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

Rules and Regulations

Federal Register
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Monday, December 16, 2024

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

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

OFFICE OF THE FEDERAL REGISTER

Title 2 CFR

Revision to Subject Matter

Editorial Note: The Director of the Office of the Federal Register, pursuant to his authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR 8.2, hereby changes the subject matter of title 2 of the Code of Federal Regulations from ''Grants and Agreements'' to ''Federal Financial Assistance.''

■ Accordingly, the subject matter of title 2 of the Code of Federal Regulations is revised as of December 16, 2024.

[FR Doc. 2024–29545 Filed 12–13–24; 8:45 am]
BILLING CODE 0099–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31581; Amdt. No. 4144]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective December 16, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 16, 2024.

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

For Examination

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

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

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

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

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

Availability

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP

amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

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

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

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on December 6, 2024.

Thomas J. Nichols,

Standards Section Manager, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Office of Safety Standards, Flight Standards Service, Aviation Safety, Federal Aviation Administration.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Procedure name
23–Jan–25 ...	MT	White Sulphur Springs	White Sulphur Springs	4/2442	11/12/2024	RNAV (GPS) RWY 1, Orig.

[FR Doc. 2024–29518 Filed 12–13–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31580; Amdt. No. 4143]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective December 16, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 16, 2024.

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

For Examination

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

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

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

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

Availability

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

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

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory

description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

Lists of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on December 6, 2024.

Thomas J. Nichols,

Standards Section Manager, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Office of Safety Standards, Flight Standards Service, Aviation Safety, Federal Aviation Administration.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 20 February 2025

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[FR Doc. 2024–29522 Filed 12–13–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

15 CFR Part 1400

[Docket No. 241121–0298]

RIN 0640–AA02

Removal of Racial and Ethnic Presumptions in Response to Court Ruling

AGENCY: Minority Business Development Agency, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Minority Business Development Agency (MBDA) amends their regulations to remove the list of racial and ethnic presumptions in order to comply with the Court's decision in *Nuziard et al* v. *Minority Business Development Agency et al.,* which struck down those racial and ethnic presumptions.

DATES: This rule is effective January 15, 2025.

FOR FURTHER INFORMATION CONTACT: Donald Smith, Chief Operating Officer, MBDA, *dsmith5@mbda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce's Minority Business Development Agency (MBDA) derives authority from the Minority Business Development Act of 2021 (''the Act''), 15 U.S.C. 9501, *et seq.,* to appoint an Under Secretary of Commerce for Minority Business Development to carry out the Act's activities and initiatives. MBDA's mission is to promote the growth and global competitiveness of minority business enterprises (MBEs) in order to unlock the country's full economic potential. One of the ways MBDA accomplishes this mission is through the funding of a network of Business Centers, Specialty Centers, and other technical assistance programs to provide MBEs with business assistance services and resources.

For a business to access MBDA technical assistance programs that serve MBEs, the individual seeking services must certify that their business is ''a business enterprise (i) that is not less than 51 percent-owned by 1 or more socially or economically disadvantaged individuals; and (ii) the management and daily business operations of which are controlled by 1 or more socially or economically disadvantaged individuals.'' 15 U.S.C. 9501(9). ''Socially or economically disadvantaged individual'' is defined in the Act as ''an individual who has been subjected to racial or ethnic prejudice or cultural bias (or the ability of whom to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area) because of the identity of the individual as a member of a group, without regard to any individual quality of the individual that is unrelated to that identity.'' 15 U.S.C. 9501(15)(A). Additionally, the Act contains a presumption in which ''the Under Secretary shall presume that the term ''socially or economically disadvantaged individual'' includes any individual who is— (i) Black or African American; (ii) Hispanic or Latino; (iii) American Indian or Alaska Native; (iv) Asian; (v) Native Hawaiian or other Pacific Islander; or (vi) a member of a group that the Agency determines under part 1400 of title 15, Code of Federal Regulations, as in effect on November 23, 1984, is a socially disadvantaged group eligible to receive assistance.'' 15 U.S.C. 9501(15)(B). This presumption was also found in MBDA's regulations at 15 CFR 1400.1(b) and (c), and members of these racial groups are presumed to be eligible for MBDA assistance.

Court Decision in Nuziard

The racial presumptions found in the Minority Business Development Act of 2021 and 15 CFR part 1400 were challenged in *Nuziard, et. al.* v. *Minority Business Development Agency, et. al.,* in which the Court found any ''provision of the MBDA Statute that is contingent on the presumption in 15 U.S.C. 9501(15)(B)'' unconstitutional and prohibited MBDA from ''imposing the racial and ethnic classifications defined in 15 U.S.C. 9501 and implemented in 15 U.S.C. 9511, 9512, 9522, 9523, 9524, and 15 CFR 1400.1 .–.–. '' No. 4:23–cv–00278–P (N.D. Tex. March 5, 2024). The court's injunction applies to the sections of the Minority Business Development Act and related regulations that require the Under Secretary of Commerce for Minority Business Development to presume that a ''socially or economically disadvantaged individual'' ''includes any individual who is—(i) Black or African American; (ii) Hispanic or Latino; (iii) American Indian or Alaska Native; (iv) Asian; (v) Native Hawaiian or other Pacific Islander.'' 15 U.S.C. 9501(15)(B). Similarly, the Court enjoined the application of 15 CFR 1400.1(b) to the extent that it imposes racial and ethnic classifications, and designates ''Blacks, Puerto-Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts'' as individuals who are socially or economically disadvantaged. Finally, the Court also enjoined 15 CFR 1400.1(c), which designates ''Hasidic Jews, Asian-Pacific Americans, and Asian Indians'' as socially or economically disadvantaged.

Updating Regulations

As a result of the Court's decision, MBDA is updating their regulations at 15 CFR 1400.1(b) and (c) to remove the sections that contain the racial presumptions described in the decision above. MBDA also proposes to make a correction to 15 CFR 1400.2(a) pertaining to the definition of minority business enterprise and where it is defined in the Act. The last change pertains to striking out outdated language referring to Executive Order 11625 in 15 CFR 1400.3 because MBDA draws statutory authority directly from the Act and not from the Executive Order. See 15 U.S.C. 9597. These changes will clarify the eligibility requirements to qualify for MBDA technical assistance programs that serve MBEs.

Classification

Pursuant to 5 U.S.C. 553(a)(2), the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable to this final rule because this rule relates to ''public property, loans, grants, benefits, or contracts.'' In addition, 5 U.S.C. 553(b)(B) exempts rulemakings from prior notice and public comment procedures when an agency finds for good cause that such procedures ''are impractical, unnecessary, or contrary to the public interest.'' Here, MBDA has determined that there is good cause and that providing prior notice and opportunity

for public comment is impractical because MBDA is required to amend the CFR to implement the holding in *Nuziard.* The court order requires MBDA to amend the CFR in a specific manner, and there are no alternative ways to make the change other than as implemented in this final rule. Therefore, this final rule is being issued without notice and comment.

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

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by another law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

This rule does not have any collection of information requirements under the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 1400

Federal financial assistance, technical assistance, administrative practice and procedure.

Dated: December 5, 2024.

Eric J. Morrissette,

Deputy Under Secretary of Commerce for Minority Business Development, Performing the delegated duties of the Under Secretary, Minority Business Development Agency, U.S. Department of Commerce.

For the reasons set out in the preamble, MBDA amends 15 CFR part 1400 as follows:

PART 1400—DETERMINATION OF GROUP ELIGIBILITY FOR MBDA ASSISTANCE

■ 1. The authority citation for part 1400 continues to read as follows:

Authority: 15 U.S.C. 1512, E.O. 11625, 3 CFR 616 (1971–75), 36 FR 19967 (1971); and E.O. 12432, 3 CFR 198 (1983), 48 FR 32551 (1983).

■ 2. Revise and republish § 1400.1 to read as follows:

§ 1400.1 Purpose and scope.

(a) The purpose of this part is to set forth regulations for determination of group eligibility for MBDA assistance.

(b) In order to be eligible to receive assistance from MBDA funded organizations, a concern must be a minority business enterprise as defined in 15 U.S.C. 9501(9). The purpose of this regulation is to provide guidance to groups not previously designated as eligible for assistance who believe they are entitled to formal designation as ''socially or economically disadvantaged.'' Upon adequate showing by representatives of the group that the group is, as a whole, socially or economically disadvantaged, the group will be so designated and its members will be eligible for MBDA assistance. Designation under this regulation will not establish eligibility for any other Federal or Federally funded program.

■ 3. In § 1400.2, revise paragraph (a) to read as follows:

§ 1400.2 Definitions.

* * * * *

(a) Minority business enterprise is defined in 15 U.S.C. 9501(9).

* * * * *

§ 1400.3 [Amended]

■ 4. In § 1400.3:

■ a. Remove ''Executive Order 11625'' and add in its place ''this part'' in the introductory text; and

■ b. Designate the parenthetical following paragraph (d) as note 1 to paragraph (d) and remove the parentheses.

[FR Doc. 2024–29059 Filed 12–13–24; 8:45 am]

BILLING CODE 3510–21–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 33–11337; 34–101867]

Commission's Organization and Program Management Regulations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting technical amendments to update information relating to its regional offices listed in the Commission's Organization and Program Management regulations.

DATES: Effective December 16, 2024.

FOR FURTHER INFORMATION CONTACT: Tiffany Moseley, Senior Special Counsel, (202) 551–5100, Office of the General Counsel, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–9150.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is amending the information in its Organization and Program Management regulations at 17 CFR 200.11 (Head Quarters Office—Regional Office Relationships) to reflect the closure of the Salt Lake Regional Office on October 26, 2024 and to update the addresses of regional offices that have moved.

II. Administrative Law Matters

The Commission finds, in accordance with the Administrative Procedure Act (''APA''), that the amendments to its rules to update the information for its regional offices relate solely to the agency's organization, procedure, or practice. Accordingly, the APA's provisions regarding notice of rulemaking and opportunity for public comment do not apply.[1] The Commission also finds that because these amendments do not substantially affect the rights or obligations of non-agency parties there is good cause not to provide advance publication of the amendments under the APA and therefore the amendments are effective on December 16, 2024.[2]

For the same reasons, the provisions of the Small Business Regulatory Enforcement Fairness Act [3] and the provisions of the Regulatory Flexibility Act [4] do not apply. These amendments also do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.[5] Further, because the amendments impose no new burdens on private parties, the Commission does not believe that the amendments will have any impact on competition for purposes of section 23(a)(2) of the Securities Exchange Act of 1934 (''Exchange Act'').[6]

III. Statutory Authority

These technical amendments are adopted pursuant to statutory authority granted to the Commission under section 19(a) of the Securities Act of 1933 and section 23(a) of the Exchange Act.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendments

For the reasons set out above, the Commission is amending title 17, chapter II, of the Code of Federal

[1] 5 U.S.C. 553(b)(A).

[2] 5 U.S.C. 553(d).

[3] 5 U.S.C. 804(3)(C) (the term ''rule'' does not include ''any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties'').

[4] 5 U.S.C. 601(2) (provisions only applicable when notice and comment required by the APA).

[5] 5 CFR 1320.3.

[6] 15 U.S.C. 78w(a)(2).

Regulations by making the following technical amendment:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, and 557; 11 U.S.C. 901 and 1109(a); 15 U.S.C. 77c, 77e, 77f, 77g, 77h, 77j, 77o, 77q, 77s, 77u, 77z–3, 77ggg(a), 77hhh, 77sss, 77uuu, 78b, 78c(b), 78d, 78d–1, 78d–2, 78e, 78f, 78g, 78h, 78i, 78k, 78k–1, 78l, 78m, 78n, 78o, 78o–4, 78q, 78q–1, 78w, 78t–1, 78u, 78w, 78ll(d), 78mm, 78eee, 80a–8, 80a–20, 80a–24, 80a–29, 80a–37, 80a41, 80a–44(a), 80a–44(b), 80b–3, 80b–4, 80b–5, 80b–9, 80b–10(a), 80b–11, 7202, and 7211 *et seq.;* 29 U.S.C. 794; 44 U.S.C. 3506 and 3507; Reorganization Plan No. 10 of 1950 (15 U.S.C. 78d nt); sec. 8G, Pub. L. 95–452, 92 Stat. 1101 (5 U.S.C. App.); sec. 913, Pub. L. 111–203, 124 Stat. 1376, 1827; sec. 3(a), Pub. L. 114–185, 130 Stat. 538; E.O. 11222, 30 FR 6469, 3 CFR, 1964–1965 Comp., p. 36; E.O. 12356, 47 FR 14874, 3 CFR, 1982 Comp., p. 166; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Information Security Oversight Office Directive No. 1, 47 FR 27836; and 5 CFR 735.104 and 5 CFR parts 2634 and 2635, unless otherwise noted.

■ 2. Amend § 200.11 by revising paragraph (b) to read as follows:

§ 200.11 Headquarters Office—Regional Office relationships.

* * * * *

(b) Regional Directors of the Commission.

Atlanta Regional Office: Alabama, Georgia, North Carolina, South Carolina, and Tennessee—Regional Director, 950 East Paces Ferry Rd. NE, Suite 900, Atlanta, GA 30326–1382.

Boston Regional Office: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont—Regional Director, 33 Arch Street, 24th Floor, Boston, MA 02110–1424.

Chicago Regional Office: Kentucky, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin—Regional Director, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604–2511.

Denver Regional Office: Colorado, Kansas, Nebraska, New Mexico, North Dakota, South Dakota, Utah, and Wyoming—Regional Director, 1961 Stout Street, Suite 1700, Denver, CO 80294–1961.

Fort Worth Regional Office: Arkansas, Kansas (for certain purposes), Oklahoma, and Texas—Regional Director, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit #18, Fort Worth, TX 76102–6819.

Los Angeles Regional Office: Arizona, Southern California (zip codes 93599 and below, except 93200–93299), Guam, Hawaii, and Nevada—Regional Director, 444 South Flower Street, Suite 900, Los Angeles, CA 90071–2939.

Miami Regional Office: Florida, Louisiana, Mississippi, Puerto Rico, and the Virgin Islands—Regional Director, 801 Brickell Avenue, Suite 1950, Miami, FL 33131–4901.

New York Regional Office: New York and New Jersey—Regional Director, 100 Pearl Street, Suite 20–100, New York, NY 10004–2616.

Philadelphia Regional Office: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia—Regional Director, 1617 John F. Kennedy Boulevard, Suite 520, Philadelphia, PA 19103–1805.

San Francisco Regional Office: Alaska, Northern California (zip codes 93600 and up, plus 93200–93299), Idaho, Montana, Oregon, and Washington—Regional Director, 44 Montgomery Street, Suite 700, San Francisco, CA 94104–4619.

* * * * *

By the Commission.

Dated: December 10, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–29420 Filed 12–13–24; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2024–1028]

Special Local Regulations; Marine Events Within the Seventh Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations for the San Juan Harbor Christmas Boat Parade on December 14, 2024, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Seventh Coast Guard District identifies the regulated area for this event in San Juan, PR. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the regulated area unless authorized by the Coast Guard Patrol Commander or a designated representative.

DATES: The regulations in 33 CFR 100.701 will be enforced for the location identified in table 1 to § 100.701, paragraph (a), Item 11, from 6 p.m. through 8 p.m. on December 14, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander Carlos M. Ortega-Perez, Sector San Juan Waterways Management Division, U.S. Coast Guard; telephone 787–729–2380, email Lieutenant Commander *Carlos.M.Ortega-Perez@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.701 for the San Juan Harbor Christmas Boat Parade regulated area identified in table 1 to § 100.701, paragraph (a), Item 11, from 6 p.m. until 8 p.m. on December 14, 2024. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for recurring marine events, Seventh Coast Guard District, § 100.701, paragraph (a), Item 11, specifies the location of the regulated area for the San Juan Harbor Christmas Boat Parade, which encompasses portions of the San Juan Harbor located in San Juan, PR. Under the provisions of 33 CFR 100.701(c) all persons and vessels are prohibited from entering the regulated area, except those persons and vessels participating in the event, unless they receive permission to do so from the Coast Guard Patrol Commander, or designated representative.

Spectator vessels may safely transit outside the regulated area, but may not anchor, block, loiter in, impede the transit of festival participants or official patrol vessels or enter the regulated area without approval from the Coast Guard Patrol Commander or a 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 will provide notice of the regulated area via Local Notice to Mariners, Marine Safety Information Bulletins, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: December 2, 2024.

Robert E. Stiles,

Captain, U.S. Coast Guard, Alternate Captain of the Port San Juan.

[FR Doc. 2024–29230 Filed 12–13–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[USCG–2023–0485]

RIN 1625–AA01

Establish Anchorage Ground; Rice Island Anchorage, Columbia River, Oregon and Washington

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing an anchorage ground near Rice Island, Oregon on the Lower Columbia River. The purpose of this rule is to improve navigation safety by establishing an area to provide for the safe anchoring of commercial vessels in the navigable waters of the Lower Columbia River.

DATES: This rule is effective January 15, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0485 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 Commander Jesse Wallace, Waterways Management Division, Sector Columbia River, 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 Information and Regulatory History

In the last several years, the Columbia River Marine Transportation System has seen an increase in commercial traffic and vessel size near the Lower Columbia River, thus creating a concern for anchorage capacity around that area. The Columbia River Steamship Operators Association and the Columbia River Pilots formally requested the Coast Guard review and evaluate the establishment of this new anchorage ground to address the safety and navigation concerns with the expanding vessel traffic in the Lower Columbia River. In response, on December 28, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Establish Anchorage Ground; Rice Island Anchorage, Columbia River, Oregon and Washington'' (88 FR 89646). There we stated why we issued the NPRM and invited comments on our proposed regulatory action to establish this anchorage ground. During the comment period that ended February 26, 2024, we received 39 comments. The Coast Guard opened another 30-day comment period that ended on June 7, 2024 (89 FR 38854), in which we received an additional 3 comments. In total, we had 90 days of comment period and received 42 total comments.

III. Legal Authority and Need for Rule

Under Title 33 of the Code of Federal Regulations (CFR) 109.05, the Commandant of the Coast Guard has delegated the authority to establish anchorage grounds to Coast Guard District Commanders. The Coast Guard establishes anchorage grounds under Section 7 of the Rivers and Harbors Act of March 4, 1915, as amended (38 Stat. 1053; 46 U.S.C. 70006) and places these regulations in Title 33 CFR part 110, subpart B. The purpose of this rule is to establish a Federal anchorage ground in the Lower Columbia River to improve safety of navigation by creating additional anchorage grounds for the increased vessel traffic transiting through the Lower Columbia River. The Coast Guard is issuing this rule under its authority in 46 U.S.C. 70034.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 42 total comments on our NPRM during the 2 comment periods. One comment asked the Coast Guard to consider three observations regarding the establishment of the proposed anchorage ground. First, the anchorage ground depth. Second, a charted sandwave area that intersects the proposed anchorage ground. And third, the boundary coordinates for the proposed anchorage ground are stated as latitude and longitude without a statement of the associated horizontal datum. Another comment made by a self-identified member of a non-federally recognized tribe, asked the Coast Guard to consider all potential impacts to the Green Sturgeon, a threatened species of fish present in the lower Columbia River Estuary. The other comments wrote in support of the proposed anchorage ground and are not discussed here.

A. Anchorage Ground Depth

The commenter noted there is variation in the depth of the anchorage ground and that some vessels with deep drafts would need to be cognizant of areas within the anchorage shallower than 43 feet. The commenter also asked if there are plans to dredge the shallower areas to a standard depth of 43 feet. The Coast Guard believes the range of depths within the anchorage ground will accommodate a variety of vessel types and configurations. If it is later determined that dredging is required, then 33 U.S.C. 365 authorizes the United States Army Corps of Engineers to dredge within, and adjacent to, Federal anchorages established by the Coast Guard. Environmental reviews and approvals are required prior to dredging in the anchorage.

B. Charted Sandwaves

The commenter indicated that a sandwave shoal formation intersects the anchorage ground. Sandwave shoal formations are common throughout the Lower Columbia River to include the area of the anchorage ground. Presence of sandwave shoal formations have not historically precluded this area from being used as an anchorage ground.

C. Horizontal Datum

The commenter asked us to explicitly state the horizontal datum for the anchorage ground. The NPRM included the boundary coordinates for the anchorage ground as latitude and longitude without a statement of the associated horizontal datum. In response to this comment, we revised the associated horizontal datum in the regulatory text at the end of this rulemaking. All other regulatory text remains unchanged.

D. Green Sturgeon

One commenter asked the Coast Guard to consider all potential impacts to the Green Sturgeon, a threatened species of fish present in the lower Columbia River Estuary. While the anchorage ground is located within the Green Sturgeon's critical habitat, this rule will have no effect on the Green Sturgeon or the critical habitat. This rule will not disturb the Green Sturgeon's ability to spawn or forage for food. Moreover, this rule will not create an increase in vessel traffic through its habitat or impede its migratory pathway through the Columbia River.

E. Final Rule

This rule establishes a Federal anchorage ground in the vicinity of Rice Island, in the Lower Columbia River.

The specific coordinates for this anchorage ground are included in the regulatory text at the end of this document.

V. Regulatory Analyses

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

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 the location and size of the anchorage ground, as well as the vessel traffic and anchoring data provided by the Coast Guard Navigation Center. The regulation will ensure approximately 1.745 square miles of anchorage grounds are designated to provide necessary commercial deep draft anchorages and enhance the safety of navigation to commercial vessels transiting to, from, and within the Columbia River. The expected impact to navigation created by the establishment of this anchorage ground is expected to be minimal because the anchorages ground is located outside the federal channel and is consistent with current anchorage habits. When not occupied, vessels will be able to maneuver in, around, and through the anchorages.

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 received no comments from the Small Business Administration on this rulemaking. 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 use the anchorage ground may be small entities, for reasons stated in section V.A above, this rule would 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.

All guidance set out in Executive Order 13132 and 13175 were followed prior to this rulemaking and there is no objection in moving forward with this rulemaking from a federally recognized tribe.

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 establishing an anchorage ground, Rice Island Anchorage, in an area traditionally used by commercial ships for anchoring in the Lower Columbia River system; and increasing the safety of navigation and anchorage capacity of the Lower Columbia River system. It is categorically excluded from further review under paragraph L59(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.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 2071; 46 U.S.C. 70006, 70034; 33 CFR 1.05–1; Department of

Homeland Security Delegation No. 00170.1 Revision No. 01.3.

■ 2. Amend § 110.228 by adding paragraph (a)(12) to subpart B to read as follows:

§ 110.228 Columbia River, Oregon and Washington.

(a) * * *

(12) *Rice Island Anchorage.* All waters in the vicinity of Rice Island, Oregon, bound by a line connecting the following points, which are based on the World Geodetic System (WGS 84):

TABLE 3 TO PARAGRAPH (a)(12)

Latitude	Longitude
46°13′15.60″	123°46′28.20″
46°13′37.20″	123°45′22.20″
46°14′42.00″	123°43′12.00″
46°14′52.80″	123°42′12.00″
46°14′42.60″	123°42′00.00″
46°13′47.40″	123°43′48.60″
46°13′36.60″	123°44′15.60″
46°13′07.20″	123°45′58.20″
46°13′00.60″	123°46′16.80″

* * * * *

Dated: December 3, 2024.

