of an amendment extends only to the portion(s) of the conservation benefit agreement or permit for which the amendment is requested. Amendment or renewal applications must meet issuance criteria based upon the best available commercial and scientific data at the time of the permit decision.

(8) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (c) remains responsible for any outstanding conservation measures required under the terms of the permit for take that occurs prior to surrender of the permit and any conservation measures required pursuant to the termination provisions of the conservation benefit agreement or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter.

(i) The permittee of a programmatic conservation benefit agreement that conveys take authorization and assurances to participants or enrollees must follow the provisions of § 13.26 of this subchapter.

(ii) The permit will be deemed canceled only upon a determination by the Service that those conservation measure(s) have been implemented and the permittee has had ample time to return the permittee's property to baseline condition, if the permit authorized take associated with return to baseline and if the permittee chooses to exercise that authorization.

(iii) Upon surrender of the permit, no further take will be authorized under the terms of the surrendered permit, and the assurances in paragraph (c)(5)(i) of this section will no longer apply.

(9) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section except as provided in this paragraph (c)(9).

(i) The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the covered activity would either:

(A) Appreciably reduce the likelihood of survival and recovery in the wild of any covered species; or

(B) Directly or indirectly alter designated critical habitat such that the value of that critical habitat is appreciably diminished for both the survival and recovery of a covered species.

(ii) Before revoking a permit for either of the reasons in paragraphs (c)(9)(i)(A) or (B) of this section, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to, extending or modifying the existing permit, capturing and relocating the species, compensating the property owner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

(d) *Objection to permit issuance.* (1) In regard to any notice of a permit application published in the **Federal Register**, any interested party that objects to the issuance of a permit, in whole or in part, may, during the comment period specified in the notice, request notification of the final action to be taken on the application. A separate written request must be made for each permit application. Such a request must specify the Service's permit application number and state the reasons why the interested party believes the applicant does not meet the issuance criteria contained in this section and § 13.21 of this subchapter, or other reasons why the permit should not be issued.

(2) If the Service decides to issue a permit despite objections received pursuant to paragraph (d)(1) of this section, the Service will, at least 10 days prior to issuance of the permit, make reasonable efforts to contact by telephone, or other expedient means, any party who has made a request pursuant to paragraph (d)(1) of this section and inform that party of the issuance of the permit. However, the Service may reduce the time period or dispense with such notice if the Service determines that time is of the essence and that delay in issuance of the permit would:

(i) Harm the specimen or population involved; or

(ii) Unduly hinder the actions authorized under the permit.

(3) The Service will notify any party filing an objection and request for notice under paragraph (d)(1) of this section of the final action taken on the application, in writing. If the Service has reduced or dispensed with the notice period referred to in paragraph (d)(2) of this section, the Service will include its reasons in such written notice.

Subpart D—Threatened Wildlife

■ 10. Amend § 17.32 by:
■ a. Revising the section heading and paragraphs (b) and (c); and
■ b. Removing paragraph (d).

The revisions read as follows:

§ 17.32 Permits for threatened species.

* * * * *

(b)(1) *Application requirements for an incidental take permit.* A person seeking authorization for incidental take that would otherwise be prohibited by § 17.31 or §§ 17.40 through 17.48 submits Form 3–200–56, a processing fee (if applicable), and a conservation plan. The Service will process the application when the Director determines the application is complete. A conservation plan must include the following:

(i) *Project description.* A complete description of the project, including purpose, location, timing, and proposed covered activities.

(ii) *Covered species.* As defined in § 17.3, common and scientific names of species sought to be covered by the permit, as well as the number, age, and sex, if known.

(iii) *Goals and objectives.* The measurable biological goals and objectives of the conservation plan.

(iv) *Anticipated take.* Expected timing, geographic distribution, type and amount of take, and the likely impact of take on the species.