Charles E. Fosse,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 2024–29536 Filed 12–12–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–1066]

RIN 1625–AA00

Safety Zone; New Years Eve Fireworks on the Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Patapsco River. This action is necessary to provide for the safety of life on these navigable waters in Baltimore, MD from potential hazards during a fireworks display to commemorate the New Years Eve. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 11:55 p.m. on December 31, 2024, through 12:15 a.m. January 1, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–1066 in the ''SEARCH'' box and click ''SEARCH.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Kate Newkirk, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2570, email *Kate.m.newkirk@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On December 4, 2024, the Baltimore Office of Promotions notified the Coast Guard that it will be conducting a fireworks display from 11:55 p.m. on December 31, 2024, through 12:15 a.m. January 1, 2025. The fireworks are to be launched from a fireworks barge located in the Patapsco River, in position 39°16′36″, N 07 076°35′53″ W. Hazards from the fireworks display include harm from the accidental discharge of fireworks, and being hit by dangerous projectiles, falling hot embers, or other debris. The Captain of the Port, Maryland-National Capital Region (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within 300 feet of the fireworks barge.

The Coast Guard is issuing this temporary rule under the 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 there is insufficient time to provide notice and opportunity to comment before the date of the event.

In addition, 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 and contrary to the public interest because the rule must be in place within 30 days of the date of publication to respond to the potential safety hazards associated with this fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the fireworks to be used in this December 31, 2024 display will be a safety concern for anyone within a 300-foot radius of the barge. The purpose of this rule is to ensure safety of vessels and of the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

This rule establishes a safety zone that will be enforced from 11:55 p.m. on December 31, 2024, through 12:15 a.m. January 1, 2025. The safety zone will cover all navigable waters within 300 feet of a barge in the Patapsco River located in approximate position latitude 39°16′36″ N, longitude 076°36′53″ W, on the Patapsco River. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. 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 Executive Order 12866 as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been subject to review by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, duration, and time-of-day of the safety zone, which will

impact a small, designated area of the Patapsco River for a total of no more than thirty minutes of total enforcement-hours during the evening, when vessel traffic is normally low. Moreover, the Coast Guard will issue Local Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety 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 regulatory flexibility analysis provisions of the Act, do not, however, apply to rules not subject to notice and comment. As the Coast Guard has, for good cause, waived the notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's flexibility analysis provisions do not apply here. In the spirit of § 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 lasting 30 minutes that will prohibit entry within 300 feet of a barge within a portion of the Patapsco River. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. 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. 0170.1, Revision 01.3.

■ 2. Add § 165.T05–1066 to read as follows:

§ 165.T05–1066 Safety Zone; December 31, 2024, Fireworks on the Patapsco River, Baltimore, MD.

(a) *Location.* The following area is a safety zone: All navigable waters of the Patapsco River within 300 feet of a fireworks barge in approximate position latitude 39°16′36″ N, longitude 076°36′53″ W, located at Baltimore, MD.

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

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

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 Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This safety zone will be enforced from 11:55 p.m. on December 31, 2024, through 12:15 a.m. January 1, 2025.

Dated: December 10, 2024.

Patrick C. Burkett,

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

[FR Doc. 2024–29455 Filed 12–13–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–1062]

RIN 1625–AA00

Safety Zone; Lake Erie, Avon Lake, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of Lake Erie within a 750-yard radius of the Avon Lake Power Plant (located at position 41°30′15″ N 082°03′14″ W). The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by demolition activities at the Avon Lake Power Plant in Avon Lake, Ohio. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Eastern Great Lakes.

DATES: This rule is effective on December 19, 2024, from 5 a.m. to 5:30 p.m. with a back-up date of December 20, 2024, from 5 a.m. to 5:30 p.m. in the event weather is unfavorable on December 19, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0678 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 proposed rulemaking, call or email Cody Mayrer at Marine Safety Unit Cleveland's Waterways Management Division, U.S. Coast Guard; telephone 216–937–0111, email *D09-SMB-MSUCLEVELAND-WWM@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 of limited advance notice provided by the contractor and because the Coast Guard must establish this safety zone by December 19, 2024 in order to protect personnel, vessels, and the marine environment from potential hazards created by the demolition activities at the Avon Lake Power Plant in Avon Lake, Ohio.

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** due to limited advance notice provided by the contractor and because the Coast Guard must establish this safety zone by December 19, 2024 in order to protect personnel, vessels, and the marine environment from potential hazards created by the demolition activities at the Avon Lake Power Plant in Avon Lake, Ohio.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 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. The Captain of the Port Eastern Great Lakes has determined that a temporary safety zone for navigable waters within a 750-yard radius of the Avon Lake Power Plant (located at position 41°30′15″ N 082°03′14″ W) is needed to protect personnel, vessels, and the marine environment from potential hazards created by demolition activities at the Avon Lake Power Plant in Avon Lake, Ohio. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Eastern Great Lakes or a designated representative.

IV. Discussion of the Rule

This rule establishes a safety zone from December 19, 2024, from 5:00 a.m. to 5:30 p.m. with a back-up date of December 20, 2024, from 5:00 a.m. to 5:30 p.m. in the event that weather is unfavorable on December 19, 2024. The safety zone will cover all navigable waters on Lake Erie within a 750-yard radius of the Avon Lake Power Plant (located at position 41°30′15″ N 082°03′14″ W). All geographic coordinates are North American Datum of 1983 (NAD 1983). The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by demolition activities at the Avon Lake Power Plant in Avon Lake, Ohio. 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 the need to protect personnel, vessels, and the marine environment from potential hazards created by demolition activities at the Avon Lake Power Plant in Avon Lake, Ohio. This safety zone is also for only 12.5 hours in a limited area along the shore of Lake Erie. Moreover, vessels can still transit through the safety zone with the permission of the COTP or a designated representative.

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 lasting 12.5 hours that will prohibit entry within a 750-yard radius of the Avon Lake Power Plant (Located at Position 41°30′15″ N 082°03′14″ W). It is categorically excluded from further review under paragraph L60a 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. § 165.T09–1062 will read as follows:

§ 165.T09–1062 Safety Zone; Avon Lake Power Plant Demolition, Lake Erie, Avon Lake, OH.

(a) *Location period:* The following area is a temporary safety zone: All U.S. Navigable waters of Lake Erie within a 750-yard radius of the Avon Lake Power Plant in Avon Lake, Ohio located at the following position: 41°30′15″ N 082°03′14″ W. All geographic coordinates are North American Datum of 1983 (NAD 1983).

(b) *Enforcement period:* The Coast Guard will enforce the safety zone described in paragraph (a) of this section from December 19, 2024, from 5: a.m. to 5:30 p.m. with a back-up date will be December 20, 2024, from 5: a.m. to 5:30 p.m. in the event weather is unfavorable on December 19, 2024. The Captain of the Port Sector Eastern Great Lakes (COTP) will announce specific enforcement periods by Broadcast Notice to Mariners. The COTP, or a designated representative may suspend enforcement of the safety zone at any time.

(c) *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 COTP in the enforcement of the safety zone.

(d) *Regulations:* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or his designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone shall contact the COTP Sector Eastern Great Lakes or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or his designated representative. The COTP or his designated representative may be contacted via VHF Channel 16 or by calling (888) 230–4703.

Dated: December 9, 2024.

M.I. Kuperman,

Captain, U.S. Coast Guard, Captain of the Port Eastern Great Lakes.

[FR Doc. 2024–29510 Filed 12–13–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–1072]

Safety Zone; Military Ocean Terminal Concord Safety Zone, Suisun Bay, Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone in the navigable waters of the Suisun Bay, off Concord, CA, in support of explosive handling operations at Military Ocean Terminal Concord (MOTCO) on December 12, 2024, through December 19, 2024. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosions within the explosive arc. The safety zone is open to all persons and vessels for transitory use, but vessel operators desiring to anchor within the safety zone must obtain the permission of the Captain of the Port (COTP) San Francisco or a designated representative.

DATES: The regulations in 33 CFR 165.1198 will be enforced without actual notice from 12:01 a.m. on December 13, 2024, until 11:59 p.m. on December 19, 2024. For purposes of enforcement, we will use actual notice to enforce the regulations in 33 CFR 165.1198 on December 12, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant William Harris, U.S. Coast Guard Sector San Francisco, Waterways Management Division, at (415) 399–7443, *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.1198 for the Military Ocean Terminal Concord, CA (MOTCO) regulated area from 12:01 a.m. on December 12, 2024, until 11:59 p.m. on December 19, 2024. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. The regulation for this safety zone, § 165.1198, specifies the locations of the safety zone which encompasses the navigable waters in the area between 500 yards of MOTCO Pier 2 in position 38°03′30″ N, 122°01′14″ W and 3,000 yards of the pier. During the enforcement period, as reflected in § 165.1198(d), if you are the operator of a vessel in the regulated area you must comply with the instructions of the COTP or the designated on-scene patrol personnel. Vessel operators desiring to anchor or otherwise loiter within the safety zone must contact Sector San Francisco Vessel Traffic Service at (415) 399–7410, or VHF Channel 14 to obtain permission.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via Broadcast Notice to Mariners.

Dated: December 10, 2024.

Jordan M. Baldueza,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2024–29520 Filed 12–13–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2024–0380; FRL–12206–02–R6]

Finding of Failure To Attain by the Attainment Date for the 2010 1-Hour Primary Sulfur Dioxide National Ambient Air Quality Standard; Louisiana; Evangeline Parish Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a determination that the Evangeline Parish, Louisiana, sulfur dioxide (SO_2) nonattainment area (NAA) failed to attain the 2010 1-hour primary SO_2 national ambient air quality standard (2010 SO_2 NAAQS) under the Clean Air Act (CAA or the Act) by the applicable statutory attainment date of April 9, 2023. This determination is based upon consideration and review of all relevant and available information for the NAA, including reported emissions records and available modeling data for the area's primary SO_2 source, Cabot Corporation's Ville Platte Plant (Cabot).

DATES: This rule is effective on January 15, 2025.

ADDRESSES: EPA established a docket for this action under Docket ID No. EPA–R06–OAR–2024–0380. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ronald Thomas, SO_2 and Regional Haze Section (R6–ARSH), Air & Radiation Division, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270. His direct telephone number is (214) 665–7478. Mr. Thomas can also be reached via electronic mail at *Thomas.Ronald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our September 4, 2024, proposal (89 FR 71872). In that document, we proposed to determine that the Evangeline Parish SO_2 nonattainment area failed to attain the 2010 SO_2 NAAQS by the applicable statutory attainment date of April 9, 2023. In summary, our proposed determination was based upon evaluation of SO_2 emissions data and prior modeling for the NAA. Specifically, this proposed determination was supported by data showing that emissions have increased when comparing the 2020–2022 period to the modeled emissions at designation. Based on this increase in emissions, there is nothing to suggest that the area is no longer in violation of the NAAQS as demonstrated by the 2017 modeling analysis for the initial designation of the area.

The public comment period for our proposed determination expired on October 4, 2024. The EPA received no comments on our September 4, 2024, proposal. Therefore, we are finalizing our action as proposed.

II. Final Action

The EPA is finalizing the September 4, 2024, proposed finding, and per CAA section 179(c)(1)–(2), the EPA determines that the Evangeline Parish SO_2 NAA has not attained the 2010 one-hour SO_2 NAAQS of 75 ppb by the applicable statutory attainment date of April 9, 2023.

Publication of this final rule has the following consequences for the State of Louisiana: (1) under CAA section 179(d), the State has up to 12 months from the publication of this notice to submit a revised SIP for the area demonstrating attainment and containing any additional measures that the EPA may reasonably prescribe that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts as required; (2) according to CAA section 179(d)(3), such a revised SIP is to achieve attainment of the 2010 SO_2 NAAQS as expeditiously as practicable, but no later than 5 years from the date of notice of the area's failure to attain (*i.e.,* 5 years after the EPA publishes a final action in the **Federal Register** determining that the area failed to attain the 2010 SO_2 NAAQS); and (3) in addition to triggering requirements for a new SIP submittal, this final determination triggers the implementation of contingency measures in this NAA adopted under 172(c)(9).

III. Environmental Justice Considerations

Information on Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) and how EPA defines environmental justice (EJ) can be found in the section titled ''IV. Statutory and Executive Order Reviews.'' EPA provided analysis of environmental justice associated with this action solely for informational purposes, and the results of this analysis were addressed in Section IV of our proposal.

This final rule formalizes EPA's determination that the Evangeline Parish SO_2 NAA has failed to attain the 2010 SO_2 NAAQS of 75 ppb by the applicable attainment date of April 9, 2023, in accordance with EPA's obligation to make a determination on attainment by the attainment date in section 179(c)(1)–(2) of the CAA. This action provides notice to the public that the area has failed to attain the NAAQS and informs the State of Louisiana of CAA requirements that the State needs to meet.

Information on SO_2 and its relationship to negative health impacts can be found at final **Federal Register** notice titled ''Primary National Ambient Air Quality Standard for Sulfur Dioxide'' (75 FR 35520, June 22, 2010).[1] We expect that this action will not have a detrimental impact on the population, including communities with EJ concerns, in and near the Evangeline Parish NAA.

IV. Statutory and Executive Order Reviews

This action finds that an area has failed to attain the NAAQS by the relevant attainment date and does not impose additional or modify existing requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not 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;

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 communities with EJ concerns to the greatest extent practicable and permitted by law. The EPA defines EJ as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

Section IV of the proposal for this action presented our EJ analysis, but we did not consider EJ as a basis for this action. Due to the nature of the action being taken here, this action is not expected to have a detrimental impact on the populations, including communities with EJ concerns, in the Evangeline Parish NAA. Consideration of EJ is not required as part of this action, which finds that the NAA failed to attain the 2010 SO_2 NAAQS by the applicable attainment date, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for communities with EJ concerns.

In addition, this final rulemaking, the finding of failure to attain by the attainment date for the Evangeline Parish SO_2 NAA, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is not intended to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

This action is exempt from the Congressional Review Act because it is a rule of particular applicability. The rule makes factual determinations for an identified entity (the Evangeline Parish area of Louisiana), based on facts and circumstances specific to that entity. The determination of failure to attain the 2010 SO_2 NAAQS does not in itself create any new requirements beyond what is mandated by the CAA.

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 February 14, 2025. 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

[1] See *https://www.federalregister.gov/d/2010-13947.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Pollution, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 9, 2024.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations 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 T—Louisiana

■ 2. Amend § 52.978 by adding paragraph (b) to read as follows:

§ 52.978 Control strategy and regulations: Sulfur Dioxide.

* * * * *

(b) *Determination of failure to attain.* Effective January 15, 2025, the EPA has determined that the Evangeline Parish nonattainment area failed to attain the 2010 1-hour primary sulfur dioxide (SO_2) national ambient air quality standard (NAAQS) by the applicable statutory attainment date of April 9, 2023. This determination triggers the requirements of CAA section 179(d) for the State of Louisiana to submit a revision to the Louisiana SIP for the Evangeline Parish nonattainment area to the EPA December 16, 2024. The SIP revision must, among other elements, provide for attainment of the 1-hour primary SO_2 NAAQS in the Evangeline Parish SO_2 nonattainment area as expeditiously as practicable but no later than December 16, 2029.

[FR Doc. 2024–29438 Filed 12–13–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2020–0434; FRL–12215–02–R6]

Determination of Attainment by the Attainment Date for the 2010 1-Hour Primary Sulfur Dioxide National Ambient Air Quality Standard; Texas; Freestone-Anderson and Titus Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is finalizing our determination that the sulfur dioxide (SO_2) nonattainment area (NAA) in Freestone and Anderson Counties and the SO_2 NAA in Titus County have each attained the 2010 1-hour primary SO_2 national ambient air quality standard (NAAQS) by the applicable attainment date of January 12, 2022. This determination is based on primary source shutdowns, available ambient air quality monitoring data from the 2019–2021 monitoring period, relevant modeling analysis, and additional emissions inventory information. This final action will address the EPA's obligation under CAA section 179(c) to determine whether the Freestone-Anderson and Titus SO_2 NAAs attained the 2010 1-hour primary SO_2 NAAQS by the statutory attainment date of January 12, 2022, for each area.

DATES: This rule is effective on January 15, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2020–0434. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: James E. Grady, EPA Region 6 Office, Regional Haze and SO_2 Section, (214) 665–6745; *grady.james@epa.gov.* Please call or email Mr. Grady above or call Mr. Bill Deese at 214–665–7253 if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' mean ''the EPA.''

I. Background

The background for this action is discussed in detail in our September 3, 2024, proposed action (89 FR 71230). In that document, we proposed to determine that the Freestone-Anderson and Titus NAAs attained the 2010 1-hour primary SO_2 NAAQS by the statutory attainment date of January 12, 2022. This satisfies the obligation under CAA section 179(c) which required EPA to issue a determination within 6 months of the attainment date (*i.e.,* by July 12, 2022). Our proposed determination was based on EPA's previous clean data determination (CDD) published on May 14, 2021;[1] the permanent and enforceable shutdowns of the primary sources of SO_2 emissions in these areas; the available modeling analysis demonstrating that the Big Brown Steam Electric Station in Freestone County and the Monticello Steam Electric Station in Titus County were responsible for almost 100 percent of the SO_2 impacts on the maximum modeled concentrations in each respective area; review of emissions data showing emissions within the Freestone-Anderson and Titus NAA's have been reduced by nearly 100 percent with the retirements of Big Brown and Monticello Steam Electric Stations in 2018 and that no other sources remain that are contributing to a violation of the SO_2 NAAQS in those NAAs; and the Freestone County and Welsh monitors' reported 2019–2021 design values of 5 ppb (7 percent of the standard) and 19 ppb (25 percent of the standard) providing additional evidence that these areas are in attainment.

II. Response to Comments

The public comment period for our proposed determination of attainment by the attainment date expired on October 3, 2024. We received two comments total;[2] one from the Texas Commission on Environmental Quality (TCEQ) supporting our proposed action; and one that was outside the scope of this action and not related to the SO_2 NAAs or our proposed determination. TCEQ's comment included a request that EPA act on the Redesignation Request and Maintenance Plan SIP revision submitted on March 3, 2022, and we plan to act on that SIP submittal in a separate action in the future. Since

[1] 86 FR 26401 (May 14, 2021) (effective June 14, 2021).

[2] The full text of the comments is available in the docket for this action.

there were no adverse comments received, we are finalizing our action as proposed.

III. Final Action

The EPA is finalizing our determination that the SO_2 NAA in Freestone and Anderson Counties and the SO_2 NAA in Titus County have each attained the 2010 1-hour primary SO_2 NAAQS by the applicable attainment date of January 12, 2022. This determination is based on primary source shutdowns, available ambient air quality monitoring data from the 2019–2021 monitoring period, relevant modeling analysis, and additional emissions inventory information. This fulfills EPA's obligation under CAA section 179(c) to determine whether the NAAs attained the SO_2 NAAQS by the statutory attainment date.

This action does not constitute a redesignation of the Freestone-Anderson and Titus NAA's to attainment of the 2010 1-hour SO_2 NAAQS under section 107(d)(3) of the CAA. The Freestone-Anderson and Titus NAA's will remain designated nonattainment for the 2010 1-hour SO_2 NAAQS until EPA revises the area's designation under CAA section 107(d)(3).

IV. Environmental Justice Considerations

Information on Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) and how EPA defines environmental justice (EJ) can be found in the section titled ''V. Statutory and Executive Order Reviews.'' EPA provided additional analysis of EJ associated with this action for the purpose of providing information to the public in the September 3, 2024, proposed action (89 FR 71230). This action is finalizing our proposed determination of attainment by the attainment date for the Freestone-Anderson and Titus SO_2 NAAs. We expect that this action will have a neutral effect on the communities with EJ concerns, as this action only identifies that the areas attained the 2010 1-hour primary SO_2 NAAQS by the attainment date.

V. Statutory and Executive Order Reviews

This action determined that two areas have attained the SO_2 NAAQS by the relevant attainment dates and does not impose additional or modify existing requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not 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 CAA.

In addition, this final action, the finding of attainment by the attainment date for the Freestone-Anderson and Titus SO_2 NAAs, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is not intended to apply in Indian country located in the State, and the 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, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with EJ concerns to the greatest extent practicable and permitted by law. The EPA defines EJ as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

This action is exempt from the Congressional Review Act because it is a rule of particular applicability. The rule makes factual determinations for an identified entity (the Freestone-Anderson and Titus areas of Texas), based on facts and circumstances specific to that entity. The determination of attainment of the 2010 SO_2 NAAQS does not in itself create any new requirements beyond what is mandated by the CAA.

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 February 14, 2025. 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 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 9, 2024.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency 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 SS—Texas

■ 2. In § 52.2277, revise paragraph (b) to read as follows:

§ 52.2277 Control strategy and regulations: Sulfur Dioxide.

* * * * *

(b) *Determination of Attainment by the Attainment Date.* Effective January 15, 2025, the EPA finalizes its

determination that the sulfur dioxide nonattainment area in Freestone and Anderson Counties and the sulfur dioxide nonattainment area in Titus County have each attained the 2010 1-hour primary sulfur dioxide National Ambient Air Quality Standard by the applicable attainment date of January 12, 2022, in accordance with CAA section 179(c). This determination is based on primary source shutdowns, available ambient air quality monitoring data from the 2019–2021 monitoring period, relevant modeling analysis, and additional emissions inventory information.

[FR Doc. 2024–29436 Filed 12–13–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0199; FRL–12188–02–R9]

Air Quality Plans; Arizona; Maricopa County Air Quality Department; Source-Specific SIP Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on a source-specific revision to the Maricopa County Air Quality Department's (MCAQD or ''Department'') portion of the Arizona State Implementation Plan (SIP). This revision consists of certain permit conditions related to emissions offsets generated from the replacement of existing diesel-fueled solid waste collection trucks promulgated by the MCAQD and submitted by the State of Arizona for inclusion in the Maricopa County portion of the Arizona SIP under the Clean Air Act (CAA or ''Act''). The permit conditions were submitted for SIP approval to ensure that they are federally enforceable, which is the basis for qualifying certain emissions reductions as creditable offsets under the CAA.

DATES: This rule is effective on January 15, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2024–0199. All documents in the docket are listed on the *https://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 *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Christa Leska, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 972–3930; or by email to *leska.christa@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Proposed Action

On August 19, 2024, the EPA proposed approval of the source-specific SIP revision to the Arizona SIP.[1] The SIP revision consists of adding portions of the following three operating permits: P0011602, P0011603, P0011601. The submitted permit conditions ensure that emission reduction credits granted to Waste Management for replacing existing diesel-fired solid waste collection trucks with compressed natural gas (CNG)-fired solid waste collection trucks meet the offset integrity criteria contained in 40 CFR part 51.165(a)(3)(ii)(C)(*1*)(*i*), which requires such emission reductions to be surplus, permanent, quantifiable, and federally enforceable. Although the permit conditions are federally enforceable pursuant to 40 CFR 52.23, approving these permit conditions into the SIP ensures their permanence and preserves their federal enforceability.

II. Public Comments

The EPA's proposed action provided a 30-day public comment period. During this period, no comments were submitted on our proposal.

III. EPA Action

No comments were submitted on our proposal. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing approval of this revision to the Arizona SIP. This action incorporates the submitted permit conditions into the Maricopa County portion of the Arizona SIP, which provides the necessary federal enforceability for these permit conditions.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the three source-specific SIP revisions identified by permit numbers P0011601, P0011602 and P0011603 issued to Waste Management, submitted on April 3, 2024. These source-specific SIP revisions incorporate specific provisions from permits issued by the MCAQD to ensure certain emission reductions are surplus, permanent, quantifiable, and federally enforceable. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

[1] 89 FR 67012.

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 Clean Air Act.

In addition, 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. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, ''the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment.''

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Orders 12898 and 14096 of achieving EJ for communities with EJ concerns.

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. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, the EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 14, 2025. 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 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, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 4, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations 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 D—Arizona

■ 2. Amend § 52.120, paragraph (d), in the table titled, ''EPA-Approved Source-Specific Requirements,'' under the heading ''Maricopa County Air Quality Department,'' after the entry for ''W.R. Meadows of Arizona, Inc., Goodyear, Arizona,'' by adding three entries to read as follows:

§ 52.120 Identification of plan.

* * * * *

EPA-APPROVED SOURCE-SPECIFIC REQUIREMENTS

Name of source	Order/permit No.	Effective date	EPA approval date	Explanation
*	*	*	*	*
Maricopa County Air Quality Department				
*	*	*	*	*
Deer Valley Transfer Station, Facility ID F000443.	P0011601, conditions 37–46.	3/06/2024	12/16/2024, [INSERT FIRST PAGE OF **FEDERAL REGISTER** CITATION].	Permit issued by the Maricopa County Air Quality Department. Submitted on August 3, 2022. Revised copy submitted on April 3, 2024, as an attachment to a letter dated March 29, 2024.

EPA-APPROVED SOURCE-SPECIFIC REQUIREMENTS—Continued

Name of source	Order/permit No.	Effective date	EPA approval date	Explanation
San Tan Transfer Station, Facility ID F001645.	P0011602, conditions 37–46.	3/06/2024	12/16/2024, [INSERT FIRST PAGE OF **FEDERAL REGISTER** CITATION].	Permit issued by the Maricopa County Air Quality Department. Submitted on August 3, 2022. Revised copy submitted on April 3, 2024, as an attachment to a letter dated March 29, 2024.
White Tanks Transfer Station, Facility ID F001646.	P0011603, conditions 33–42.	3/06/2024	12/16/2024, [INSERT FIRST PAGE OF **FEDERAL REGISTER** CITATION].	Permit issued by the Maricopa County Air Quality Department. Submitted on August 3, 2022. Revised copy submitted on April 3, 2024, as an attachment to a letter dated March 29, 2024.

* * * * *

[FR Doc. 2024–28910 Filed 12–13–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R07–OAR–2023–0199; FRL–10830.1–01–R7]

Approval of State Plans for Designated Facilities and Pollutants; MO; Approval and Promulgation of Implementation Plans; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Clean Air Act (CAA) plan and two state rules submitted by the Missouri Department of Natural Resources (MoDNR) on July 25, 2022. This plan was submitted to fulfill the state's obligations under the CAA to implement and enforce the requirements of the Emissions Guidelines and Compliance Times for municipal solid waste (MSW) landfills. This plan includes an inventory of affected sources and explains how the state rules fulfill the regulatory requirements needed for EPA to approve the plan.

DATES: This final rule is effective on January 15, 2025. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of January 15, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2023–0199. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Allyson Prue, Environmental Protection Agency, Region 7 Office, Air Permitting and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7277; email address: *prue.allyson@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

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I. Background

On August 21, 2023, the EPA proposed to approve Missouri's submitted section 111(d) State Plan with two accompanying state rule revisions and a SIP revision in the **Federal Register** (88 FR 56787). The EPA proposed to approve both the section 111(d) State Plan with two accompanying state rule revisions and SIP revision together. On February 16, 2024, the EPA finalized approval of the SIP revision to 10 CSR 10–5.490 ''Municipal Solid Waste Landfills'' (which covers the St. Louis area) into Missouri's SIP (89 FR 12244). In this action, the EPA is finalizing approval of the section 111(d) State Plan and two accompanying state rule revisions.

The proposed rule included additional background information on Missouri's Municipal Solid Waste Landfill Rule for the St. Louis Ozone Nonattainment Area. The Technical Support Document (TSD), located in the docket for this rulemaking, includes the summary and analysis of Missouri's SIP Revision. The EPA solicited comments on the proposed approval of the submission and received one comment.

II. What is being addressed in this document?

EPA is approving Missouri's section 111(d) State Plan for Existing MSW Landfills (Missouri's section 111(d) State Plan) and two state rules accompanying the plan pursuant to 40 CFR part 60, subparts B and Cf. Missouri state rule 10 Code of State Regulations (CSR) 10–6.310 ''Restriction of Emissions from Municipal Solid Waste Landfills'' (which covers all areas of Missouri except St. Louis) and 10 CSR 10–5.490 ''Municipal Solid Waste Landfills'' (which covers the St. Louis area) provide the enforceable portion of Missouri's section 111(d) State Plan. The state rules incorporate by reference the federal plan located at 40 CFR part 62, subpart OOO as the underlying rule which implements and enforces the applicable provisions under the 2016 MSW landfill Emissions Guidelines at 40 CFR part 60, subpart Cf.

EPA's detailed rationale and discussion concerning Missouri's section 111(d) State Plan, including the revisions to 10 CSR 10–6.310 and 10 CSR 10–5.490 can be found in the EPA TSD, located in the docket for this rulemaking.

III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule opened August 21, 2023 the date of its publication in the **Federal Register** and closed on

September 20, 2023. During this period, EPA received one comment that was supportive of EPA's proposed action.

IV. What action is the EPA taking?

The EPA is taking final action to approve Missouri's section 111(d) plan and the two state rules for MSW landfills pursuant to 40 CFR part 60, subparts B and Cf. Therefore, EPA amends 40 CFR part 62, subpart AA, to reflect this action. The EPA's final approval of Missouri's section 111(d) plan will result in the replacement of the federal plan currently in place in the State of Missouri.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Missouri state rules 10 CSR 10–5.490 and 10 CSR 10–6.310, state effective date July 30, 2022, which regulate municipal solid waste landfills. EPA has made, and will continue to make, these materials generally available through the docket for this action, EPA–R07–OAR–2023–0199, at *https://www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a CAA section 111(d) submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subparts A and OOO. Thus, in reviewing CAA section 111(d) state plan submissions, the EPA's role is to approve state choices provided that they meet the minimum 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 CAA;

In addition, the CAA section 111(d) submission is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, 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.''

MoDNR did not evaluate environmental justice considerations as part of its 111(d) plan submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act (CRA), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 February 14, 2025. 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 may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 9, 2024.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 62 as set forth below:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri Air Emissions From Existing Municipal Solid Waste Landfills

■ 2. Revise § 62.6357 to read as follows:

§ 62.6357 Missouri Department of Natural Resources.

(a) *Identification of plan.* Missouri plan for control of landfill gas emissions from existing municipal solid waste landfills and associated state regulations submitted on January 26, 1998, with amendments on September 8, 2000, February 9, 2012, and July 25, 2022. The plan includes the regulatory provisions cited in paragraph (d) of this section, which EPA incorporates by reference.

(b) *Identification of sources.* The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, and have design capacities greater than 2.5 million megagrams and nonmethane organic emissions greater than 50 megagrams per year, as described in 40 CFR part 60, subpart Cc.

(c) *Effective date.* The effective date of the plan for municipal solid waste landfills is June 23, 1998. The amendments are effective January 16, 2001, May 30, 2012, and January 15, 2025, respectively.

(d) *Incorporation by reference.* (1) Certain material is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference material is available for inspection at the Environmental Protection Agency (EPA) and at the National Archives and Records Administration (NARA). Contact the EPA Region 7 office, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7003; email address: *prue.allyson@epa.gov*. You may obtain copies from the EPA Region 7 office or the EPA Docket Center—Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004; telephone number: (202) 566–1744. For information on the availability of this material at NARA, visit *https://www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*. You may also obtain this material from the source in paragraph (d)(2) of this section.

(2) State of Missouri, 600 West Main Street, Jefferson City, Missouri 65101; telephone number: (573) 751–4015; *https://www.sos.mo.gov/adrules/csr/current/10csr/10csr.asp#10-10*.

(i) 10 CSR 10–5.490, Municipal Solid Waste Landfills, effective July 30, 2022.

(ii) 10 CSR 10–6.310, Restriction of Emissions from Municipal Solid Waste Landfills, effective July 30, 2022.

[FR Doc. 2024–29404 Filed 12–13–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R08–OAR–2024–0001; FRL–12469–01–R8]

Denial of Request for Attainment Date Extension, Finding of Failure To Attain, and Reclassification of an Area in Utah as Moderate for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is denying a request by the State of Utah and the Ute Indian Tribe for an extension of the attainment date for the Uinta Basin, Utah Marginal nonattainment area under the 2015 ozone National Ambient Air Quality Standards (NAAQS). In addition, we are determining that the area did not attain the standard by the applicable attainment date, and accordingly that the area will be reclassified by operation of law to ''Moderate'' nonattainment for the 2015 ozone NAAQS on the effective date of this final rule. With respect to the Uinta Basin area, this action fulfills the EPA's obligation under the Clean Air Act (CAA) to determine whether ozone nonattainment areas attained the NAAQS by the Marginal area attainment date and to publish a document in the **Federal Register** identifying each area that is determined as having failed to attain and identifying the reclassification.

DATES: This rule is effective on January 15, 2025.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2024–0001. All documents in the docket are listed on the *https://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 *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Amanda Brimmer, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–AQ–R, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6323, email address: *brimmer.amanda@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Overview of Action

The EPA is required to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain (see CAA section 181(b)(2)). The EPA's determination of attainment for the 2015 ozone NAAQS is based on a nonattainment area's design value (DV) as of the attainment date.[1]

The 2015 ozone NAAQS is met at a monitoring site when the DV does not exceed 0.070 parts per million (ppm). This action addresses the Uinta Basin area in Utah, which includes portions of Duchesne and Uintah Counties. The Uinta Basin was initially classified as Marginal for the 2015 ozone NAAQS and received a 1-year extension of the attainment date in 2022, making the Marginal area attainment date for this area August 3, 2022. As further explained in the Response to Comment document in the docket, in this action we are denying a request for a second 1-year extension. Accordingly, the applicable attainment date for the area remains August 3, 2022. Because DVs are based on the three most recent, complete calendar years of data preceding the attainment date, attainment must occur no later than December 31 of the year before the attainment date (*i.e.,* December 31, 2021, in the case of the Uinta Basin Marginal nonattainment area for the 2015 ozone NAAQS). Accordingly, the EPA's determination for this area is

[1] A DV is a statistic used to compare data collected at an ambient air quality monitoring site to the applicable NAAQS to determine compliance with the standard. The data handling conventions for calculating DVs for the 2015 ozone NAAQS are specified in appendix U to 40 CFR part 50. The DV for the 2015 ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. The DV is calculated for each air quality monitor in an area, and the DV for an area is the highest DV among the individual monitoring sites located in the area.

based upon the complete, quality-assured, and certified ozone monitoring data from calendar years 2019, 2020, and 2021.

The EPA is finding that the Uinta Basin Marginal area did not attain by the attainment date, because the area's 2019–2021 DV was 0.078 ppm, which is greater than 0.070 ppm. Under CAA section 181(b)(2)(A), the effect of this determination is that this area will be reclassified by operation of law as Moderate on the effective date of this final rule. The reclassified area will then be subject to the Moderate area requirement to attain the 2015 ozone NAAQS as expeditiously as practicable, but not later than August 3, 2024.

As a result of the area's reclassification as Moderate, Utah must submit to the EPA the State Implementation Plan (SIP) revisions for this area that satisfy the statutory and regulatory requirements applicable to Moderate areas established in CAA section 182(b) and in the 2015 Ozone NAAQS SIP Requirements Rule (see 83 FR 62998, December 6, 2018). The EPA will be establishing deadlines for the Uinta Basin area for submitting SIP revisions and for planning requirements on Indian Country in a separate action.

II. What is the background for this action?

On October 26, 2015, the EPA issued its final action to revise the NAAQS for ozone to establish a new 8-hour standard (*see* 80 FR 65452, October 26, 2015). In that action, the EPA promulgated identical tighter primary and secondary ozone standards, designed to protect public health and welfare, that specified an 8-hour ozone level of 0.070 ppm. Specifically, the standards provide that the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.070 ppm.

Effective August 3, 2018, the EPA designated 52 areas throughout the country as nonattainment for the 2015 ozone NAAQS (see 83 FR 25776, June 4, 2018). In a separate action, the EPA assigned classification thresholds and attainment dates based on the severity of an area's ozone problem, determined by the area's DV (see 83 FR 10376, May 8, 2018). Consistent with CAA section 181(a), the EPA established the attainment date for Marginal, Moderate, and Serious nonattainment areas as 3 years, 6 years, and 9 years, respectively, from the effective date of the final designations. Thus, the attainment date for Marginal nonattainment areas for the 2015 ozone NAAQS was August 3, 2021; the attainment date for Moderate areas was August 3, 2024; and the attainment date for Serious areas is August 3, 2027. On October 7, 2022 (87 FR 60897), the EPA determined that 22 areas, including the Uinta Basin area, did not attain the standards by the Marginal attainment date. All of these areas except the Uinta Basin were reclassified as Moderate by operation of law. As to the Uinta Basin, however, EPA granted a 1-year extension of the attainment date, to August 3, 2022.

The State of Utah requested a second 1-year extension of the attainment date for the Uinta Basin, to August 3, 2023. On December 20, 2022, the Ute Indian Tribe also requested a second one-year extension.[2] Granting this extension would make the relevant years for evaluating attainment 2020–2022. On April 10, 2024 (89 FR 25223), EPA proposed to grant the request for a second extension, and to determine that the area attained by this attainment date based on data from 2020–2022. EPA took public comment on this proposal through May 10, 2024.

III. What is the statutory authority for this action?

The statutory authority for this determination is provided by the CAA, as amended (42 U.S.C. 7401 *et seq.*), including sections 107, 181 and 182.

CAA section 107(d) provides that when the EPA establishes or revises a NAAQS, the agency must designate areas of the country as nonattainment, attainment, or unclassifiable based on whether each area is not meeting (or is contributing to air quality in a nearby area that is not meeting) the NAAQS, meeting the NAAQS, or cannot be classified as meeting or not meeting the NAAQS, respectively. Subpart 2 of part D of title I of the CAA governs the classification, state planning, and emission control requirements for any areas designated as nonattainment for a revised primary ozone NAAQS. In particular, CAA section 181(a)(1) requires each area designated as nonattainment for a revised ozone NAAQS to be classified at the same time as the area is designated based on the extent of the ozone problem in the area (as determined based on the area's DV). Classifications for ozone nonattainment areas are ''Marginal,'' ''Moderate,'' ''Serious,'' ''Severe,'' and ''Extreme,'' in order of stringency. CAA section 182 provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification.

Section 181(b)(2)(A) of the CAA provides that within 6 months following the applicable attainment date, the EPA must determine whether an ozone nonattainment area attained the ozone standard based on the area's DV as of that date. Section 181(a)(5) of the CAA provides the EPA the discretion (*i.e.,* ''the Administrator may'') to extend an area's applicable attainment date by one additional year upon application by any state if the state meets the two criteria under CAA section 181(a)(5), as interpreted by the EPA at 40 CFR 51.1307. No more than two one-year extensions may be issued for a single nonattainment area. CAA section 181(a)(5).

With respect to the first criterion, the EPA interprets the provision as having been satisfied if a state can demonstrate that it is in compliance with its approved implementation plan. *See Delaware Dept. of Nat. Resources and Envtl. Control* v. *EPA,* 895 F.3d 90, 101 (D.C. Cir. 2018) (holding that the CAA requires only that an applying state with jurisdiction over a nonattainment area comply with the requirements in its applicable SIP, not every requirement of the Act); *see also Vigil* v. *Leavitt,* 381 F.3d 826, 846 (9th Cir. 2004). A state may meet this requirement by certifying its compliance, and in the absence of such certification, the EPA may make a determination as to whether the criterion has been met. *See Delaware,* 895 F.3d at 101–102.

Application of the second criterion differs depending on whether it is being applied to a first or a second extension.[3] For a second extension, the EPA has interpreted the air quality criterion of CAA section 181(a)(5)(B) to mean that an area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, must be no greater than 0.070 ppm.[4]

We evaluated the information submitted by the Utah Division of Air Quality (UDAQ) and proposed to determine that the area met the two necessary statutory criteria for the second 1-year extension under CAA section 181(a)(5) and 40 CFR

[2] *See* letter dated December 20, 2022, from Ute Indian Tribe Chairman Shaun Chapoose to U.S. EPA Region 8 Regional Administrator KC Becker.

[3] *See* 40 CFR 51.1307 (pertaining to determining eligibility under CAA section 181(a)(5)(B) for attainment date extensions for the 2015 ozone NAAQS).

[4] *See id.* As of October 31, 2024, the Uinta Basin area's certified 2020 and 2021 ozone data show that the maximum two-year average design value for 2020–2021 is 0.069 ppm. This is based on 2020 and 2021 ozone values at the two key monitors in the region (AQS Site 490472002, which had fourth highest daily maximum 8-hour value for 2020 at 0.066 ppm, and AQS Site 490472003, which had fourth highest daily maximum 8-hour value for 2021 at 0.072 ppm, which averaged is 0.069 ppm.).

51.1307(a)(2). We stated that no other facts or circumstances compelled the EPA Administrator to consider information beyond the statutory criteria (see 89 FR 25223, 25226 (Apr. 10, 2024)). But we also explicitly asked the public to weigh in on the EPA's findings: ''[t]he EPA solicits comments on this proposal to grant the requested second 1-year attainment date extension . . . and whether there are any particular circumstances . . . that the EPA should consider before granting the request.'' *Id.* We still conclude that the area met the two minimum statutory criteria, but after considering public comments received, air quality data, potential impacts on populations in the nonattainment area, and other relevant factors, EPA is exercising its discretion not to grant the request.

An exercise of discretion is involved in denying *or* granting an ozone attainment date extension, once the two minimum statutory criteria are met. *See, e.g., New York* v. *EPA,* 921 F.3d 257, 298 (D.C. Cir. 2019) (internal citations omitted) (finding under a similarly constructed CAA provision that ''[t]he statute requires this showing to be made, but once it has been made, the statute provides only that EPA 'may' expand the region, not that it 'shall' or 'must' do so . . . In other words, this requirement is a necessary but not sufficient condition for expansion of the region''). With respect to CAA section 181(a)(5), the D.C. Circuit has acknowledged that the provision grants the EPA discretion to look beyond the two enumerated factors. *Delaware,* 895 F.3d 90, 100 (D.C. Cir. 2018) (noting that despite its holding that the EPA was not *required* to determine every state in a multi-state nonattainment area's compliance with its SIP under section 181(a)(5)(A), ''EPA nevertheless *retained discretion* to consider Delaware's compliance, given that the Act only dictates that EPA 'may' grant an extension when the statute's requirements are met'') (emphasis added). The court added that the EPA's exercise of discretion under this provision is subject to arbitrary-and-capricious review, such that the Agency ''must cogently explain why it has exercised *its discretion* in a given manner.'' *Id.* (emphasis in original) (citing *Motor Vehicle Mfrs. Ass'n of the U.S., Inc.* v. *State Farm Auto. Ins. Co.,* 463 U.S. 29, 48 (1983)). The statute does not compel the Agency to grant an extension when the two criteria are met, and it is reasonable to exercise our discretionary authority in light of the Act's goals.

CAA section 181(a)(5), which establishes the extension process for ozone nonattainment areas, mirrors the extension process established in the general nonattainment area provisions at CAA section 172(a)(2)(C), and is appropriately read in light of the Act's focus on the expeditious attainment of the NAAQS—both in subpart 2 specifically [5] and in part D more generally.[6] The ultimate goal of part D of the CAA, which governs planning requirements for nonattainment areas, and the responsibility of states and the EPA under that section of the Act, is to drive progress in nonattainment areas toward attainment as expeditiously as practicable but by no later than the maximum attainment dates prescribed by the Act.

We are denying this extension after evaluating and considering the public comments received and carefully reviewing the area's air quality data. We conclude that it is appropriate to exercise our discretion to deny the extension to ensure the expeditious attainment of the NAAQS in the Uinta Basin, and that granting the State's and Tribe's request for a second 1-year extension and finding that the area attained by the extended Marginal attainment date would potentially delay needed improvement of the area's air quality and protection of human health and the environment. As noted in the proposal, we are encouraged by the progress of emissions reductions in the area. However, after reviewing the public comments on the proposal, we agree with commenters that recent air quality concentrations indicate that continued application of the planning requirements of subpart 2 of the CAA, which are designed to achieve attainment of the ozone NAAQS, would help ensure that those reductions, along with other reductions if they are determined to be necessary, result in attainment of the NAAQS.

As discussed in further detail in the Response to Comments document, monitoring values do show an overall trend towards attainment. But we also recognize the importance and significance of the high ozone levels recorded in 2023. The Uinta Basin is quite unusual among ozone nonattainment areas, in that the area has elevated terrain surrounding a low basin, and in that the highest ozone levels tend to occur during the winter months. Specifically, when strong and persistent temperature inversions form over snow-covered ground in the Uinta Basin, this results in a stable atmosphere which traps emissions and allows them to accumulate and react with sunlight to form ozone.[7] Additionally, because sunlight reflects off snow, under these conditions there is even higher reactivity and thus higher ozone levels. Conversely, in years without these meteorological conditions (such as 2020 and 2021), local anthropogenic emissions typically will not create high wintertime ozone concentrations. Therefore, EPA is concerned that it remains probable that the area will continue to experience high ozone levels in years where these meteorological conditions are met.

Granting the extension and determining that the area attained by its attainment date would mean that the Uinta Basin would remain in Marginal nonattainment, even though the area has experienced significant violations of the NAAQS after the attainment date and likely will do so in the future if the same meteorological conditions reoccur in future winters. Those future meteorological conditions could result in similar violations of the ozone NAAQS again, because none of the specific mechanisms and controls in part D and subpart 2, which require that emission reductions result in attainment, would apply to the area. For example, while Marginal nonattainment areas are subject to requirements such as periodic inventories and nonattainment new source review (NNSR) permitting, the vital nonattainment planning requirements that result in imposition of controls and actual emission reductions, such as reasonable further progress, attainment demonstration controls and modeling, and reasonable available control technology (RACT), apply only to areas classified as Moderate and above. Therefore, if EPA were to finalize its proposed approval of Utah's request for an extension and determine that the area attained by its Marginal area

[5] CAA section 181(a)(1).