(v) *Conservation program:* That explains the:

(A) Conservation measures that will be taken to minimize and mitigate the impacts of the incidental take for all covered species commensurate with the taking;

(B) Roles and responsibilities of all entities involved in implementation of the conservation plan;

(C) Changed circumstances and the planned responses in an adaptive management plan; and

(D) Procedures for dealing with unforeseen circumstances.

(vi) *Conservation timing.* The timing of mitigation relative to the incidental take of covered species.

(vii) *Permit duration.* The rationale for the requested permit duration.

(viii) *Monitoring.* Monitoring of the effectiveness of the mitigation and minimization measures, progress towards achieving the biological goals and objectives, and permit compliance. The scope of the monitoring program should be commensurate with the scope and duration of the conservation program and the project impacts.

(ix) *Funding needs and sources.* An accounting of the costs for properly implementing the conservation plan and the sources and methods of funding.

(x) *Alternative actions.* The alternative actions to the taking the applicant considered and the reasons why such alternatives are not being used.

(xi) *Additional actions.* Other measures that the Director requires as necessary or appropriate, including those necessary or appropriate to meet the issuance criteria or other statutory responsibilities of the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether a permit should be issued. The Director will consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4). In making a decision, the Director will consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of covered species' habitat that is involved and the degree to which covered species and their habitats are affected. The Director will issue the permit if the Director finds:

(i) The taking will be incidental to, and not the purpose of, carrying out an otherwise lawful activity.

(ii) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.

(iii) The applicant will ensure that adequate funding for the conservation plan implementation will be provided.

(iv) The applicant has provided procedures to deal with unforeseen circumstances.

(v) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

(vi) The measures and conditions, if any, required under paragraph (b)(1)(xi) of this section will be met.

(vii) The applicant has provided any other assurances the Director requires to ensure that the conservation plan will be implemented.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under the regulations in this section will contain terms and conditions that the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan, including, but not limited to, additional conservation measures, if any, that may be required pursuant to paragraph (b)(1)(xi) of this section, specified deadlines, and monitoring and reporting requirements deemed necessary for determining whether the permittee is complying with those terms and conditions. The Director will rely upon existing reporting requirements to the maximum extent practicable.

(4) *Permit duration and effective date.* In determining the duration of a permit, the Director will consider the duration of the activities for which coverage is requested; the time necessary to fully minimize and mitigate the impacts of the taking; and uncertainties related to the impacts of the taking, success of the mitigation, and external factors that could affect the success of the conservation plan.

(i) Permits issued under this paragraph (b) become effective for listed covered species upon the date the permittee signs the incidental take permit, which must occur within 90 calendar days of issuance. For non-listed covered species, the permit's take authorization becomes effective upon the effective date of the species' listing provided the permittee signed the permit within 90 calendar days of issuance and has properly implemented the conservation plan.

(ii) The permit expires on the date indicated on the face of the permit.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented and the permittee is properly complying with the incidental take permit. The assurances apply only with respect to species covered by the conservation plan. These assurances do not apply to Federal agencies or to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised.

(i) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(ii) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were not provided for in the plan's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the Director determines that the plan is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating a response to unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures:

(1) Are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species; and

(2) Maintain the original terms of the conservation plan to the maximum extent possible.

(3) Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan, without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The factors to be considered by the Director include, but are not limited to, the following:

(1) Size of the current range of the affected species;

(2) Percentage of range adversely affected by the conservation plan;

(3) Percentage of range conserved by the conservation plan;

(4) Ecological significance of that portion of the range affected by the conservation plan;

(5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) *Additional actions.* Nothing in this section will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity from taking additional actions, at their own expense, to protect or conserve a species included in a conservation plan.

(7) *Permit amendment or renewal.* Any amendment or renewal of an existing permit issued under this part is a new agency decision and is therefore subject to all current relevant laws and regulations. The application will be evaluated based on the current policies and guidance in effect at the time of the amendment or renewal decision. Evaluation of an amendment extends only to the portion(s) of the conservation plan or permit for which the amendment is requested. Amendment or renewal applications must meet issuance criteria based upon the best available commercial and scientific data at the time of the permit decision.

(8) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter.

(i) The Service will deem the permit canceled only upon a determination that such minimization and mitigation measures have been implemented.

(ii) Upon surrender of the permit, no further take by the permittee will be authorized under the terms of the surrendered permit.

(9) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except:

(i) The reasons set forth in § 13.28(a)(1) through (4) of this subchapter; or

(ii) If continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied.

(c)(1) *Application requirements for an enhancement of survival permit associated with conservation benefit agreements.* The applicant must submit Form 3–200–54, the processing fee (if applicable), and a conservation benefit agreement. The Service will process the application when the Director determines the application has met all statutory and regulatory requirements for a complete application. A conservation benefit agreement must include the following:

(i) *Conservation measures.* A complete description of the conservation measure or measures, including the location of the activity or activities to be covered by the permit, and their intended outcome for the covered species.

(ii) *Covered species.* The common and scientific names of the covered species for which the applicant will conduct conservation measures and may need authorization for take.

(iii) *Goals and objectives.* The measurable biological goals and objectives of the conservation measures in the agreement.

(iv) *Enrollment baseline.* The baseline condition of the property or area to be enrolled as defined in § 17.3.

(v) *Net conservation benefit.* A description of how the measures are reasonably expected to improve each covered species' existing baseline condition on the enrolled property and result in a net conservation benefit as defined at § 17.3.

(vi) *Monitoring.* The steps the applicant will take to monitor and adaptively manage to ensure the goals and objectives of the conservation benefit agreement are met, the responsibilities of all parties are carried out, and the conservation benefit agreement will be properly implemented.

(vii) *Neighboring property owners.* A description of the enrollment process to provide neighboring property owners take coverage under paragraph (c)(5)(ii) of this section, if applicable, or any other measures developed to protect the interests of neighboring property owners.

(viii) *Return to baseline condition.* The applicant's choice between including authorization to return the enrolled property to baseline condition or forgoing that authorization. For applicants seeking authority to return to baseline condition, a description of steps that may be taken to return the property to baseline condition and measures to reduce the effects of the take to the covered species.

(ix) *Additional actions.* Any other measures that the Director may require as necessary or appropriate to meet the issuance criteria in paragraph (c)(2) of this section or to avoid conflicts with other Service conservation efforts.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether to issue a permit. The Director will consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if the Director finds:

(i) The take will be incidental to an otherwise lawful activity or purposeful if it is necessary for the implementation of the conservation benefit agreement and will be in accordance with the terms of the agreement.

(ii) The implementation of the terms of the conservation benefit agreement is reasonably expected to provide a net conservation benefit to the affected covered species on the enrolled property that is included in the permit and for each individual property within a programmatic conservation benefit agreement, based upon: condition of the species or habitat, effects of conservation measures, and anticipated impacts of any permitted take.

(iii) The direct and indirect effects of any authorized take are unlikely to appreciably reduce the likelihood of survival and recovery in the wild of any listed species.

(iv) Implementation of the terms of the conservation benefit agreement will not conflict with any ongoing conservation or recovery programs for listed species and the covered species included in the permit.

(v) The applicant has shown a capability for and commitment to implementing all terms of the conservation benefit agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) The participating property owner must notify the Service of any transfer of property subject to a conservation benefit agreement, at least 30 calendar days prior to the transfer.

(ii) The permittee must give the Service reasonable advance notice (generally at least 30 calendar days) of when take of any covered species is expected to occur, to provide the Service an opportunity to relocate affected individuals of the species, if possible and appropriate.

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation benefit agreement.

(4) *Permit duration and effective date.* The duration of permits issued under paragraph (c) of this section must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit on the enrolled property.