[6] *See, e.g.,* CAA section 171(1) (defining reasonable further progress as annual incremental reductions in emissions of the relevant air pollutant . . . for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable attainment date''); CAA section 172(a)(2)(A) (establishing attainment dates for the primary NAAQS as ''the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment under [107(d)] of this title''); CAA section 172(c)(1) (requiring implementation of all reasonably available control measures as expeditiously as practicable and that plans provide for attainment of the NAAQS); CAA section 172(c)(6) (requiring state plans to include enforceable emission limitations, and such other control measures, means or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of the NAAQS by the applicable attainment date).

[7] See Regulatory Impact Analysis (RIA) for the U&O O&NG FIP for a more detailed discussion of winter ozone. This can be viewed in Docket ID No. EPA–R08–OAR–2015–0709 at *https://regulations.gov/document/EPA-R08-OAR-2015-0709-0260.*

attainment date, the area could continue violating the 2015 ozone NAAQS indefinitely without being subject to any of the CAA's attainment planning requirements and consequences that were designed to ensure that nonattainment areas progress to attainment. Timely attainment of the ozone NAAQS also serves to ensure that communities in the Uinta Basin are not exposed to disproportionate health and environmental impacts.

Accordingly, we are not finalizing the action as proposed, and are instead denying the request for a second extension. Further, we are determining that the area failed to attain by the Marginal attainment date of August 3, 2022. These final actions are within the scope of our proposed action. *See Arizona Pub. Serv. Co.* v. *EPA,* 211 F.3d 1280, 1299 (D.C. Cir. 2000) (''[T]he final rule was not wholly unrelated or surprisingly distant from what EPA initially suggested. In first proposing that Tribes would have to meet the 'same requirements' as states, EPA effectively raised the question as to whether this made sense.''); Final rule, Denial of Request for Extension of Attainment Date for 1997 $PM_{2.5}$ NAAQS; California; San Joaquin Valley Serious Nonattainment Area, 81 FR 69396, 69400 (Oct. 2, 2016) (''Implicit in any such proposal to grant an extension requested by a state is the possibility that the EPA may decide to deny the extension, after considering public comments.''). For a discussion of comments received on the proposal and responses to those comments, please see the Response to Comments document in the docket for this action.

If an ozone nonattainment area fails to attain the ozone NAAQS by the applicable attainment date and is not granted a 1-year attainment date extension, CAA section 181(b)(2)(A) requires the EPA to make the determination that the area failed to attain the ozone standard by the applicable attainment date, and the area is reclassified by operation of law to the higher of: (1) the next higher classification for the area, or (2) the classification applicable to the area's DV as of the determination of failure to attain. Section 181(b)(2)(B) of the CAA requires the EPA to publish the determination of failure to attain and accompanying reclassification in the **Federal Register** no later than 6 months after the attainment date, which in the case of the Uinta Basin Marginal nonattainment area was February 3, 2023.

Once an area is reclassified, each state that contains a reclassified area must submit certain SIP revisions in accordance with the more stringent classification. The SIP revisions are intended to, among other things, demonstrate how the area will attain the NAAQS as expeditiously as practicable, but no later than August 3, 2024, the Moderate area attainment date for the 2015 ozone NAAQS. Per CAA section 182(i), a state with a reclassified ozone nonattainment area must submit the applicable attainment plan requirements ''according to the schedules prescribed in connection with such requirements'' in CAA section 182(b) for Moderate areas, but the EPA ''may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.'' EPA will address the SIP revision and implementation deadlines for the Uinta Basin in a separate rulemaking.

The above obligations of the State of Utah do not extend to the portions of the Uinta Basin nonattainment area consisting of Indian country lands within the Uintah & Ouray Reservation of the Ute Indian Tribe.[8] Section 301(d) of the CAA authorizes the EPA to treat Indian Tribes in the same manner as states for purposes of implementing the CAA over their reservations or other areas within their jurisdiction, and directs the EPA to promulgate regulations specifying those provisions of the CAA for which such treatment is appropriate.[9] Section 301(d) also authorizes the EPA, when the EPA determines that the treatment of Indian Tribes in the same manner as states is inappropriate or administratively infeasible, to provide by regulation other means by which the EPA will directly administer the CAA.[10]

EPA regulations promulgated under this authority provide a process for interested Tribes to seek treatment in a similar manner as a state (TAS) for all CAA purposes except for a specified list of exceptions.[11] In addition, these regulations include a provision requiring the EPA to ''promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality,'' unless a complete CAA Tribal Implementation Plan (TIP) is submitted or approved.[12] The Ute Indian Tribe has not sought TAS status for the purpose of submitting or developing a TIP for the portion of the nonattainment area consisting of Indian country lands within its reservation. Accordingly, the EPA intends to address attainment planning obligations for the Indian country portions of the Uintah & Ouray Reservation within the Uinta Basin nonattainment area through one or more separate rulemaking actions, in accordance with the EPA's authority and responsibility to protect air quality in Indian country under section 301(d)(4) of the CAA and 40 CFR 49.11.

IV. How does EPA determine whether an area has attained the standard?

The level of the 2015 ozone NAAQS is 0.070 ppm.[13] Under EPA regulations at 40 CFR part 50, appendix U, the 2015 ozone NAAQS is attained at a site when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient ozone concentration (*i.e.,* the DV) does not exceed 0.070 ppm. When the DV does not exceed 0.070 ppm at each ambient air quality monitoring site within the area, the area is deemed to be attaining the ozone NAAQS. Each area's DV is determined by the highest DV among monitors with valid DVs.[14]

[8] *Okla. Dep't of Envtl. Quality* v. *EPA,* 740 F.3d 185, 194 (D.C. Cir. 2014) (For purposes of a Clean Air Act SIP, ''[a] state therefore has regulatory jurisdiction within its geographic boundaries except where a Tribe has a reservation. . . .''). The Uintah & Ouray Reservation's boundaries have been addressed and explained in a series of federal court decisions. Consistent with those decisions, the EPA considers all lands within the U&O Reservation's boundaries to be ''Indian country'' as defined in 18 U.S.C. 1151, subject to federal court decisions holding that specified Congressional acts removed certain lands from Indian country status. *See Ute Indian Tribe* v. *Utah,* 521 F. Supp. 1072 (D. Utah 1981); *Ute Indian Tribe* v. *Utah,* 716 F.2d 1298 (10th Cir. 1983); *Ute Indian Tribe* v. *Utah,* 773 F.2d 1087 (10th Cir. 1985) (en banc), *cert. denied,* 479 U.S. 994 (1986); *Hagen* v. *Utah,* 510 U.S. 399 (1994); *Ute Indian Tribe* v. *Utah,* 935 F. Supp. 1473 (D. Utah 1996); *Ute Indian Tribe* v. *Utah,* 114 F.3d 1513 (10th Cir. 1997), *cert. denied,* 522 U.S. 1107 (1998); *Ute Indian Tribe* v. *Utah,* 790 F.3d 1000 (10th Cir. 2015), *cert. denied,* 136 S. Ct. 1451 (2016); *Ute Indian Tribe* v. *Myton,* 835 F.3d 1255 (10th Cir. 2016), *cert. denied,* 582 U.S. 952 (2017); *Hackford* v. *Utah,* 845 F.3d 1325, 1327 (10th Cir.), *cert. denied,* 138 S. Ct. 206 (2017).

[9] 42 U.S.C. 7601(d)(1) and (2); see 63 FR 7254–57 (Feb. 12, 1998) (explaining that CAA section 301(d) includes a delegation of authority from Congress to eligible Indian Tribes to implement CAA programs over all air resources within the exterior boundaries of their Reservations).

[10] 42 U.S.C. 7601(d)(4).

[11] See 40 CFR 49.3 (General Tribal Clean Air Act authority), 49.4 (Clean Air Act provisions for which it is not appropriate to treat Tribes in the same manner as States); see generally 40 CFR part 49, subpart A (Tribal Authority).

[12] 40 CFR 49.11(a).

[13] See 40 CFR 50.19.

[14] According to appendix U to 40 CFR part 50, ambient monitoring sites with a DV of 0.070 ppm or less must meet minimum data completeness requirements in order to be considered valid. These requirements are met for a 3-year period at a site if daily maximum 8-hour average ozone concentrations are available for at least 90% of the days within the ozone monitoring season, on average, for the 3-year period, with a minimum of at least 75% of the days within the ozone monitoring season in any one year. Ozone monitoring seasons are defined for each state in appendix D to 40 CFR part 58. DVs greater than

The data handling convention in 40 CFR part 50 appendix U states that concentrations are to be reported in ppm to the third decimal place, with additional digits to the right being truncated. Thus, a 3-year average ozone concentration of 0.071 ppm is greater than 0.070 ppm and would exceed the standard, but a 3-year average ozone concentration of 0.0709 ppm is truncated to 0.070 ppm and attains the 2015 ozone NAAQS. The EPA's determination of whether the Uinta Basin attained the standard is based on hourly ozone concentration data for calendar years 2019, 2020, and 2021 that have been collected and quality-assured in accordance with 40 CFR part 58 and reported to the EPA's Air Quality System (AQS) database.[15]

V. What action is EPA taking?

After evaluating the comments received, as explained in detail in the Response to Comments document in the docket for this action, EPA is denying the request for a second extension of the attainment date for the area.

Further, the EPA is determining, pursuant to CAA section 181(b)(2), that the Uinta Basin nonattainment area failed to attain the 2015 ozone NAAQS by the attainment date of August 3, 2022. As shown in table 1 at least one monitor in this area had a 2019–2021 DV greater than 0.070 ppm. Table 1 shows the annual fourth highest daily maximum 8-hour average ozone concentration and 2019–2021 DV for each monitor in the Uinta Basin areas.

TABLE 1—2019–2021 FOURTH HIGHEST DAILY MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS AND DESIGN VALUES AT ALL MONITORS IN THE UINTA BASIN AREA

AQS site ID	Local site name	Fourth highest daily maximum 8-hour average ozone concentration (ppm)			2019–2021 DV (ppm)
		2019	2020	2021	
490130002	Roosevelt	0.087	0.063	0.072	0.074
490137011	Myton	0.079	0.064	0.069	0.070
490471002	Dinosaur National Monument	0.070	0.063	0.068	0.067
490471004	Vernal	0.065	0.063	0.068	0.065
490472002	Redwash	0.074	0.066	0.071	0.070
490472003	Ouray	0.098	0.065	0.072	0.078
490477022	Whiterocks	0.067	0.065	0.068	0.066

Because of the area's failure to attain by its attainment date, on the effective date of this final action this area will be reclassified by operation of law to Moderate nonattainment for the 2015 ozone NAAQS. Once reclassified as Moderate, this area will be required to attain the standard ''as expeditiously as practicable'' but no later than 6 years after the initial designation as nonattainment, which in this case would be no later than August 3, 2024.

EPA will address whether the area attained the standard by the Moderate date, and any related consequences, in a future action.

VI. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Order 14094 (88 FR 21879, April 11, 2023).

B. Paperwork Reduction Act (PRA)

This rule does not impose an information collection burden under the provisions of the PRA of 1995 (44 U.S.C. 3501 *et seq.*). This action does not contain any information collection activities and serves only to make a final determination that the Uinta Basin nonattainment area failed to attain the 2015 ozone standards by the August 3, 2022, attainment date, as a result of which the area will be reclassified as Moderate nonattainment for the 2015 ozone standards by operation of law upon the effective date of this final reclassification action.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action will not impose any requirements on small entities. The determination of failure to attain the 2015 ozone standards and resulting reclassifications, do not in and of themselves create any new requirements beyond what is mandated by the CAA. This final action would require the state to adopt and submit SIP revisions to satisfy CAA requirements and would not itself directly regulate any small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal government and the states for purposes of implementing the NAAQS is established under the CAA.

0.070 ppm are considered to be valid regardless of the data completeness.

[15] The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, state, local, and Tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data is used to (1) assess air quality, (2) assist in attainment/non-attainment designations, (3) evaluate SIPs for non-attainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. Access is through the website at *https://www.epa.gov/aqs.*

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

This action has Tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt Tribal law.

The EPA has identified Tribal areas within the nonattainment area covered by this final rule that would be potentially affected by this rulemaking. Specifically, the Ute Indian Tribe of the Uintah & Ouray Reservation in the Uinta Basin, Utah ozone nonattainment area.

The EPA has concluded that the final rule may have Tribal implications for this Tribe for the purposes of Executive Order 13175 but would not impose substantial direct costs upon the Tribe, nor would it preempt Tribal law. As noted previously, a Tribe that is part of an area that is reclassified from Marginal to Moderate nonattainment is not required to submit a TIP revision to address new Moderate area requirements. However, when the EPA finalizes the determinations of failure to attain proposed in this action, the NNSR major source threshold and offset requirements will change for stationary sources seeking preconstruction permits in any nonattainment areas newly reclassified as Moderate.

The EPA will communicate with the potentially affected Tribe located within the boundary of the nonattainment area addressed in this final rule, including offering government-to-government consultation, as appropriate.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern environmental health or safety risks that 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 establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines 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.''

In the proposed rule we explained that we had considered specific information related to EJ, consisting of an EJSCREEN analysis for Duchesne and Uintah Counties, along with the ozone design values for the area. As explained in our Response to Comments document, we received additional EJ-related information during the public comment period and have considered that information in taking this final action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Our final action is consistent with the stated goal of E.O. 12898 of achieving environmental justice for communities with EJ concerns.

K. Congressional Review Act

This rule is exempt from the Congressional Review Act (CRA) because it is a rule of particular applicability. The rule makes factual determinations for an identified entity (Uinta Basin, UT area), based on facts and circumstances specific to that entity. The determinations of attainment and failure to attain the 2015 ozone NAAQS do not in themselves create any new requirements beyond what is mandated by the CAA.

L. 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 February 14, 2025. Filing a petition for reconsideration by the Administrator of this action 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 this action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 6, 2024.

KC Becker,

Regional Administrator, Region 8.

For the reasons stated in the preamble the Environmental Protection Agency amends title 40 CFR part 81 as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.345, the table titled ''Utah—2015 8-Hour Ozone NAAQS [Primary and Secondary]'' is amended by revising the entry ''Uinta Basin, UT'' to read as follows:

§ 81.345 Utah.

* * * * *

UTAH—2015 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
* * * *	*	*	*	*
Uinta Basin, UT [3]	.....	Nonattainment	January 15, 2025 ...	Moderate.
Duchesne County (part): All land in Duchesne County below a contiguous external perimeter of 6,250 ft. in elevation. All areas within that contiguous external perimeter are included in the nonattainment area—including mesas and buttes which may have an elevation greater than 6,250 ft., but which are surrounded on all sides by land lower than 6,250 ft. Additionally, areas that fall outside the 6,250 ft. contiguous external perimeter that have elevations less than 6,250 ft. are excluded from the nonattainment area. The boundary is defined by the 6,250 ft. contour line created from the 2013 USGS 10-meter seamless Digital Elevation Model (USGS NED n41w1101/3 arc-second 2013 1 × 1 degree IMG).				
Uintah County (part): All land in Uintah County below a contiguous external perimeter of 6,250 ft. in elevation. All areas within that contiguous external perimeter are included in the nonattainment area—including mesas and buttes which may have an elevation greater than 6,250 ft., but which are surrounded on all sides by land lower than 6,250 ft. Additionally, areas that fall outside the 6,250 ft. contiguous external perimeter that have elevations less than 6,250 ft. are excluded from the nonattainment area. The boundary is defined by the 6,250 ft. contour line created from the 2013 USGS 10-meter seamless Digital Elevation Model (USGS NED n41w1101/3 arc-second 2013 1 x 1 degree IMG).				
* * * *	*	*	*	*

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is August 3, 2018, unless otherwise noted.

[3] The EPA is designating portions of the Uinta Basin as ''nonattainment,'' including both Tribal and State lands. The Ute Indian Tribe has air quality planning jurisdiction in the areas of Indian country included in the Uinta Basin nonattainment area, while the State of Utah has air quality planning jurisdiction in the areas of State land included in the Uinta Basin nonattainment area.

* * * * *

[FR Doc. 2024–29246 Filed 12–13–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2023–0231; FRL–8524–03–OCSPP]

RIN 2070–AK91

Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) is making corrections to a final rule that appeared in the **Federal Register** of November 12, 2024, that finalized several revisions to EPA's lead-based paint (LBP) regulations. Subsequent to publication, the Office of the Federal Register (OFR) informed the Agency that there were errors in the amendatory instructions that describe specific revisions for two sections of the regulation. The corrections to the amendatory instructions will allow for the proper revisions to be incorporated into the Code of Federal Regulations (CFR).

DATES: This final rule correction is effective January 13, 2025.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0231, is available online at *https://www.regulations.gov.* Additional information about dockets generally, along with instructions for visiting the docket in-person, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information: Claire Brisse, Existing Chemicals Risk Management Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9004; email address: *brisse.claire@epa.gov.*

For general information on lead: The National Lead Information Center, 422 South Clinton Avenue, Rochester, NY 14620; telephone number: (800) 424–LEAD [5323]; online form: *https://www.epa.gov/lead/forms/lead-hotline-national-lead-information-center.*

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

For hearing- or speech-impaired assistance: Persons may reach the telephone numbers for the contacts through TTY by calling the toll-free Federal Communications Commission's Telecommunications Relay Service at 711.

SUPPLEMENTARY INFORMATION: EPA is correcting the final rule that published in the **Federal Register** of November 12,

2024 (89 FR 89459 (FRL–8524–02–OCSPP)) to address two errors where EPA inadvertently omitted important text within the amendatory instructions:

1. The first error appears in amendatory instruction 15a, which directs the OFR to revise paragraph (e)(5) in 40 CFR 745.225, however, since the set-out text for paragraph (e)(5) does not include the subordinate paragraphs to paragraph (e)(5), the instruction should direct the OFR to revise the introductory text of paragraph (e)(5).

2. The second error appears in amendatory instruction 17b, which directs the OFR to revise paragraph (e)(8)(v) of 40 CFR 745.227, however, since the set-out text for paragraph (e)(8)(v) does not include the subordinate paragraphs to paragraph (e)(8)(v), the instruction should direct the OFR to revise the introductory text of paragraph (e)(8)(v).

Correction

In FR Doc. 2024–25070, appearing on page 89416 in the **Federal Register** of November 12, 2024, the following correction is made:

§ 745.225 [Corrected]

■ 1. On page 89459, in the first column, correct instruction 15a to read as follows:

''■ a. Revising paragraphs (b)(1) introductory text, (c)(13)(vi), (c)(14)(iii), (d)(1)(vi), (d)(3)(xi), (d)(4)(v), (d)(7)(v), (e)(5) introductory text, and (f)(2);''

§ 745.227 [Corrected]

■ 2. On page 89460, in the first column, correct instruction 17b to read as follows:

''■ b. Revising paragraphs (c)(2)(i), (iv) and (v), (d)(3) and (5), (d)(6)(ii), (d)(7), (e)(4)(ii) and (vii), (e)(8) introductory text, (e)(8)(i) through (v), (vii) and (viii), (e)(9) introductory text, (e)(9)(ii) and (iii), and (e)(10)(iv) and (v);''

Dated: December 6, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024–29423 Filed 12–13–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 67

[Docket No. USCG–2023–0584]

RIN 1625–AC93

Updated Document Submission Process for Compliance With Electronic Records Mandate

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing a final rule to update regulations that reflect the Coast Guard National Vessel Documentation Center's processes and capabilities, as well as align regulations with statutory reporting timelines. The processes noted pertain to electronic file submissions, requirements for submission of original build evidence, and return of existing Certificates of Documentation (CODs). In addition, the time period related to reporting changes to COD information is updated to align with statute.

DATES: This final rule is effective January 15, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov,* type USCG–2023–0584 in the search box, and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. Ronald (Sam) Teague, Coast Guard National Vessel Documentation Center; telephone (304) 271–2506, email *ronald.s.teague@uscg.mil*.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

Builder's Certificate Builder's Certification and First Transfer of Title (form CG–1261)
CFR Code of Federal Regulations
CGAA 2018 Frank LoBiondo Coast Guard Authorization Act of 2018
COD Certificate of Documentation
CY Calendar year
DHS Department of Homeland Security
Fax Facsimile
FR Federal Register
FTE Full-time equivalent
GS General Schedule
NARA National Archives and Records Administration
NPRM Notice of proposed rulemaking
NVDC U.S. Coast Guard National Vessel Documentation Center
OMB Office of Management and Budget
OPM Office of Personnel Management
PDF Portable document format
§ Section
U.S.C. United States Code
YoY Year-over-year
YTD Year-to-date

II. Basis and Purpose, and Regulatory History

Section 2103 of Title 46 of the United States Code (U.S.C.) gives the Secretary of the Department in which the Coast Guard is operating broad regulatory authority to carry out the provisions of 46 U.S.C. subtitle II (Vessels and Seamen), where vessel documentation provisions in 46 U.S.C. chapter 121 are located. The Secretary's authority is delegated to the Coast Guard by the Department of Homeland Security (DHS) Delegation No. 00170.1, Revision No. 01.4, paragraph II (92)(a).

The Coast Guard did not publish a notice of proposed rulemaking (NPRM) before this rule. As explained in Section IV.F Administrative Procedure Act of this preamble, the Coast Guard finds that this rule is exempt from notice and comment as a procedural rule under 5 U.S.C. 553(b)(A) and for good cause under 5 U.S.C. 553(b)(B).

III. Background and Discussion of Rule

In 2007, the Coast Guard amended vessel documentation regulations to eliminate the requirement to provide certain original documents to the U.S. Coast Guard National Vessel Documentation Center (NVDC) for recording and eliminated the additional fee for filing by facsimile (fax).[1] Currently, Coast Guard regulations allow the filing of instruments, such as Bills of Sale, Deeds of Gifts, Mortgages, and Notices of Claim of Lien, to the NVDC by paper submission or electronically. Regulations on the

[1] Vessel Documentation; Recording of Instruments direct final rule, 72 FR 42310, Aug. 2, 2007; and confirmation of effective date, 72 FR 58762, Oct. 17, 2007.

electronic means for filing specify two technologies: via fax or Portable Document Format (PDF) attachment(s) to electronic mail.

This rule removes references to the specific electronic filing methodologies of PDF and faxing and revises the regulations with more general terms to capture other electronic filing options. It also removes referencing a specific technology that is no longer a part of NVDC's current process, because the system provided to and used by the NVDC does not support fax capabilities.