(i) In determining the duration of a permit, the Director will consider the duration of the planned activities, the uncertainties related to the impacts of the taking, and the positive and negative effects of the planned activities covered by the permit on species covered by the conservation benefit agreement.

(ii) Permits issued under this paragraph (c) become effective for listed covered species upon the date the permittee signs the enhancement of survival permit, which must be within 90 calendar days of issuance. For non-listed covered species, the take authorized through the permit becomes effective upon the effective date of the species' listing provided the permittee signed the permit within 90 calendar days of issuance and has properly implemented the conservation benefit agreement since signing the permit.

(5) *Assurances.* The assurances in paragraph (c)(5)(i) of this section apply only to enhancement of survival permits issued in accordance with paragraph (c)(2) of this section where the conservation benefit agreement is being properly implemented, apply only with respect to species covered by the permit, and are effective until the permit expires. The assurances provided in this section apply only to enhancement of survival permits issued after July 19, 1999.

(i) *Permittee and participating property owners.* The Director and the permittee may agree to revise or modify the conservation measures set forth in a conservation benefit agreement if the Director determines that those revisions or modifications do not change the Director's prior determination that the conservation benefit agreement is reasonably expected to provide a net conservation benefit to the covered species. However, the Director may not require additional or different conservation measures to be undertaken by a permittee without the consent of the permittee.

(ii) *Neighboring property owners.* The Director may provide take coverage in the enhancement of survival permit for owners of properties adjacent to properties covered by the conservation benefit agreement through enrollment procedures contained in the agreement. The take covered and the method of providing take coverage will be tailored to the specific conservation benefit agreement and needs of adjacent property owners. One method is to have the neighboring property owner sign a certificate that applies the authorization and assurances in the permit to the neighboring property owner. The certificate must:

(A) Establish a baseline condition for the covered species on their property; and

(B) Give permission to the Service, the permittee, or a representative of either to enter the property, with reasonable notice, to capture and relocate, salvage, or implement measures to reduce anticipated take of the covered species.

(6) *Additional actions.* Nothing in this section will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity from taking additional actions, at their own expense, to protect or conserve a species included in a conservation benefit agreement.

(7) *Permit amendment or renewal.* Any amendment or renewal of an existing permit issued under this part is a new agency decision and is therefore subject to all current relevant laws and regulations. The application will be evaluated based on the current policies and guidance in effect at the time of the amendment or renewal decision. Evaluation of an amendment extends only to the portion(s) of the conservation benefit agreement or permit for the which the amendment is requested. Amendment or renewal applications must meet issuance criteria based upon the best available commercial and scientific data at the time of the permit decision.

(8) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (c) remains responsible for any outstanding conservation measures required under the terms of the permit for take that occurs prior to surrender of the permit and any conservation measures required pursuant to the termination provisions of the conservation benefit agreement or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter.

(i) The permittee of a programmatic conservation benefit agreement that conveys take authorization and assurances to participants or enrollees must follow the provisions of § 13.26 of this subchapter.

(ii) The permit will be deemed canceled only upon a determination by the Service that those conservation measure(s) have been implemented and the permittee has had ample time to return the permittee's property to baseline condition, if the permit authorized take associated with return to baseline and if the permittee chooses to exercise that authorization.

(iii) Upon surrender of the permit, no further take will be authorized under the terms of the surrendered permit, and the assurances in paragraph (c)(5)(i) of this section will no longer apply.

(9) *Criteria for revocation.* The Director may not revoke a permit issued under this paragraph (c) except as provided in this paragraph (c)(9).

(i) The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the covered activity would either:

(A) Appreciably reduce the likelihood of survival and recovery in the wild of any covered species; or

(B) Directly or indirectly alter designated critical habitat such that the value of that critical habitat is appreciably diminished for both the survival and recovery of a covered species.

(ii) Before revoking a permit for either of the reasons in paragraphs (c)(9)(i)(A) or (B) of this section, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to, extending or modifying the existing permit, capturing

and relocating the species, compensating the property owner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

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