Electronic filing is not mandatory. With this rule, vessel owners retain the ability to file paper records with the Coast Guard. Historically, paper records that were scanned and uploaded into the system were ultimately archived with the Federal Records Center, in accordance with National Archives and Records Administration (NARA) requirements. The NVDC still scans and uploads paper records, but, NARA, with few exceptions, stopped accepting paper records as of January 1, 2023. *See* Transition to Electronic Records, OMB and NARA Memorandum M–19–21 (June 28, 2019).[2] NARA does recognize a possible exception for records of intrinsic historic value to its rule on no longer accepting paper documents. *See* Federal Records Management: Digitizing Permanent Records and Reviewing Records Schedules, 88 FR 28410, 28412–13 (May 4, 2023) and Guidance on OMB and NARA Memorandum Transition to Electronic Records, NARA Bulletin 2020–01 (September 30, 2020).[3] However, that exception would not apply to the vast majority of NVDC records, if any. Therefore, paper records currently submitted to the NVDC are shelved for up to 2 years awaiting destruction by the Coast Guard.

In response to NARA's paper processing change, the NVDC is maximizing electronic filing capabilities to reduce the need to digitize physical submissions, store the submissions, and ultimately destroy them. Additionally, more general language in the regulations allows the Coast Guard and affected vessel owners to take advantage of developing technologies as they become available for electronic submission of instruments.

Currently, 46 CFR 67.99 requires original vessel build evidence. Without the ability to send original documents to NARA, the NVDC is required to either mail the form CG–1261, the original Builder's Certification and First Transfer of Title (hereafter ''Builder's Certificate''), to the vessel owner, or shred the document. The NVDC currently accepts copies of other original documents and ceased requiring vessel owners to submit original evidence of build as of July 1, 2022. In line with this practice, the Coast Guard is amending 46 CFR 67.99 to remove the requirement for original evidence of build documents.

In addition, 46 CFR 67.141(a)(4), 67.167(a), and 67.169(b) currently require an outstanding Certificate of Documentation (COD) be submitted as part of the application procedure for COD replacement, exchange, or deletion. This rulemaking removes this requirement.

On December 4, 2018, Congress enacted the Frank LoBiondo Coast Guard Authorization Act of 2018 (CGAA 2018). Section 512 of the CGAA 2018 amended 46 U.S.C. 12105(e)(3)(A)[4] to require vessel owners to notify the Coast Guard no later than 30 days after each change in information that the issuance of a COD for the vessel is based on if it occurs before the expiration of the certificate. The Coast Guard previously revised 46 CFR 67.319 to reflect this statutory change (86 FR 5022, Jan. 19, 2021). With this final rule, the Coast Guard amends 46 CFR 67.113(e) and 67.321 to also extend, from 10 to 30 days, the time that a vessel owner has to report a change of a managing owner's address to the NVDC.

This rulemaking will benefit vessel owners in the form of greater clarification by codifying current policy and practice at the NVDC of not requiring vessel owners to mail original build evidence and instruments. In addition, Coast Guard regulations will accurately reflect current statutory periods for vessel owners to submit changes to their address used to apply for a COD. The Coast Guard will also benefit from greater clarity, as this final rule harmonizes the CFR with current practices.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulatory action. A regulatory analysis follows.

Summary of Regulatory Analysis

As discussed in Section III, Background and Discussion of Rule, in this preamble, the NVDC no longer sends or receives faxes, leaving PDF attachment to email as the only electronic means of submission. Since July 1 of 2022, the Coast Guard ceased requiring vessel owners to submit original Builder's Certificates to the NVDC, and NVDC began accepting copies of the original certificate.[5] To better implement this change, the Coast Guard is maximizing electronic filing capabilities, although vessel owners will retain the option to submit paper records to the Coast Guard. Additionally, more general language in the regulations allows the Coast Guard to take advantage of developing technologies as they become available for electronic submission of records.

To provide a comprehensive analysis covering both of these programmatic changes with implementation of the final rule, the Coast Guard utilizes two baselines, a pre-program change baseline that represents the state of the world without the program change in 2022 and a ''no action'' baseline that represents the state of the world without the regulation. According to federal guidelines, the economic impact of the rule should be accounted for in the period in which the changes occur. The rulemaking aligns regulations with current industry practice, which existed prior to the rulemaking. Therefore, the economic impact of the rule, which normally includes costs, cost-savings,

[2] *https://www.archives.gov/files/records-mgmt/policy/m-19-21-transition-to-federal-records.pdf* (accessed December 10, 2024).

[3] *https://www.archives.gov/records-mgmt/bulletins/2020/2020-01* (accessed December 10, 2024).

[4] Public Law 115–282, 132 Stat. 4192.

[5] *https://www.dco.uscg.mil/Portals/9/DCO%20Documents/NVDC/Change%20in%20Requirements%20for%20Original%20Build%20Certificate.pdf?ver=qOU5UxE1-bvviJMo75ZCmA%3D%3D* (accessed December 10, 2024).

and benefits, will be attributed to the ''pre-program change'' baseline.

The ''pre-program'' baseline is used to measure the economic impacts of the program changes (a timespan that includes events beginning in 2022 through 2033), and the ''no action'' baseline is used to measure the impacts of the final rule (a projected 10-year period, which includes events beginning in 2024 through 2033).

Tables 1 and 2 present the overall impacts for both baselines.

TABLE 1—SUMMARY OF THE AFFECTED POPULATION, COSTS, COST-SAVINGS, AND BENEFITS

Category	Program change impacts (''no action'' baseline)	Final rule impacts compared to ''no action'' baseline
Applicability	July 1, 2022: the Coast Guard began accepting copies of Builder's Certificates and other documents through electronic means, primarily email with PDF attachments.	*Original Evidence of Build Documents:* Amends 46 CFR 67.99(a) and reflects current processes and capabilities at the NVDC, eliminating the requirement for vessel owners to submit original evidence of build documents and allowing copies. *Reporting Period:* Amends 46 CFR 67.113(e) and 67.321 to extend the time, from 10 days to 30 days, in which a vessel owner must notify the NVDC of a change of address, or when information submitted for the issuance of a COD changes. *Electronic Record Submissions:* Amends 46 CFR 67.209, 67.218 and 67.219 to eliminate restrictions on electronic submission options. *Return of CODs:* Amends 46 CFR 67.167(a) and 67.171(b), and deletes 67.169(b) and 141(a)(4), which requires applicants to return original CODs upon application for a replacement or exchange of COD.
Affected Population	*Original Evidence of Build Documents:* Approximately 20,068 Initial COD applications are expected to be submitted to the NVDC annually over the next 10 years. Additionally, this population includes the 18,336 and 17,558 applicants who submitted to NVDC in 2022 and 2023, respectively. *Electronic Record Submissions:* On average, this change applies to the entire population of NVDC customers, estimated at 161,587[6] COD holders over the next 10 years. Additionally, this population includes the 213,087 and 174,343 applicants who submitted to NVDC in 2022 and 2023, respectively. *Return of CODs:* On average, this change applies to the population of NVDC customers who submit a COD other than an Initial COD, estimated at 141,519 COD holders over the next 10 years. Additionally, this population includes the 194,751 and 156,785 applicants who submitted to NVDC in 2022 and 2023, respectively.	*Original Build Evidence:* Approximately 20,068 Initial COD applications are expected to be submitted to the NVDC annually over the next 10 years. *Reporting Period:* On average, this change applies to the entire population of NVDC customers, estimated at 161,587 COD holders over the next 10 years. *Electronic Record Submissions:* On average, this change applies to the entire population of NVDC customers, estimated at 161,587 COD holders over the next 10 years. *Return of CODs:* On average, this change applies to the population of NVDC customers who submit a COD other than an Initial COD, estimated at 141,519 COD holders over the next 10 years.
Costs	Additional costs were not imposed by a program change to accepting electronic versions of a Builder's Certificate, among other documents, since July 1 of 2022.	This final rule does not impose any new costs to industry by amending 46 CFR 67.99(a) and harmonizing CFR language with current procedures at NVDC, as the NVDC has accepted electronic versions of a Builder's Certificate, among other documents, since July 1 of 2022. The option of submitting an original document to the NVDC by mail is preserved in this final rule.
Cost-savings (in 2023 dollars, 2% discount rate)*.	*Electronic Records—Industry:* Estimated annualized cost-savings of approximately $14,914 in 2023 dollars, discounted at 2 percent. *Electronic Records—Government:* Estimated annualized cost savings of approximately $208,985 in 2023 dollars, discounted at 2 percent. Estimated total annualized cost-savings of approximately $223,899 in 2023 dollars, discounted at 2 percent.	This final rule does not impose any new cost savings beyond those attributable to the program change. The opportunity for cost saving to industry began in July 2022, when vessels owners no longer had to submit original evidence of build documents to the Coast Guard. The cost savings of this new practice were incurred even without a new regulation codifying the practice. Therefore, all cost savings in this analysis are assigned to the program change in 2022. Additionally, there are no estimated cost savings to industry or Government associated with amending 46 CFR 67.113(e) and 67.321.
Benefits	*Electronic Records—Industry:* The electronic submission of evidence of build benefits industry by reducing the burden to the public of printing and mailing paper records to the NVDC. *Electronic Records—Government:* Government benefits by reducing the need to digitize original physical applications, store the submissions, and ultimately shred or send evidence of build documents back to vessel owners.	*Reporting Period—Industry:* There are no qualitative or quantitative benefits. However, industry is given an increase in the allotted time provided to vessel owners in which they must notify the NVDC of any changes to the issuance of their COD, from 10 to 30 days. *Reporting Period—Government:* There are no qualitative benefits to Government from extending the period in which vessel owners must notify the NVDC of any changes to the issuance of their COD from 10 to 30 days.

*Totals may not add due to rounding.

[6] Estimates for total COD applicants are not used in the estimation of cost savings. Total COD applications were estimated using a 5-year moving average, and similar to methods described below for the affected population methodology, we applied a growth rate to estimate future years and an annual average.

TABLE 2—BASELINE MATRIX—CHANGES BETWEEN THE FINAL RULE AND THE CFR BY BASELINE

Subpart	Description of change	Type of change	"No action" baseline impact	"Final rule" impact
§ 67.99(a)	Revises the text, "Evidence of the facts of build may be either a completed original form CG–1261 or other original document. . ." to "Evidence of the facts of build may be a copy of either the original, completed form CG–1261 (Builder's Certification and First Transfer of Title), or other document. . .".	Economic (*pre-programmatic change baseline)* and Editorial.	The Coast Guard began receiving electronic copies of documents in July of 2022. This immediately reduced the cost to vessel owners and operators of the previous requirement to mail in original documents. Estimated annualized cost-savings to industry of approximately $14,165 in 2023 dollars, discounted at 2%. Estimated annualized cost-savings to Government of approximately $198,501 in 2023 dollars, discounted at 2%. Total annualized cost-savings of approximately $212,666 in 2023 dollars, discounted at 2%.	No economic impact.
§ 67.113(e)	Update "within 10 days" to "within 30 days," in accordance with 67.319.	Editorial	No economic impact	No economic impact.
§ 67.141(a)(4) ..	Remove "(4) If the application is for replacement of a mutilated document or exchange of documentation, the outstanding Certificate of Documentation.".	Editorial	No economic impact	No economic impact.
§ 67.167(a)	Remove .". . send or deliver the Certificate to the National Vessel Documentation Center, and . . .".	Editorial	No economic impact	No economic impact.
§ 67.169(b)	Remove "b) When application for replacement of a Certificate of Documentation is required because the Certificate has been mutilated, the existing Certificate must be physically given up to the National Vessel Documentation Center.".	Editorial	No economic impact.	No economic impact.
§ 67.171(b)	Remove "or deliver the original Certificate of Documentation to the National Vessel Documentation Center together with.".	Editorial	No economic impact	No economic impact.
§ 67.209	Remove reference to 67.218 and 67.219	Editorial	No economic impact	No economic impact.
§ 67.218	PDF filing—edit to reference "electronic filing." ..	Editorial	No economic impact	No economic impact.
§ 67.219	67.219 is eliminated entirely	Editorial	No economic impact	No economic impact.
§ 67.321	Replaces the word "shall" with "must," and the number "10" with "30.".	Editorial	No economic impact	No economic impact.

Affected Population/Methodology

Every application for an Initial COD submitted to the NVDC must include evidence of build in the form of a Builder's Certificate or other original documentation containing the same information. Given that a Builder's Certificate, or other original documentation containing the same information, must be submitted to the NVDC with every Initial COD application, for our analysis, the number of applications for Initial CODs submitted to the NVDC is used interchangeably with the number of Builder's Certificates submitted to the NVDC.

Table 3 displays the number of Initial COD applications submitted to the NVDC for Commercial (b), Fishing (c), and Recreational Vessels (d), beginning in calendar year (CY) 2018, and ending in CY 2023. The sum of these categories will be considered "Industry" for purposes of this rule. The sum of columns (b), (c), and (d) yields the total Initial COD applications submitted to the NVDC per calendar year (e), where (e) = (b) + (c) + (d).

TABLE 3—INITIAL CODS APPLICATIONS (e) SUBMITTED TO THE NVDC FOR COMMERCIAL (b), FISHING (c), AND RECREATIONAL VESSELS (d)

Year	Commercial	Fishing	Recreational	Initial COD applications
(a)	(b)	(c)	(d)	(e) = (b) + (c) + (d)
2018	3,010	444	12,444	15,898
2019	3,161	450	12,811	16,422
2020	3,559	439	15,510	19,508
2021	3,790	466	15,798	20,054
2022	3,159	456	14,721	18,336
2023	3,269	471	13,818	17,558

Methodology—Affected Population

Our methodology begins with establishing an affected population growth rate, to help project Initial COD applicants for an additional 10 years. Table 4 illustrates the year-over-year (YoY) change for each vessel category, calculated as the percentage change within each series, over the most recent 5 years' worth of data.

TABLE 4—PERCENTAGE CHANGE OF INITIAL COD APPLICATIONS BETWEEN CY 2018 AND CY 2023

Year	Commercial	Fishing	Recreational	Initial COD applications
(a)	(b)	(c)	(d)	(e)
2018	.....	.....	.....	.....
2019	5.0	1.4	2.9	3.3
2020	12.6	-2.4	21.1	18.8
2021	6.5	6.2	1.9	2.8
2022	−16.6	−2.1	−6.8	−8.6
2023	3.5	3.3	−6.1	−4.2
Average Growth	.....	.....	.....	*2.4

*Average Growth figure is rounded. Therefore, totals may not sum due to rounding.

As we can see from Table 4, the range in growth between CY 2018 and CY 2023 across all vessel categories fluctuated from a –16.6 percent YoY decline in Commercial vessels (b) during CY 2022, to a 21.1 percent YoY growth for Recreational vessels (d) in CY 2020. However, each series has grown over time on average; approximately 2.2 percent for Commercial vessels (b), 1.2 percent for Fishing vessels (c), and 2.6 percent for Recreational vessels (d). The average growth rate for all Initial COD applications is estimated at 2.4 percent. This figure is used to forecast the Initial COD applications for years 2024–2033.

Projecting Initial CODs from 2024 to 2033, Table 5 shows the average number of Initial COD applications for the next 10 years, derived by applying the 2.4 percent growth rate measured in Table 4. We take the average annual estimate of Initial COD applications and use that number to represent the affected population for Initial COD applications for each year from 2024–2033 for both the pre-program change baseline and the ''no action'' baseline. Here, the baselines are treated equally, as we don't anticipate the final rule to induce a change in applications.

TABLE 5—INITIAL CODS PROJECTIONS FOR THE NEXT 10-YEARS

Year	Commercial	Fishing	Recreational	Initial COD applications
(a)	(b)	(c)	(d)	(e) = (b) + (c) + (d)
2024	3,348	482	14,152	17,982
2025	3,429	494	14,494	18,416
2026	3,512	506	14,844	18,861
2027	3,596	518	15,202	19,317
2028	3,683	531	15,569	19,783
2029	3,772	544	15,945	20,261
2030	3,863	557	16,331	20,751
2031	3,957	570	16,725	21,252
2032	4,052	584	17,129	21,765
2033	4,150	598	17,543	22,291
Average 2024–2033	.....	.....	.....	20,068

Methodology—Industry and Government Cost Savings

With a value for the average Initial COD applications for future years, we can begin estimating cost savings for all years, by multiplying the annual affected population no longer needing to submit a Builder's Certificate by the opportunity cost of either postage to industry, and time and wages to assess the documents by the Federal Government. Table 6 provides a list of key inputs used to estimate cost savings including the postage rate for assessing industry savings and time and wages associated with government savings.

TABLE 6—INPUTS FOR INDUSTRY AND GOVERNMENT COST-SAVINGS

[2022–2033]

Inputs	HR equivalent
Government:	
12-minute Process Time	0.2 Hour.
Hourly Wage	$24.88.
Load Factor	1.75.
GDP Deflator (2023)	1.092.
Total Wage Rate	$47.64.
Industry:	
Postage Submission Cost	$0.68.
Percent of Submission	100%.

Cost savings to industry is calculated as the product of the estimated average number of Builder's Certificates that the Coast Guard no longer expects to be submitted by mail annually, and the price of a standard, stamped, letter-sized envelope bought through the United States Postal Service (USPS). For years 2024 through 2033, the estimated average affected population is approximately 20,068 Initial COD applications submitted yearly, assuming 100 percent electronic submission rate. Additionally, according to the USPS, the cost of purchasing a standard, stamped, letter-sized envelope is approximately $0.68.[7] To estimate the average annualized cost savings per form not mailed to the NVDC, we multiply the estimated annual affected population of Initial CODs by the cost of mailing each form. For example, for a given future year, we multiply the average 20,068 Initial COD applications by avoided postage of $0.68, to estimate an annual cost savings of $13,646.

Cost savings to government is calculated as the product of the estimated average number of Initial COD applications that the Coast Guard no longer expects to receive in the mail annually, and the 12 minutes it takes to process mailed-in forms, or 0.2 hours, and the total wage rate of a GS–5 employee at $47.64 per hour (the total wage rate is equal to the hourly wage multiplied by the load rate).

To explain more about Government savings estimates, in general, once a Builder's Certificate paper copy is received by the NVDC, General Schedule (GS)-5 personnel must first locate and open the mail, put it in the mail tray, classify and sort it, and scan each Builder's Certificate into the Coast Guard's database. Once the application has been processed, the documents will be shelved at NVDC's file room and await destruction. According to our subject matter expert at NVDC, this process takes approximately 12 minutes per batch of paper copies, or 0.2 hours' worth of time for GS–5 employees (12 ÷ 60 = 0.2 hrs.).

According to the Office of Personnel Management (OPM) salary table published for CY 2024, which is the official publication for Federal Government employees' salaries and wages, the average hourly wage-rate in the Washington DC metropolitan area for a GS–5 employee at the step 5 level is approximately $24.88.[8]

To account for the employee benefits to which employees are typically entitled, we use the Congressional Budget Office (CBO)'s Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015 [9] study to derive a load factor. This is a one-time study conducted by the CBO that compared the wages and salaries between Federal Government and private sector employees.

Multiplying a benefit factor [10] by the estimated average hourly wage-rate for GS–5 employees, $24.88, yields a loaded wage-rate of approximately $47.64. As stated earlier, the process of receiving, sorting, logging, storing, and destroying or returning a Builder's Certificate is estimated at approximately 0.2 hours' of labor time for a GS–5 employee. Multiplying this value by the estimated loaded hourly wage-rate, $47.64, yields a total of $9.53 of avoided cost per form not processed by the NVDC ($47.64 × 0.2 hrs. = $9.53).

The NVDC expects an average annual reduction in burden of approximately 20,068 Builder's Certificate paper copies. The product of this value, and the opportunity cost per form, $9.53, yields an estimated annual average undiscounted cost-savings of approximately $191,248. That is, 20,068 × $9.53 = $191,248.

Methodology—Time Value Formulation

Lastly, with respect to time value considerations, all savings figures are discounted by the number of years into the future considered under this economic analysis, as well as for years 2022 and 2023.[11] For the 2 previous years, we discount using multiplication in replacement of division and assign period numbers 1 and 0, respectively. Present valuation is then calculated by multiplying the previous year value by one (1) plus the discount rate, exponentiating the year-period. For years 2024, and all years forward, we assign corresponding period number 1, 2, 3 . . . sequentially, and apply the standard present value formula, dividing future values by one (1) plus the discount rate raised to the corresponding year-period.

Cost-Benefit Analysis From the Program Change (2022–2033)

Costs

We found no costs associated with or imposed by program changes to accept electronic versions of a Builder's Certificate, among other documents, starting on July 1 of 2022. Applicants have been able to submit documents electronically, or by mail, and the option of submitting an original document to the NVDC by mail is preserved in this final rule. We assume the time it takes to prepare an electronic version versus a hard copy to be the same.

Cost Savings—Undiscounted and Discounted Savings to Industry

Using the inputs described in the methodology section, in table 7 we display the estimated undiscounted and discounted cost-savings to industry. The discounted figures are calculated as the product of the anticipated Initial COD applications expected to be submitted to the NVDC (from tables 3 and 5), and the cost of a standard, stamped envelope, determined at $0.68 per submission (Table 6). This figure is then discounted for a 10-year period.[12] Including years 2022 (initial year of the programmatic change) and 2023, the Coast Guard estimates total cost savings to industry of approximately $147,236 in 2023 dollars, discounted at 2 percent.

[7] *https://www.usps.com/business/prices.htm* (accessed December 10, 2024).

[8] *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/24Tables/html/DCB_h.aspx* (accessed December 10, 2024).

[9] Congressional Budget Office, Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015.'' *https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf* (accessed December 10, 2024).

[10] We divide the Total Compensation for employees in the Federal Government with some college as presented in Table 4—Federal and Private Sector Total Compensation, $56.30, by the average Wage for an employee in the Federal Government with some college, $32.10 in Table 2—Federal and Private-Sector Wages, by Workers' Educational Attainment. Dividing the Federal Sector Total Compensation value, $56.30, by the Federal Sector Wages for an employee with some college, $32.10, yields a load factor of 1.75, $56.30 ÷ $32.10 = 1.75.

Source: Congressional Budget Office, ''Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015.'' *https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf* (accessed December 10, 2024).

[11] Net Present Value (NPV) is used to estimate the future value of money in terms of the present value. Money can be invested at annual returns for future income, which means the value of money spent in the future may be less than if that money had been invested instead. NPV allows us to calculate how much the total expenditures are worth discounted backwards to the present, so we can estimate the true value of the money expended or saved.

[12] For future years, the discount formula: Yearly Cost-Savings/(1+.02) ^ Year Number.

TABLE 7—UNDISCOUNTED AND DISCOUNTED COST-SAVINGS FOR INDUSTRY

Year		Initial COD applications	Undiscounted cost-savings	2% Discount [13]
2022	1	18,336	$12,468	$12,718
2023	0	17,558	11,939	11,939
2024	1	20,068	13,646	13,379
2025	2	20,068	13,646	13,116
2026	3	20,068	13,646	12,859
2027	4	20,068	13,646	12,607
2028	5	20,068	13,646	12,360
2029	6	20,068	13,646	12,117
2030	7	20,068	13,646	11,880
2031	8	20,068	13,646	11,647
2032	9	20,068	13,646	11,419
2033	10	20,068	13,646	11,195
Total			160,870	147,236
Annualized Equivalent Cost				14,914

Undiscounted and Discounted Cost Savings to Government

The Government did incur cost savings under changes during the pre-programmatic baseline period by not having to process, store, and shred or return as many paper Builder's Certificates. In addition to years 2022, and 2023, the Coast Guard estimates that, from 2024 to 2033, the Government will not need to process, store, or destroy, on average, approximately 20,068 Initial COD paper instruments annually in the future.

As shown in table 8, the Coast Guard estimates total cost savings to the Government of approximately $2,063,232 in 2023 dollars, discounted at 2 percent.

TABLE 8—UNDISCOUNTED AND DISCOUNTED COST-SAVINGS FOR GOVERNMENT

Year		Initial COD applications	Undiscounted cost-savings	2% Discount
2022	1	18,336	$174,723	178,217
2023	0	17,558	167,309	167,309
2024	1	20,068	191,226	187,477
2025	2	20,068	191,226	183,801
2026	3	20,068	191,226	180,197
2027	4	20,068	191,226	176,664
2028	5	20,068	191,226	173,200
2029	6	20,068	191,226	169,803
2030	7	20,068	191,226	166,474
2031	8	20,068	191,226	163,210
2032	9	20,068	191,226	160,010
2033	10	20,068	191,226	156,872
Total			2,254,294	2,063,232
Annualized Equivalent Cost				208,985

Over a 12-year period, the programmatic changes will save the Government approximately $2,063,232 when discounted at 2 percent.

Total Undiscounted and Discounted Cost Savings—Industry and Government

As presented in table 9, the estimated total cost savings for both industry and Government is approximately $2,210,468, in 2023 dollars, discounted at 2 percent.

[13] Discount total for a year is calculated with the following formula: (Undiscounted cost savings * discount rate) ^ number of years from present.

TABLE 9—TOTAL UNDISCOUNTED AND DISCOUNTED COST-SAVINGS

Year		Initial COD applications	Undiscounted cost-savings	2% Discount
2022	1	18,336	$187,191	$190,935
2023	0	17,558	179,248	179,248
2024	1	20,068	204,872	200,855
2025	2	20,068	204,872	196,917
2026	3	20,068	204,872	193,056
2027	4	20,068	204,872	189,271
2028	5	20,068	204,872	185,559
2029	6	20,068	204,872	181,921
2030	7	20,068	204,872	178,354
2031	8	20,068	204,872	174,857
2032	9	20,068	204,872	171,428
2033	10	20,068	204,872	168,067
Total			2,415,164	2,210,468
Annualized Equivalent Cost				223,899

Benefits

In addition to cost savings above, industry applicants likely experience additional qualitative benefits of increased flexibility and ease with the option for electronic submission of Initial COD applications.

Additionally, programmatic changes benefit Government by reducing the need to digitize original physical applications, store the submissions, and ultimately shred or send evidence of build documents back to vessel owners.

Cost-Benefit Analysis From the No Action Baseline (2024–2033)

Costs—All Provisions

This final rule does not impose any new costs to industry or the Government by amending 46 CFR 67.99(a), 67.113(e), 67.321, 67.99(a), or 67.113(e); that is, the allowance for evidence of build copies, or for the extension from 10 to 30 days of notification for changes in ownership or address.

Cost Savings—Electronic Records

As shown under the previous sections, the final rule does not produce additional cost savings beyond those attributable to the programmatic changes which occurred in 2022, when the NVDC ceased requiring vessel owners to submit original evidence of build documents. The opportunity for cost saving to industry and Government began in 2022, following the NVDC's acceptance of electronic submission of documents and copies. Therefore, all cost savings in this analysis are assigned to the program change of 2022.

Cost Savings—Reporting Period

There are no quantifiable cost savings to industry or the Government by amending 46 CFR 67.113(e) and 67.321, which extends the time, from 10 to 30 days, in which a vessel owner must notify the Coast Guard for a change of address or when information submitted for the issuance of a COD changes.

Benefits—All Provisions

This final rule eliminates confusion among the regulated public as it reconciles language in regulations with current procedures at the NVDC, which has been accepting electronic versions of Builder's Certificates since July 1 of 2022.

Industry benefits from the increased period to notify the Coast Guard of any changes to their COD by an additional 20 days. The Coast Guard considers this a qualitative benefit because it increases the flexibility to the affected population by extending the time in which vessel owners must notify the Coast Guard of any changes to their COD.

No new qualitative benefits will occur to Government by amending § 67.113(e), which extends the reporting period by which vessel owners must notify the NVDC when information submitted for the issuance of a COD changes, from 10 to 30 days.

Alternatives

Alternative (1). The Coast Guard takes no action. The Coast Guard considered not updating 46 CFR part 67. However, since July 1 of 2022, NVDC has accepted electronic means of submission of build evidence. Therefore, taking no action implies preserving the mismatch between regulations and the NVDC's current procedures. This would cause confusion among the regulated public.

Alternative (2). The Coast Guard considered requiring paper submission via mail delivery for vessel owners to obtain a COD and other documents. This alternative would have reverted the NVDC to a previous practice of receiving and issuing documents through mail submission. This alternative was rejected because it was more expensive and less convenient than electronic submission, for both the NVDC and vessel owners. The time required for mailing submissions and documents, in addition to the expense of postage and added wages for personnel to process the forms, made this a less desirable alternative.

Alternative (3). The Coast Guard considered creating a web portal on the NVDC website, to allow vessel owners to submit documents directly into a database. This would save time over electronic submission via email. However, a web portal must be built by C5I, the command organization that controls NVDC resources, and they currently do not have the means to create a web portal for document submission. This alternative is, therefore, unfeasible.

B. Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612,[14] requires federal agencies to consider the potential impact on small entities when they issue a rule after being required to first publish a general NPRM. Under 5 U.S.C. 604(a), a regulatory flexibility analysis is not required for this final rule because, under 5 U.S.C. 553(b)(A) and (B), we are not required to publish

[14] *https://www.govinfo.gov/content/pkg/USCODE-2022-title5/pdf/USCODE-2022-title5-partI-chap6-sec601.pdf* (accessed December 10, 2024).

a general NPRM. This final rule is exempt from notice and comment requirements for the reasons stated in Section IV. F. Administrative Procedure Act. Therefore, we did not conduct a regulatory flexibility analysis for this rule.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for no new or revised collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. We estimate the time burden to submit paper versus electronic copies to be the same.

E. Federalism

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

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See* the Supreme Court's decision in *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (2000). This rule implements changes to the federal vessel documentation requirements of 46 U.S.C. chapter 121, over which Congress clearly has granted the Coast Guard, via delegation from the Secretary, exclusive authority. Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations.

F. Administrative Procedure Act

The Coast Guard believes that this rule should be exempt from notice and comment rulemaking requirements as a rule of procedure under 5 U.S.C. 553(b)(A) and for good cause under 5 U.S.C. 553(b)(B).

Rules are procedural if they are ''primarily directed toward improving the efficient and effective operations of an agency.'' *Mendoza* v. *Perez,* 754 F.3d 1002, 1023 (D.C. Cir. 2014) (quoting *Batterton* v. *Marshall,* 648 F.2d 694, 702 n.34 (D.C.C. 1980). The purpose of the exception is ''to ensure that agencies retain latitude in organizing their internal operations.'' *Mendoza,* 754 F.3d at 1023 (quoting *Batterton,* 648 F.2d at 707); *accord* Bowen, 834 F.2d at 1047. Moreover, ''the critical feature of a rule that satisfies the so-called procedural exception is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.'' *James V. Hurson Assocs., Inc.* v. *Glickman,* 229 F.3d 277, 280 (D.C. Cir. 2000) (internal quotation marks omitted).

Here, because the rule modifies the procedures and means for the submission of files, the rule is primarily directed toward improving the efficient and effective operations of the submission process. *See Mendoza,* 754 F.3d at 1023. By expanding the electronic means by which parties may submit documentation, this rule conforms Coast Guard acceptance of documentation with the ways in which parties typically submit documentation. This expansion improves the efficiency of the document submission process for evidence of build and CODs. The other changes made by this rule—enabling customers to submit copies of original documents during the Initial COD application; removing the requirement to return paper CODs to the NVDC during the COD replacement, exchange, or deletion process; and increasing the time to report changes in information that a COD is based on, from 10 to 30 days—streamline the file submission process and enhance the Coast Guard's ability to comprehensively accept, track, store, and adjudicate vessel documentation. Additionally, these changes are mere housekeeping initiatives that codify the NVDC's current policies, procedures, and practices to align with OMB's policy to move federal agencies to an electronic environment. Finally, the rule in no way alters the substantive rights of parties. The rule does not affect the substantive standards by which the Coast Guard makes determinations or otherwise impact agency officials' discretion. The rule has no impact on the outcome of NVDC determinations to issue or not issue a vessel owner a COD. Indeed, the updated provisions increase access to the COD submission process by lessening submission requirements, maintaining the option to submit paper documentation, and merely codifying current practice and policy. In sum, the rule is exempt from notice-and-comment as a rule of procedure under 5 U.S.C. 553(b)(A).

The Coast Guard also believes the good cause exception under 5 U.S.C. 553(b)(B) to notice-and-comment rulemaking applies. Section 553(b)(B) provides an exception from the notice and comment requirements when an agency finds, for good cause, that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' As explained above, the changes do not affect the rights or interests of regulated parties and indeed are less restrictive. Moreover, the rule merely updates the procedure for vessel owners to present information electronically while still maintaining paper and existing electronic means of submission. The replacement of the specific fax submission option with an open-ended electronic submission allowance is not only inconsequential but also conforms the submission process to modern modalities of document submission actually used by the public. Accordingly, because the changes made by the rule are insignificant in nature and impact, and

inconsequential to the public, the Coast Guard believes there exists good cause to exempt the rule from notice-and-comment rulemaking under 5 U.S.C. 553(b)(B).

G. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. 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. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

H. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

I. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

J. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

K. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

L. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

M. Technical Standards and Incorporation by Reference

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

N. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. This rule is categorically excluded under paragraph A3 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev 1. Paragraph A3 pertains to ''promulgation of rules of a strictly administrative or procedural nature;'' and those that ''interpret or amend an existing regulation without changing its environmental effect.'' Paragraph L54 pertains to regulations that are editorial or procedural. This rule updates 46 CFR part 67 to reflect the NVDC's current processes and capabilities, particularly regarding electronic files. The changes include removing the requirement for ''original'' documents provided for evidence of the facts of build. The rule eliminates references to specific electronic means of submission of documents, as NVDC systems can no longer accept physical faxes or electronic faxes. Finally, the rule harmonizes regulations on the length of time that a vessel owner has to report changes in information that a COD is based on, from 10 days to 30 days with statutory requirements.

List of Subjects in 46 CFR Part 67

Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 67 as follows:

PART 67—DOCUMENTATION OF VESSELS

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

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2104, 2107, 12102, 12103, 12104, 12105, 12106, 12113, 12133, 12139; DHS Delegation 00170.1, Revision No. 01.4.

■ 2. Amend § 67.99 by revising paragraph (a) introductory text to read as follows:

§ 67.99 Evidence of build.

(a) Evidence of the facts of build may be a copy of either the original, completed form CG–1261 (Builder's Certification and First Transfer of Title), or other document containing the same information, executed by a person having personal knowledge of the facts of build because that person:

* * * * *

§ 67.113 [Amended]

■ 3. Amend § 67.113 in paragraph (e) by removing the number ''10'' and adding in its place the number ''30''.

■ 4. Amend § 67.141 by revising paragraph (a) to read as follows:

§ 67.141 Application procedure; all cases.

* * * * *

(a) Submit the following to the National Vessel Documentation Center:

(1) Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation; or Redocumentation (form CG–1258);

(2) Title evidence, if applicable; and

(3) Mortgagee consent on form CG–4593, if applicable.

* * * * *

■ 5. Amend § 67.167 by revising paragraph (a) to read as follows:

§ 67.167 Requirement for exchange of Certificate of Documentation.

(a) When application for exchange of the Certificate of Documentation is required upon the occurrence of one or more of the events described in paragraph (b), (c), or (d) of this section,

or the owner of the vessel chooses to apply for exchange of the Certificate pursuant to paragraph (e) of this section, the owner must apply for an exchange of the Certificate in accordance with subpart K of this part.

* * * * *

§ 67.169 [Amended]

■ 6. Amend § 67.169 by removing and reserving paragraph (b).

■ 7. Amend § 67.171 by revising paragraph (b) to read as follows:

§ 67.171 Deletion; requirement and procedure.

* * * * *

(b) Where a cause for deletion arises for any reason under paragraphs (a)(1) through (6) of this section, the owner must send to the National Vessel Documentation Center a statement setting forth the reason(s) deletion is required.

* * * * *

■ 8. Revise § 67.209 to read as follows:

§ 67.209 No original instrument requirement.

A copy of the original signed and acknowledged instrument must be presented. The copy may be delivered to the National Vessel Documentation Center or transmitted electronically in accordance with the procedures in § 67.218 of this part. Signatures may be affixed manually or digitally.

■ 9. Revise § 67.218 to read as follows:

§ 67.218 Optional electronic filing of applications and instruments.

(a) Any instrument identified as eligible for filing and recording under § 67.200 may be submitted using electronic filing. The method(s) or address(es) to be used for electronic filing may be obtained from the National Vessel Documentation Center's website. If the instrument submitted for filing pertains to a vessel that is not a currently documented vessel, a completed Application for Initial Issue, Exchange, or Replacement Certificate of Documentation, or Return to Documentation (form CG–1258) (or a letter application for deletion from documentation) must already be on file with the National Vessel Documentation Center or must be submitted electronically with the instrument being filed.

(b) If the filing of any instrument is terminated for any cause under § 67.217(a), the instrument will be returned to the submitter.

§ 67.219 [Removed]

■ 10. Remove § 67.219.

■ 11. Revise § 67.321 to read as follows:

§ 67.321 Requirement to report change of address of managing owner.

Upon the change of address of the managing owner of a documented vessel, the managing owner must report the change of address to the National Vessel Documentation Center within 30 days of its occurrence.

Dated: December 11, 2024.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2024–29555 Filed 12–13–24; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket Nos. 15–80 and 13–75, ET Docket No. 04–35; FCC 22–88; PS Docket Nos. 23–5 and 15–80, WC Docket No. 18–336; FCC 23–57; FR ID 267131]

Disruptions to Communications; Improving 911 Reliability; Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline; Rules Concerning Disruptions to Communications; Implementation of the National Suicide Hotline Improvement Act of 2018

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (''FCC'' or ''Commission'') announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's Second Report and Order in PS Docket Nos. 15–80 and 13–75, ET Docket No. 04–35, FCC 22–88 (*2022 Second Report and Order*), and the Commission's Report and Order in PS Docket Nos. 23–5 and 15–80, WC Docket No. 18–336, FCC 23–57 (*2023 Report and Order*). This document is consistent with the *2022 Second Report and Order* and *2023 Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the new information collection requirements.

DATES: The amendments to 47 CFR 4.9 (amendatory instruction 3) published at 88 FR 9756, February 15, 2023, and the amendments to 47 CFR 4.9 (amendatory instruction 4) published at 89 FR 2503, January 16, 2024, are effective April 15, 2025.

FOR FURTHER INFORMATION CONTACT: Tara Shostek, Attorney Advisor, Public Safety and Homeland Security Bureau, at (202) 418–8130, or by email, at *tara.shostek@fcc.gov.*

For additional information concerning the Paperwork Reduction Act information collection requirements, contact Nicole Ongele at (202) 418–2991 or via email: *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on November 5, 2024, OMB approved, until November 30, 2027, the information collection requirements adopted in (i) the Commission's Second Report and Order (*2022 Second Report and Order*) in PS Docket Nos. 15–80 and 13–75, ET Docket No. 04–35, FCC 22–88, adopted on November 17, 2022, and released on November 18, 2022, and, (ii) the Commission's Report and Order (*2023 Report and Order*) in PS Docket Nos. 23–5 and 15–80, WC Docket No. 18–336, FCC 23–57, adopted on July 20, 2023, and released on July 21, 2023.

In the *2022 Second Report and Order,* the Commission adopted rule amendments to 47 CFR 4.9 (by revising paragraphs (a)(4) and (c)(2)(iv); adding a heading for paragraph (e); and revising paragraphs (e)(1)(v), (f)(4), (g)(1)(i), and (h)) that required review by OMB pursuant to the Paperwork Reduction Act (PRA). Those amendments were included in the Final Rules section of *2022 Second Report and Order* with an amendatory instruction that they be delayed indefinitely (because they required OMB approval before they could be made effective). The *2023 Report and Order* also adopted amendments to 47 CFR 4.9 (by revising paragraphs (a)(4), (c)(2)(iv), (e)(1)(v), (f)(4), and (g)(1)(i) and adding paragraph (i)) that required review by OMB pursuant to the PRA. Those amendments were included in the Final Rules section of *2023 Report and Order* with an amendatory instruction that they be delayed indefinitely (because they required OMB approval before they could be made effective). The amendments to § 4.9 adopted in the *2023 Report and Order* are additive to and to not conflict with the amendments to § 4.9 adopted in the *2022 Second Report and Order.*

The amendments identified herein adopted in the *2022 Second Report and Order* and *2023 Report and Order* were submitted for OMB review as a single information collection. Because OMB has approved this information collection, the Commission is setting an effective date for the above-cited rule revisions of 120 days following publication of this document in the **Federal Register**.

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens cause thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Please include OMB Control Number, 3060–0484, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on November 5, 2024, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR part 4.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0484.

The foregoing notification is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0484.

OMB Approval Date: November 5, 2024.

OMB Expiration Date: November 30, 2027.

Title: Part 4 of the Commission's Rules Concerning Disruptions to Communications.

Form Number: N/A.

Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 3,224 respondents; 201,848 responses.

Estimated Time per Response: 1 hour–2 hours (average per response).

Frequency of Response: On occasion and Annual Reporting Requirements and Recordkeeping Requirement.

Obligation to Respond: Mandatory and Voluntary. The statutory authority for this information collection is contained in sections in sections 1, 4(i), 4(j), 4(n), 4(o), 201(b), 214, 218, 251(e)(3), 251(e)(4), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i)–(j), (n), & (o), 201(b), 214, 218, 251(e)(3), 251(e)(4), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 332, 403, 615, 615a–1, and 1302.

Total Annual Burden: 398,319 hours.

Total Annual Cost: No Cost.

Needs and Uses: Through this information collection, data received facilitates the Commission's monitoring, analysis, and investigation of the reliability and security of voice, paging, and interconnected voice over internet protocol communications services. Data received through this information collection also helps the Commission identify and act on potential threats to our Nation's telecommunications infrastructure. Moreover, the Commission uses this information collection to identify the duration, magnitude, root causes, contributing factors with respect to significant outages; and to identify outage trends; support service restoration efforts; and help coordinate with public safety officials during times of crisis. The Commission uses the information collection to draw lessons learned in order to foster a better understanding of significant outages' root causes, and to explore preventive measures in the future so as to mitigate the potential scale and impact of such outages.

Harmonizing the existing notification requirements for covered 911 service providers and originating service providers (OSPs) will simplify compliance for providers and reduce confusion for 911 special facilities. Among other harmonization requirements, the initial notification requirements are intended to provide preliminary notice of a potential problem to a 911 special facility so that the 911 special facility can, as quickly as possible, mitigate the impacts of the outage, and alert the public to alternative means of emergency services.

The new requirement that covered 988 service providers and OSPs notify 988 special facilities about outages that potentially affect them serves these same purposes with respect to the availability of the 988 Lifeline, including providing notice to the Substance Abuse and Mental Health Services Administration, the Veterans Affairs Administration, and the 988 Lifeline administrator when an outage that potentially affects a 988 special facility occurs.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–29154 Filed 12–13–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 260

[241206–0315]

RIN 0648–BH37

Inspection and Certification of Establishments, Fishery Products, and Other Marine Ingredients

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

ACTION: Final rule.

SUMMARY: The NMFS Office of International Affairs, Trade, and Commerce is revising its current implementing regulations to improve the uniformity and reliability of seafood inspection services by adopting recognized best practices for inspection. NMFS has not significantly revised or updated the existing regulations since first issuing them in 1971, though it has modified many operating procedures since implementation of the current regulations. NMFS anticipates that these revisions will benefit the seafood industry by streamlining seafood inspection services and providing improved, more accurate inspection results.

DATES: This final rule is effective January 15, 2025.

ADDRESSES: Public comments and materials received and used in the preparation of this final rule are available online at *https://www.regulations.gov* in docket number NOAA–NMFS–2024–0061. In case of problems accessing these documents, please use the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Melissa Beaudry, Senior Consumer Safety Officer, Seafood Inspection Program, National Marine Fisheries Service Office of International Affairs, Trade, and Commerce by email at *Melissa.Beaudry@noaa.gov* or by phone at 301–427–8308.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*), and in accordance with the Reorganization Plan Number 4 of 1970 (84 Stat. 2090), NOAA administers a voluntary Seafood Inspection Program (SIP or Program) which offers inspection and grading services for seafood and other marine products, as well as audit and consultative services to domestic and international processors, importers, and international competent food safety authorities. SIP also authorizes the use of certain marks and shields to processors meeting specific safety, quality, and other program requirements. The existing regulations codified at 50 CFR part 260 have not been significantly revised or updated since NMFS first issued them in 1971, 36 FR 21037 (November 3, 1971), and currently do not reflect the changes in industry practices or the expanding role of SIP since that time. NMFS published a notice of proposed rulemaking (89 FR 31690, April 25, 2024) and requested comments for 30 days. SIP received six public comments during the 30-day comment period. We reviewed and considered all comments received in development of this final rule. All substantive comments received on the proposed rule are addressed in this final rule in the Comments and Responses section.

Comments and Responses

We published the proposed rule in the **Federal Register** on April 25, 2024 (89 FR 31690), with a 30-day comment period. During the 30-day comment period, we received six comment submissions. The comments received were from stakeholders and interested parties on focused areas of the Seafood Inspection Program. NMFS appreciates the thoughtful comments representing a diverse set of views and has considered them thoroughly. The comments generally expressed support of the action by the NMFS Office of International Affairs, Trade, and Commerce to revise its current implementing regulations to improve the uniformity and reliability of seafood inspection services by adopting recognized best practices for inspection. There was general support by commenters for the intent to modernize and move language from regulation to the online SIP Manual. There was also general support for simplifying the administrative, inspection, and certification procedures, updating and consolidating grade standards wherever possible, and SIP's effort to improve the uniformity and reliability of seafood inspections services. Our responses to all comments that are pertinent to this action are described below.

Comment 1: Some commentators recommended that periods of public comment be longer than 30 days, and that NMFS should give all operational alterations, including ones such as this proposed rule, at least nine weeks of industry consideration. There was also a request for industry-facing seminars/informational sessions, as well as consideration for seasonal timing impacts and that all change actions allow for industry dialogue and participation going forward.

Response: A 30-day comment period is generally considered by courts to be sufficient to allow for meaningful public participation pursuant to the Administrative Procedure Act. Longer comment periods may be necessary where a rule is technically complex or lengthy. However, as the proposed rule codified NMFS's current practices and did not make any changes to NMFS's operation, a longer comment period was not necessary. NMFS does agree that before implementing any changes to policy that will affect how industry operates or responds, they will notify industry and engage in dialogue to ensure all parties understand the changes and have sufficient time to implement any changes required.

Comment 2: One commenter asked NMFS to focus on Gulf shrimp and raise tariffs against Thai shrimp.

Response: The authority to raise tariffs against any country or product is outside the scope and regulatory authority of the NMFS SIP.

Comment 3: One commenter asked whether NMFS conferred with FDA (U.S. Food and Drug Administration) regarding definitions of ''fish'', ''fishery product'', ''inspection service'', ''product'', ''wholesome.'' Similarly, another commenter recommended examination of the final definitions for clarity, as well as the inclusion of sourcing for each new definition implemented in the event industry needs additional guidance.

Response: NMFS confirms that the FDA reviewed and provided feedback on the proposed rule prior to publication. The definitions used in the proposed rule are also in alignment with the definitions in current regulations, both under 50 CFR part 260 and 21 CFR parts 123 and 117. In the proposed rule, the definition for ''fish'' was revised from ''. . . other than birds or mammals, and all mollusks, . . .'' to ''. . . other than birds or mammals, and *including* all mollusks, . . .'' to help clarify that all mollusks are defined as fish, which has been a source of confusion since the HACCP regulations in 21 CFR part 123 were implemented. The definition of fish was also expanded to include ''other non-food uses.'' These definitions remain unchanged in the final rule. NMFS disagrees with the need to source definitions, as the terms defined here pertain specifically to use within this regulation and source definitions to the use of these terms in other contexts would not provide accurate guidance to industry.

Comment 4: One commenter noted that some definitions refer to ''animal'' consumption (fish, inspection services) and others do not include ''animal consumption'' (fishery product, product, wholesome).

Response: The inclusion of ''animal'' or ''animal consumption'' in definitions varies based on the end use of the product. The definitions for ''fish'' and ''inspection services'' identify that the end use of the product could be for consumption other than as human food. NMFS inspects and certifies a variety of non-human food fishery products, whether they be for animal feed, use in making animal food, or other industrial uses. The terms ''fishery product'' and ''wholesome'' refer specifically to the end use being for human consumption. The definition for ''product'' does not include the word ''animal'', but conveys that end use with the phrase ''whether or not destined for human consumption''.

Comment 5: Several commenters asked how NMFS will notify industry of changes to the online manual. For example, one commenter suggested highlighting or striking out changes, or listing date(s) of revisions on each title page for transparency. Another commenter suggested that SIP establish a method of providing a summary of any modifications to the NMFS Fishery Products Inspection Manual (SIP Manual or Manual) so stakeholders are aware of and can locate the changes. A third commenter recommended a regular update period for the Manual, wherein industry may expect to review potential new Manual language annually or biannually, rather than needing to react to NMFS actions on short timelines when they are communicated. Another commenter recommended that amendments to the Manual or other policy changes be marked and displayed in ways that make it easy for users to see what is changing and how.

Response: NMFS agrees that changes to the online SIP Manual should be communicated to the public in a timely manner and in a transparent way.

However, NMFS declines to adopt the suggestion to strike out or highlight changes in the Manual as this could create confusion and make the Manual more difficult to navigate. Additionally, restricting updates to only once or twice a year would make the online format less flexible, undermining NMFS' goal for the Manual to remain current and up to date. Therefore, NMFS will continue to make updates when needed, but will make sure to notify all stakeholders and/or staff members when changes are made that affect the way in which they interact with NMFS SIP. Currently, NMFS adds revision dates to chapter and section headings when changes occur to highlight such updates for stakeholders and will continue to assess practices which support transparency.

Comment 6: Several commenters noted that moving procedural changes into the Manual will make future changes easier, but is less transparent than the formal rulemaking process and can limit the opportunity for stakeholder engagement afforded through the open comment periods of FR notices. Similarly, some commentators noted that the move to the online Manual has led to confusion as to how and when updates take place.

Response: Proposed changes to NMFS SIP policy or operational procedures that run counter to current regulations will continue to follow the formal rulemaking process, including public notice and opportunity for comment. Changes to NMFS SIP's day-to-day operational procedures or policies that do not run counter to current regulations may be updated in the Manual as needed, with ample notice of these changes given to the public. Changes such as updates to the SIP fees schedule or new Grade Standards, will also continue to be published in the **Federal Register**.

Comment 7: One commenter requested that NMFS allow users time to make changes to their programs before implementing compliance actions whenever the Manual is updated.

Response: NMFS agrees that whenever the Manual is updated with changes required to operational procedures, time will be given to stakeholders to fully understand and implement the changes. NMFS also will continue to provide outreach and training when changes necessitate a more involved response from stakeholders.

Comment 8: One commenter wrote that NMFS should hold informational sessions for users when making revisions so the users can better understand the new or revised criteria.

Response: NMFS agrees that outreach is beneficial to both stakeholders and SIP when substantial changes to a system or procedure are enacted, and will continue to engage in such activities with stakeholders when warranted.

Comment 9: One commenter wrote that NMFS must ensure that latest standards and Sensory Quality indicators are readily available to users so they can meet the criteria.

Response: NMFS agrees that all standards and criteria must be available and informed to users prior to their implementation, and will continue to ensure that happens. The SIP Manual is updated in real-time as new methodologies and standards are developed and employed, and whenever clarification is required. Emailed notices go out broadly to industry members and program participants when these changes occur, and all relevant standards and criteria are housed in the online Manual, which is available to the public on the NMFS website at *https://www.fisheries.noaa.gov/national/seafood-commerce-certification/seafood-inspection-manual.*

Comment 10: One commenter wrote that moving to the proposed ''one size fits all'' sampling plan of six and zero is a significant departure from the current sampling plans. The proposed changes to the sampling plan will not have the positive impact for firms who currently use a sampling plan with a sample size of three or four. A sampling plan allowing for more samples and specific number of non-conformances should still be allowed. Further, National Fisheries Institute disagrees with the assessment that the proposed rule will not have a significant economic impact on small entities. The proposed sampling plan of six and zero will influence inspection and destructive sampling costs for many SIP participants in a negative way.

Response: NMFS previously experimented with the model sampling plan of six and zero (sample size of six with zero non-conforming units) and found that it did not have the overall positive impact expected. Therefore, NMFS has decided not to go forward with the proposed six and zero sampling plan, and will continue to use the single and multiple sampling plans formerly found in 50 CFR 260.61, which are also found in the Manual. NMFS also allows the use of other validated and internationally recognized sampling plans, and participants are encouraged to use the sampling plan that works best for their situation.

Comment 11: One commenter suggested that NMFS consider changing the way we test for Paralytic Shellfish Poisoning (PSP).

Response: The mouse bioassay is the current regulatory method for determining the presence of PSP and other toxins in shellfish in the United States, and is recognized internationally. Changing the approved methodology falls outside the scope of NMFS' regulatory authority.

Comment 12: Several commenters asked how NMFS would cover other marine ingredients, such as algae and kelp, which are not covered by FDA under 21 CFR part 123.

Response: NMFS, as the U.S. Competent Authority for export health certification for fishery products for human consumption, has for years been providing export certification for products such as edible algae and kelp when requested by stakeholders, in an effort to keep trade flowing. This expansion of NMFS to non-consumer and other marine products is an opportunity to facilitate trade for U.S. businesses. The inclusion of non-human-consumption fish and fishery products and other marine ingredients to the program allows U.S. businesses to compete better with industry members from other countries in providing these valuable resources to the worldwide marketplace. Adding inspection and certification services for non-food, by-products, and other marine ingredients in this regulation codifies the ability of NMFS to provide services to businesses trading in marine products that traditionally the FDA and the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) do not provide.

Comment 13: One commenter wrote that NMFS should be more transparent with costs and billing invoices and be more aware of their impact to industry users. Another commenter requested further consideration into how the payment structure can be adjusted to allow industry to better anticipate and absorb these costs, as well as implementing controls to minimize overtime and holiday work by auditors.

Response: NMFS strives to maintain fairness and equity in all billing processes. When an inspector travels to conduct multiple audits at multiple facilities in one geographic location, the total travel expenses are divided equally among all facilities involved in that trip, while the actual audit time per facility is charged directly. The regional inspection offices manage their personnel and duty assignments, and to the extent practical, manage working hours to avoid overtime and holiday work. However, given the nature of the industry, inspections often have to take

place on evenings, weekends, and holidays due to the constraints of specific requests. For example, live product that requires inspection and/or certification and is harvested and shipped on a weekend also requires weekend work from an inspector. SIP rates are analyzed annually and updated as needed to ensure that NMFS recovers as nearly as possible the operating expenses of the Program, without generating a profit.

Comment 14: Several commenters wrote that SIP inspectors and industry will need time to adjust to the changes in the final rule. Companies will need time to make internal changes to their documentation and procedures, as well as train employees. Commenters further noted that NOAA should recognize the seasonal contracts for inspection services to allow for sufficient timing and outreach to these participants.

Response: Since the proposed rule did not make any changes to the way in which NMFS SIP currently operates, the agency does not believe that an adjustment period is necessary. NMFS does agree that before implementing any changes to policy that will affect how industry operates or responds, stakeholders will be notified and engaged in dialogue to ensure all parties understand the changes and have sufficient time to implement any changes required.

Comment 15: One commenter wrote that NMFS being the only organization to provide export health certification and grading for other agency purchases does not make it a true voluntary program if industry wants to distribute and market their seafood products in a global community.

Response: NMFS offers services to industry that are required as part of doing business in the international arena, or with the U.S. Government Purchasing Programs. Since SIP operates as a fee-for-service agency, and does not have appropriated funding, it is necessary to charge for these services. NMFS calculates the rates to recover as nearly as possible the operating costs of the Program without generating a profit, and analyzes and adjusts them annually. NMFS does not mandate the inspections and certification required from importing countries and other U.S. Government agencies, but is the Competent Authority within the U.S. Government to provide inspection and export certification for fish and fishery products. SIP's provision of those services allows customers to participate in international trade and government purchase programs only if they choose to do so, and at the level they choose to participate. NMFS represents the U.S. in negotiations with other countries regarding their import requirements, and works to reduce the inspection and certification burdens imposed on U.S. exporters.

Changes From the Proposed Rule

NMFS made no changes to the regulatory text from the proposed rule to the final rule. NMFS made one change regarding a sampling approach that was described in the proposed rule preamble. SIP has decided not to go forward with the proposed six and zero sampling plan, and will continue to use the single and multiple sampling plans formerly found in 50 CFR 260.61, which are also found in the Manual.

Classification

This final rule is published under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). The NMFS Assistant Administrator has determined that this final rule is consistent with the provisions of this and other applicable laws.

Executive Order 12866

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

Executive Order 13175

A Tribal summary impact statement under section (5)(b)(2)(B) and section (5)(c)(2)(B) of E.O. 13175 was not required for this final rule because this action does not impose substantial direct compliance costs on Indian Tribal Governments and this action does not preempt Tribal law. A Tribal summary impact statement is not required and none has been prepared.

Final Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this final rule 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, and the initial certification remains unchanged. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

National Environmental Policy Act

Under NOAA Administrative Order (NAO 216–6A), the promulgation of regulations that are administrative, financial, legal, technical or procedural in nature are categorically excluded from the requirement to prepare an Environmental Assessment. This final rule to update 50 CFR part 260 is procedural and administrative in nature, in that it merely reflects the actual operations of the SIP today. Neither fishing activity nor trade in seafood products are further restricted relative to any existing laws or regulations, either foreign or domestic. Given the procedural and administrative nature of this rulemaking, an Environmental Assessment was not required and none has been prepared.

Paperwork Reduction Act

This final rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Number: 0648–0266, Seafood Inspection and Certification Requirements. 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.

List of Subjects in 50 CFR Part 260

Inspection, Inspection Services, Certification, Approved Establishment, Sampling, Imports, Exports, Fish and Fisheries Products, Marine Ingredients, Grade Standards, Marks.

Dated: December 6, 2024.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, NMFS revises 50 CFR part 260 as follows:

PART 260—INSPECTION AND CERTIFICATION

Subpart A—Inspection and Certification of Establishments, Fishery Products, and Other Marine Ingredients

Sec.

Authority: Sec. 6, 70 Stat. 1122, 16 U.S.C. 742e; secs. 203, 205, 60 Stat. 1087, 1090 as amended; 7 U.S.C. 1622, 1624; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

Subpart A—Inspection and Certification of Establishments, Fishery Products, and Other Marine Ingredients

§ 260.1 Administration of regulations.

The Secretary of the Department of Commerce is charged by the Agricultural Marketing Act of 1946 with the administration of the regulations in this part, except that they may delegate any or all of such functions to any officer or employee of the National Marine Fisheries Service (the *Agency*) of the Department at their discretion.

Definitions

§ 260.2 Terms defined.

Words in the regulations in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand. For the purposes of the regulations in this part, unless the context otherwise requires, the following terms shall have the following meanings:

Acceptance number means the number in a sampling plan that indicates the maximum number of nonconformities permitted in a sample of a lot that meets a specific requirement.

Act means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087 *et seq.,* as amended; 7 U.S.C. 1621 *et seq.*) or any other act of Congress conferring like authority.

Administrator means the Administrator of NOAA (Under Secretary of Commerce for Oceans and Atmosphere) or a designee.

Agency means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

Applicant means any interested party who requests inspection service under the regulations in this part.

Approved Establishment means an establishment which has been approved by the Agency pursuant to this Part and the NMFS Fishery Products Inspection Manual (SIP Manual) and utilizes inspection service on a contract basis.

Certificate of loading means an official certificate or document that makes a statement relative to check-loading of a fish or fishery product or other marine ingredient subsequent to inspection thereof issued pursuant to the regulations in this part.

Certificate of sampling means an official certificate or document that makes a statement pursuant to the regulations in this part identifying officially drawn samples and may include a description of the condition of containers and the condition under which the fish or fishery product or other marine ingredient is stored.

Class means a grade or rank of quality.

Condition means the degree of soundness of the product that may affect its merchantability and includes but is not limited to those factors that are subject to change due to age, improper preparation and processing, improper packaging, improper storage, or improper handling.

Cross-Licensed Inspector means a qualified person employed and licensed by the agency to perform specified inspection services under a joint Federal-State inspection service arrangement.

Department means the U.S. Department of Commerce.

Director means the Assistant Administrator for Fisheries, NOAA, or a designee.

Establishment means the premises, buildings, structures, facilities, and equipment (including machines, utensils, fixtures and transit vehicles) used with respect to the receipt, processing and transport of fish and fishery products and other marine ingredients.

Fish means a fresh or saltwater finfish, crustaceans, other forms of aquatic animal life (including, but not limited to, alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and including all mollusks, where such animal life is intended for human or animal consumption or for other non-food uses.

Fishery product means any human food product in which fish is a characterizing ingredient.

Inspection certificate means a statement, either written or printed, issued pursuant to the regulations in this part, setting forth the quality and condition of the product, or any part thereof, in addition to appropriate descriptive information relative to a fish, fishery product, or other marine ingredient, and the container thereof. It may also include a description of the conditions under which the product is stored.

Inspection service means:

(1) The performance of sampling pursuant to the regulations in this part;

(2) The determination pursuant to the regulations and requirements in this part:

(i) Assessing compliance with statutory and regulatory requirements pertaining to the interstate commerce of fish and fishery products or other marine ingredients for human or animal food;

(ii) Identifying the essential characteristics such as style, type, size, or identity of any fish or fishery product or other marine ingredient; or

(iii) Assessing the class, quality, and condition of any fish or fishery product or other marine ingredient, including the condition of the container thereof by the examination of appropriate samples;

(3) The issuance of any certificates of sampling, inspection certificates, or

certificates of loading of a fish or fishery product or other marine ingredient, or any report relative to any of the foregoing; or

(4) The performance by an inspector of any related services, such as:

(i) Observing the preparation of the product from its raw state through each step in the entire process;

(ii) Observing the conditions under which the product is being harvested, prepared, handled, stored, processed, packed, preserved, transported, or held;

(iii) Observing the sanitation conditions as a prerequisite to the inspection of the processed product, either on a contract basis or periodic basis;

(iv) Check-loading the inspected processed product in connection with the marketing of the product; or

(v) Conducting any other type of service of a consultative or advisory nature related herewith as outlined in the NMFS Fishery Products Inspection Manual. *Inspector* means any employee of the Department authorized by the Secretary or any other person licensed by the Secretary to investigate, sample, inspect, and certify in accordance with the regulations in this part to any interested party the class, quality and condition of processed products covered in this part and to perform related duties in connection with the inspection service.

Interested party means any person who has a financial interest in the fish or fishery product or other marine ingredient involved.

Licensed sampler means any person who is authorized by the Secretary to draw samples of fish and fishery products or other marine ingredients for inspection service, to confirm the identification and condition of containers in a lot, and may, when authorized by the Secretary, perform other related services under the act and the regulations in this part.

Lot means a defined quantity of product accumulated under conditions considered uniform for sampling purposes.

(1) For processors who manufacture fish and fishery products or other marine ingredients, a lot is a production unit as defined by mutual agreement between the processor and SIP, consisting of fish or fishery products or other marine ingredients of the same type, style, form and size, which have been marked or labeled as such and produced under conditions as nearly uniform as possible, during a single 8 hour shift (or as defined and approved) on an individual processing line.

(2) For establishments that receive fish or fishery products or other marine ingredients and perform no additional processing, such as distribution warehouses and foodservice distributors, a lot is defined by mutual agreement between the establishment and SIP and must consist of fish or fishery products or other marine ingredients located in a discrete grouping that consists of fish or fishery products or other marine ingredients of the same type, style and size and are marked or labeled as such. Except that: Fish or fishery products or other marine ingredients located in separate groups that differ from each other as to grade or other factors may be deemed as separate lots in some cases, for example:

(i) Fish or fishery products or other marine ingredients located in the same group bearing an identification mark different from other containers in that group may be deemed as separate lots;

(ii) Containers of fish or fishery products or other marine ingredients in a group bearing an identification mark different from other containers in that group, if determined to be of lower grade or deficient in other factors, may be deemed as separate lots; or

(iii) If the applicant requests more than one inspection certificate covering different portions of a lot, the quantity of the product covered by each certificate shall be deemed a separate lot.

Marine ingredient means any product of marine origin, whether or not intended for human consumption, including, but not limited to, fishmeal, fish oil, fish-based fertilizer, seaweed, kelp, and algae.

NMFS Fishery Products Inspection Manual (SIP Manual) means the online handbook, housed at *https://www.fisheries.noaa.gov/national/seafood-commerce-certification/seafood-inspection-manual,* that provides procedures of how services shall be scheduled, planned, conducted, and documented and describes services that conform to global activities that harmonize inspection protocols.

Officially drawn sample means any sample that has been selected from a particular lot by an inspector, licensed sampler, or by any other person authorized by the Secretary pursuant to the regulations in this part.

Person means any individual, partnership, association, business trust, corporation, any organized group of persons (whether incorporated or not); the United States (including, but not limited to, any corporate agencies thereof) any State, county, or municipal government; any common carrier; and any authorized agent of any of the foregoing.

Processing means, with respect to fish and fishery products and other marine ingredients, activities that an establishment engages in including handling, storing, preparing, heading, eviscerating, shucking, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading, or holding.

Product means any fish or fishery product or other marine ingredient, whether or not destined for human consumption, presented to NMFS for inspection and/or certification service.

Quality means the inherent properties of any processed product that determine the relative degree of excellence of such product, includes the effects of preparation and processing, and may or may not include the effects of packing media or added ingredients.

Rejection number means the smallest number of nonconformities, defectives (or defects) in the sample or samples under consideration that will require rejection of the lot.

Sample means the number of sample units drawn from a lot for purposes of inspection to reach a decision regarding acceptance of the lot and for purposes of quality to reach a conclusion regarding conformity of the lot.

Sample unit means a ''unit of product'', a primary container and its contents that makes up the sample that is inspected to determine whether it complies with regulatory criteria and that is quality assessed to determine whether it conforms to quality criteria.

Sampling means the process of selecting sample units that comprise the sample for the purpose of inspection and quality assessment under the regulations of this part.

Seafood Inspection Program (SIP) means the program within the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, which offers inspection and grading services for seafood and other marine products as well as audit and consultative services to domestic and international processors, importers, and international competent food safety authorities.

Secretary means the Secretary of the Department of Commerce or any other officer or employee of the Department authorized to exercise the powers and to perform the duties of the Secretary with respect to the matters covered by the regulations in this part.

Shipping container means an individual container designed for shipping a number of packages or cans ordinarily packed in a container for shipping or designed for packing

unpackaged fish or fishery products or other marine ingredients for shipping.

Unofficially drawn sample means any sample that has been selected by any person other than an inspector or licensed sampler.

Wholesome means the minimum basis of acceptability for human food purposes of any fish or fishery product or other marine ingredient as defined in section 402 of the Federal Food, Drug, and Cosmetic Act, as amended.

§ 260.3 Designation and use of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.

Section 203(h) of the Agricultural Marketing Act of 1946 provides criminal penalties for various specified offenses relating to the misuse of official certificates, memoranda, marks or other identifications and devices for making such marks or identifications, issued or authorized under section 203 of said Act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said section and the provisions in this part, the terms listed below shall have the respective meanings specified:

Official certificate means any form of written, printed or electronic certification, including those defined in § 260.2, used under this part to document and/or certify the compliance of fish or fishery products and other marine ingredients to applicable specifications with respect to inspection compliance and conformity to class, grade, quality, size, quantity, or condition requirements.

Official device means a mechanically or manually operated tool, appliance or other means approved by the Agency to apply an official mark or other identification to any product or the packaging material thereof that is approved by the Director, including, but not limited to, a stamping appliance, branding device, stencil, or printed label.

Official identification means any designation of class, grade, quality, size, quantity, condition, or attribute specified by this part or any symbol, stamp, label, seal, or official statement indicating that the product has been inspected or graded using specifications deemed appropriate by SIP or otherwise evaluated for any buyer specified attribute.

Official insignia means a grade mark, inspection mark, combined inspection and grade mark, shield, stamp, other emblem, and/or official statement approved by the Secretary, authorized by the Agency, and used in accordance with the NMFS Fishery Products Inspection Manual (SIP Manual).

Official document means a record of findings made by an authorized person having performed any inspection, certification, grading, audit or any other service pursuant to this part.

Inspection Service

§ 260.4 Where inspection service is offered.

Inspection services may be furnished where an inspector, cross-licensed inspector, or licensed sampler is available and when the establishment's facilities and conditions are appropriate for the conduct of such service. This location can include, but is not limited to, SIP regional and field offices, warehouses, processing facilities, docks, and vessels, as detailed in the SIP Manual.

§ 260.5 Who may obtain inspection service.

Any person engaged in the processing, shipping or receiving of fish and fishery products or other marine ingredients in interstate commerce may apply for inspection service.

§ 260.6 Application for inspection service.

Prospective service participants must submit an application for inspection service per the Application for Inspection Services procedures in the SIP Manual. To be considered for approval, applications for inspection service must be complete and conform to all SIP inspection service requirements as specified in the SIP Manual.

§ 260.7 Rejection of application for inspection service.

Applicants will be notified if an Application for Inspection Service is rejected. Inspection Service applications may be rejected when: (a) the application is incomplete or in contravention of regulations and/or policy; (b) there is a noncompliance with NOAA financial policy, such as nonpayment for previous inspection services rendered; (c) the fish or fishery product or other marine ingredient is not properly identified; or (d) it appears that the performance of the inspection service would not be in the best interests of the Government.

§ 260.8 Withdrawal of an application for inspection service.

The applicant may withdraw an Application for Inspection Service at any time before the inspection is performed, provided that the applicant shall pay for all costs and expenses which have been incurred by the inspection service in connection with such application.

§ 260.9 Disposition of inspected samples.

Any product sample that has been used for inspection may be returned to the applicant, at its request and expense; otherwise it shall be destroyed or, when appropriate, diverted to a charitable institution.

§ 260.10 Basis of inspection, grade and compliance assessment.

(a) Finished product inspection and certification services shall be performed on the basis of the specifications deemed appropriate by SIP.

(b) Unless otherwise approved by SIP, compliance with the appropriate specifications shall be determined by evaluating the product, or sample, in accordance with the product inspection and quality assessment procedures outlined in the SIP Manual. *Provided,* that:

(1) Such sample complies with the applicable standards of quality promulgated under the Federal Food, Drug, and Cosmetic Act;

(2) Such sample complies with the product description;

(3) Such sample meets the indicated grade with respect to factors of quality which are not rated by score points; and

(4) The number of sample units classed as deviants does not exceed the applicable acceptance number indicated in the sampling plans approved and used. A ''deviant,'' as used in this paragraph, means a sample unit that falls below the indicated grade or specification parameter.

§ 260.11 Order of inspection service.

Inspection services shall be performed, insofar as practicable, in the order in which Application for Inspection Service is made, except that precedence is given first to the United States (including, but not limited to, any instrumentality or agency thereof); second, to an inspection contract holder; and third, to an interested party without an inspection contract.

§ 260.12 Financial interest of inspector.

No inspector shall inspect any product in which s/he has a direct or indirect financial interest.

§ 260.13 Official forms for inspection services.

Inspection certificates, memoranda, reports and other documents associated with inspection services shall only be issued on forms approved by the Agency.

§ 260.14 Issuance of certificates.

Inspection Certificates and Certificates of Loading may be issued by an inspector authorized by the Agency

to affix their signature to a certificate that has been prepared in accordance with the documented evidence in connection with the inspection service provided.

§ 260.15 Issuance of corrected certificates.

When an issued inspection certificate contains errors or otherwise requires revision, the inspector who issued the original document or another employee of the Agency may issue a corrected inspection certificate. The corrected certificate will supersede the original document, which will become null and void after the issuance of the corrected certificate.

§ 260.16 Issuance of an inspection report in lieu of an inspection certificate.

A written report in lieu of an inspection certificate may be issued by an inspector when such action appears to be more suitable than an inspection certificate.

§ 260.17 Retention and provision of inspection certificates.

Inspection certificate copies or other documents issued under the regulations in this part shall be retained by the Agency in accordance with Agency record retention policies. The original certificate (electronic or other) or copy is provided to the inspection service requester, and copies may be provided to other interested parties as identified by the Agency.

§ 260.18 Report of inspection results prior to issuance of formal report.

Upon request by any interested party and approval by the Agency, the interim inspection findings may be provided.

Appeal Service

§ 260.19 Requesting an appeal.

(a) An application for an appeal may be made by any interested party who has cause to disagree with the results of a product inspection or audit finding. An official appeal inspection of a product inspection may only be performed when the lot of fish or fishery products or other marine ingredients can be positively identified by the inspection service as the lot from which officially drawn samples were previously inspected.

(b) Such application shall be made in adherence with the SIP Manual and shall be made within 30 days following the day on which the previous result was communicated, except that upon approval by SIP the time may be extended.

§ 260.20 Withdrawing an appeal application.

An application for appeal may be withdrawn by the applicant at any time before the appeal service is performed, provided that the applicant shall pay for all costs and expenses which have been incurred by the inspection service in connection with such application.

§ 260.21 Declining an appeal application.

A request for an appeal may be declined when:

(a) The reasons for the appeal are frivolous or not substantial;

(b) The quality or condition of the product has undergone a material change since the inspection covering the product on which an appeal inspection is requested;

(c) The lot relative to which an appeal inspection is requested is not, or cannot be made, accessible for the selection of officially drawn samples;

(d) The lot relative to which an appeal inspection is requested cannot be positively identified by the inspector as the lot from which officially drawn samples were previously inspected; or

(e) There is noncompliance with the regulations in this part. The applicant shall be notified promptly if a request for appeal is declined, as outlined in the SIP Manual.

§ 260.22 Appeal inspector selection protocol.

(a) An inspector who did not perform the original product inspection shall be assigned to perform the appeal service; provided that the inspector who made the original product inspection on which an appeal is requested may be authorized to draw the samples when another inspector or licensed sampler is not available in the area where the product is located.

(b) Whenever practical, the appeal service shall be conducted jointly by two inspectors.

§ 260.23 Appeal documentation.

(a) After an appeal service has been completed, the results will be recorded on an appropriate document, as outlined in the SIP Manual. Any appeal document shall supersede the certificate or report previously issued for the product or establishment involved.

(b) The superseded document shall become null and void upon the issuance of the appeal document and shall no longer represent the quality or condition of the product, system, or establishment described therein.

(c) If the original document and all copies have not been returned to the inspector(s) performing the appeal service, the appeal document shall be issued to the person(s) the inspector(s) considers necessary to prevent misuse of the superseded document.

(d) All provisions in this regulation concerning the use, issuance and disposition of inspection certificates shall apply to appeal inspection certificates, except that electronic copies of the appeal inspection certificates shall be furnished to all interested parties who received the superseded certificate.

Licensing of Inspectors and Samplers

§ 260.24 Inspectors.

(a) Federal Government employees licensed or authorized as inspectors will perform inspections.

(b) In addition, qualified persons may be employed and licensed (Cross-Licensee) by the Agency to perform specified inspection services under a joint Federal-State inspection service arrangement.

(c) An Inspector or Cross-Licensee shall perform their duties pursuant to the regulations in this part as directed by the Director.

§ 260.25 Licensed samplers.

(a) Any person deemed to have the necessary qualifications may be approved as a licensed sampler.

(b) Licensed samplers are authorized to draw samples, to confirm the identity of the lot, and assess the condition of containers in the lot.

(c) Licensed samplers are not authorized to inspect fish or fishery products or other marine ingredients.

§ 260.26 Suspension or revocation of licensed inspector or licensed sampler.

In adherence to Federal and Agency requirements, the Agency may suspend or revoke the license of a licensed inspector or licensed sampler when deemed necessary, as outlined in the SIP Manual.

§ 260.27 Surrender of license.

Upon suspension, revocation and/or termination of the services of a licensed inspector and/or licensed sampler, or in the case of an expired license, the licensee shall surrender their license to the Agency.

Sampling

§ 260.28 Sampling plans and procedures.

(a) When finished product inspections of fish and fishery products and other marine ingredients are performed, the Sampling Plans and Sampling Procedures set forth in the SIP Manual will be followed.

(b) Defined lots of product must be accessible, allowing thorough and proper sampling in accordance with the

regulations of this part. Failure to make lots accessible for proper sampling shall be sufficient cause for postponing or canceling inspection service.

(c) Lots must be readily identifiable; if lots to be sampled are not suitably identified, the inspector or licensed sampler will mark the lot in a manner prescribed by the agency in the regulations and in the SIP Manual.

(d) Samples shall be furnished for inspection at no cost to the Agency.

(e) A certificate of sampling shall be prepared and signed by the inspector or licensed sampler.

(f) Officially drawn samples shall be marked by the Agency representative so such samples can be properly identified for inspection.

§ 260.29 Shipment of samples.

Samples that require shipment to an Inspection Office shall be shipped in a manner to avoid, if possible, any material change in the quality or condition of the product. Costs associated with shipments shall be at the expense of the applicant.

Fees and Charges

§ 260.30 Inspection fees, payment guarantees, charges and payments.

(a) A schedule of fees, charges, payment guarantees and payments for inspection services shall be made in accordance with the applicable provisions of the regulations in this part and the Financial Policy provided in the SIP Manual.

(b) The Schedule of Fees to be charged and collected for any inspection service performed under the regulations of this part will be determined annually, or as required, and published as a Notice in the **Federal Register**.

(c) Fees for inspection under a cooperative agreement with any State or person shall be transferred and collected in accordance with the terms of such agreement. Such portion of the fees collected under a cooperative agreement as may be due the United States shall be remitted in accordance with this section and the Financial Policy as provided in the SIP Manual.

(d) Charges may be made to cover the cost of travel and other expenses incurred in connection with the performance of any inspection service, including appeal inspections, as provided in the SIP Manual.

(e) Inspection services may be made on a contract basis or via a memorandum of understanding with other Federal and State entities pursuant to the Agricultural Marketing Act of 1946, provided the Agency is reimbursed for the full cost of such service.

(f) For each calendar year, SIP will calculate the rate for services, per hour per program employee, using the following formulas:

(1) *Regular rate.* The total SIP inspection program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service. The regular rate shall be the contract rate.

(2) *Overtime rate.* The total SIP inspection program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total SIP inspection program personnel direct pay divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(g) For each calendar year, based on previous fiscal year/historical actual costs, SIP will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(1) *Benefits rate.* The total SIP inspection program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(2) *Operating rate.* The total SIP inspection program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(3) *Allowance for bad debt rate.* Total allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(h) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most recent Office of Management and Budget's Presidential Economic Assumptions.

(1) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be determined using the formulas in this section.

Requirements for Approved Establishments

§ 260.31 Application for SIP Approved Establishment.

Any person desiring to process and pack fish and fishery products and other marine ingredients as an SIP Approved Establishment must receive approval of their written and implemented food management system per the application procedures which are detailed in the SIP Manual.

§ 260.32 Requirements for the provision of Inspection Services for Approved Establishments.

All establishments must remain in good standing in order to receive services per this Part.

(a) The determination as to the inspection effort required to adequately provide inspection service at any establishment will be made by NMFS. The person-hours required may vary at different establishments due to factors such as, but not limited to, size and complexity of operations, volume and variety of products produced, and adequacy of control systems and cooperation. The inspection effort requirement may be reevaluated when the contracting party or NMFS deems there is sufficient change in production, equipment and change of quality control input to warrant reevaluation. Inspectors will not be available to perform any of the employee or management duties; however, they will be available for consultation purposes. NMFS reserves the right to reassign inspectors as it deems necessary.

(b) Assessment of an establishment's good standing will be made by the Agency through systems, process, and product auditing and inspection activities, which are further specified in the SIP Manual.

(c) The Agency shall not be held responsible:

(1) For damages occurring through any act of commission or omission on the part of its inspectors when engaged in performing services; or

(2) For production errors, such as processing temperatures, length of process, or misbranding of products; or

(3) For failure to supply enough inspection effort during any period of service.

(d) Approved Establishments shall:

(1) Use, handle, process, store and distribute only raw materials and finished products that meet processing

and sanitation statutory and regulatory requirements for food safety, wholesomeness and labeling;

(2) Adequately code each primary container and master case of products sold or otherwise distributed from a manufacturing, processing, packing, or repackaging activity to enable lot identification to facilitate, where necessary, the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use;

(3) Provide adequate office space in the designated establishment, if required by the Agency, and furnish suitable desks, office equipment, internet services access, laboratory facilities and equipment required to perform product verification and inspection, as prescribed by the Agency;

(4) Furnish and provide laundry service for coats, trousers, smocks, and towels used by inspectors during performance of duty in establishments if required by the Agency; and

(5) During all reasonable times, provide representatives of the Agency free and immediate access to the establishment under the applicant's control for the purpose of performing any and all inspection services.

(e) Retention tags:

(1) Any equipment such as, but not limited to, conveyors, tillers, sorters, choppers, and containers which fail to meet appropriate and adequate sanitation requirements will be identified by the inspector in an appropriate and conspicuous manner with the word ''RETAINED.'' Following such identification, the equipment shall not be used until the discrepancy has been resolved, the equipment re-inspected and approved by the inspector and the ''RETAINED'' identification removed by the inspector.

(2) Lot(s) of processed products that may be considered to be mislabeled and/or unwholesome by reason of contaminants, or which may otherwise be in such condition as to require further evaluation or testing to determine that the product is properly labeled and/or wholesome, will be identified by the inspector in an appropriate and conspicuous manner with the word ''RETAINED.'' Such lot(s) of product shall be held for re-inspection or testing. Final disposition of the lot(s) shall be determined by NMFS and the removal of the ''RETAINED'' identification shall be performed by the inspector.

(f) Termination of inspection services:

(1) The fishery products inspection service, including the issuance of inspection reports, shall be rendered from the date of the commencement specified in the contract and continue until suspended or terminated:

(i) by mutual consent;

(ii) by either party giving the other party 60 days' written notice specifying the date of suspension or termination;

(iii) by written notice by the Agency in the event the applicant does not meet financial obligations;

(iv) by written notice by the Agency, terminating service in the event the applicant fails to meet statutory and/or regulatory requirements, or in the event the applicant fails to comply with any provisions of the regulations contained in this part;

(v) by automatic termination in case of bankruptcy, closing out of business, or change in controlling ownership.

(2) In case the contracting party wishes to terminate the fishery products inspection service under the terms of paragraph (f)(1)(i) or (ii) of this section:

(i) the service must be continued until all unused containers, labels, and advertising material on hand or in possession of his supplier bearing official identification marks or reference to the fishery products inspection service have been used;

(ii) all unused containers, labels, and advertising material bearing official identification marks or reference to the fishery products inspection service must be destroyed;

(iii) official identification marks and all other reference to the fishery products inspection service on all unused containers, labels, advertising material must be obliterated; or

(iv) assurance satisfactory to NMFS must be furnished that all unused containers, labels, and advertising material bearing official identification marks or reference to the fishery products inspection service will not be used in violation of any of the provisions of the regulations in the part.

(3) In case the fishery products inspection service is terminated for cause by NMFS under the terms of paragraph (f)(1)(iii) or (iv) of this section, or in case of automatic termination under terms of paragraph (f)(1)(v) of this section, the contracting party must destroy all unused containers, labels, and advertising material on hand bearing official identification marks or reference to the fishery products inspection service or must obliterate official identification marks and all reference to the fishery products inspection service on said containers, labels and advertising material. After termination of the fishery products inspection service, NMFS may, at such time or times as it may determine to be necessary, during regular business hours, enter the establishment(s) or other facilities in order to ascertain that the containers, labels, and advertising material have been altered or disposed of in the manner provided herein, to the satisfaction of NMFS.

§ 260.33 Compliance with statutory and regulatory requirements.

Approved Establishments shall comply with all statutory and regulatory requirements and provisions pertaining to the production of fish and fishery products and other marine ingredients for human or animal consumption.

Miscellaneous

§ 260.34 Policies and procedures.

The policies and procedures pertaining to the Agency's inspection services are contained within the SIP Manual.

§ 260.35 Approved marks, shields, stamps and official statements.

As prescribed by the SIP Manual, Inspection Service participants meeting the requirements may request approval to utilize specified SIP Grade Marks, Shields, Stamps and Official Statements (collectively *SIP Insignia*).

(a) *Participants as approved establishments.* (1) Fish and Fishery products and other marine ingredients that are processed under Federal inspection to assure compliance with all applicable regulatory requirements through the SIP Approved Establishments Program may be eligible to bear an:

(i) Approved Establishment inspection mark; and/or,

(ii) Approved Establishment Official Statement.

Figure 1 to Paragraph (a)(1)(ii)—USDC Approved Establishment Inspection Mark

(2) Fish and Fishery products and other marine ingredients that are processed under Federal inspection to ensure compliance with all applicable regulatory requirements through the SIP Approved Establishments Program and certified by an inspector as meeting the requirements of the applicable Approved Specification additionally may be eligible to bear (as applicable):

(i) Grade A shield;

Figure 3 to Paragraph (a)(2)(ii)—Processed Under Federal Inspection (PUFI) Mark

(ii) Processed Under Federal Inspection (PUFI) mark; and/or

(iii) Other official statements and/or marks, as approved by SIP, *e.g.*

Figure 2 to Paragraph (a)(2)(i)—U.S. Grade A Shield

(3) Approved Establishments will not make deceptive, fraudulent, or unauthorized use in advertising, or otherwise, of the fishery products inspection service marks, the inspection certificates or reports issued, or the containers on which official identification marks are embossed or otherwise identified, in connection with the sale of any processed products;

(b) *Lot inspection marks.* (1) Fish and fishery products and other marine ingredients that have not been processed under Federal inspection may not be approved for the use of Grade or Inspection Marks. Such products may, however, be inspected on a Lot Inspection basis.

(2) Master cases and inspection certificates for products that are submitted for inspection through the lot inspection process identified in the SIP Manual and are certified by an inspector as meeting the requirements of the applicable USDC Approved Specification corresponding with the shield, may bear one or more of the following:

(i) USDC Accepted per Specifications shield;

Figure 4 to Paragraph (b)(2)(i)—USDC Accepted per Specifications Shield

(ii) Officially Sampled shield, *e.g.*

Figure 5 to Paragraph (b)(2)(ii)—Officially Sampled Shield

§ 260.36 Revocation of approval to use inspection marks and statements.

(a) Approval for use of SIP inspection marks, statements, and insignia will be rescinded when evidence indicates that processing conditions and/or product lots do not meet applicable regulatory, inspection and/or quality requirements per the SIP Manual.

(b) Any affected lot(s) shall be retained and may not enter commerce unless the lot meets minimum regulatory requirements to enter commerce and the SIP insignia is removed.

(c) The establishment or processor shall obtain written clearance from the Agency for the release of product lots that have been put on hold under this part.

§ 260.37 Compliance with other laws.

None of the requirements in the regulations in this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to the operation of food processing establishments and to processed food products.

§ 260.38 Identification.

Each inspector and licensed sampler shall have a means of identification furnished by the Agency in his/her possession and, while on duty, present such identification upon request.

§ 260.39 Debarment and suspension.

(a) *Debarment.* Any person may be debarred from using or benefiting from the inspection service provided under the regulations of this subchapter or under the terms of any inspection contract, and such debarment may apply to one or more processing establishments under their control, if such person engages in one or more of the following acts or activities:

(1) Misrepresenting, misstating, or withholding any material or relevant facts or information in conjunction with any application or request for an inspection contract, inspection service, inspection appeal, lot inspection, or other service provided for under the regulations of this subchapter.

(2) Using on a fish or fishery or other marine ingredient product any label that displays any official identification, official device, or official mark, when the label is not currently approved for use by the Director or his/her delegate.

(3) Using on a fish or fishery product or other marine ingredient any label that displays the words ''USDC Approved Establishment'' or ''Processed Under Federal Inspection, U.S. Department of Commerce''; any official mark, official device, or official identification; or a facsimile of the foregoing, when such product has not been inspected under the regulations of this subchapter.

(4) Making any statement or reference to the U.S. Grade of any product or any inspection service provided under the regulations of this subchapter on the label or in the advertising of any product when such product has not been inspected under the regulations of this subchapter.

(5) Making, using, issuing or attempting to issue or use in conjunction with the sale, shipment, transfer or advertisement of a product any certificate of loading, certificate of sampling, inspection certificate, official device, official identification, official mark, official document, or score sheet which has not been issued, approved, or authorized for use with such product by an inspector.

(6) Using any of the terms ''United States,'' ''Officially graded,'' ''Officially inspected,'' ''Government inspected,'' ''Federally inspected,'' ''Officially sampled,'' ''Grade A Equivalent'' or words of similar import or meanings, or using any official device, official identification, or official mark on the label, on the shipping container, or in the advertising of any fish or fishery product or other marine ingredient, when such product has not been inspected under the regulations of this subchapter.

(7) Using, attempting to use, altering or reproducing any certificate, certificate form, design, insignia, mark, shield, device, or figure which simulates in whole or in part any official mark, official device, official identification, certificate of loading, certificate of sampling, inspection certificate or other official certificate issued pursuant to the regulations of this subchapter.

(8) Assaulting, harassing, interfering, obstructing or attempting to interfere with or obstruct any inspector or licensed sampler in the performance of their duties under the regulations of this subchapter.

(9) Violating any one or more of the terms of any inspection contract or the provisions of the regulations of this subchapter.

(10) Engaging in acts or activities which destroy or interfere with the purposes of the inspection program or which have the effect of undermining the integrity of the inspection program.

(b) *Temporary suspension.* (1) Whenever the Director has reasonable cause to believe that any person has engaged in any act or activity described in paragraph (a) of this section and such act or activity, in the judgment of the Director, would cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter, the Director may, without a hearing, temporarily suspend, either before or after the institution of a debarment hearing, the inspection service provided under the regulations of this subchapter or under any inspection contract for one or more processing establishments under the control of such person. Notice of suspension shall be served by registered or certified mail, return receipt requested, and the notice shall specifically state those acts or activities of such person that are the basis for the suspension. The suspension shall become effective 5 days after receipt of the notice.

(2) Once a person has received a notice of a temporary suspension, a debarment hearing will be set for 30 days after the effective date of the suspension. Within 60 days after the completion of the debarment hearing, the Hearing Examiner shall determine, based upon evidence of record, whether the temporary suspension shall be continued or terminated. A temporary suspension shall be terminated by the Hearing Examiner if they determine that the acts or activities that were the bases for the suspension did not occur or will not cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter. This determination of the Hearing Examiner on the continuation or termination of the temporary suspension shall be final, and there shall be no appeal of this determination. The initial decision by the Hearing Examiner on the debarment shall be made in accordance with paragraph (b)(l), *Decisions,* of this section.

(3) After a debarment hearing has been instituted against any person by a suspension, such suspension will remain in effect until a final decision is rendered on the debarment in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(4) When a debarment hearing has been instituted against any person not under suspension, the Director may, in accordance with the regulations of this paragraph (b), of this section, temporarily suspend such person, and the suspension will remain in effect until a final decision on the debarment is rendered in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(c) *Hearing Examiner.* All hearings shall be held before a Hearing Examiner appointed by the Secretary or the Director.

(d) *Hearing.* If one or more of the acts or activities described in paragraph (a) of this section have occurred, the Director may institute a hearing to determine the length of time during which the person shall be debarred and those processing establishments to which the debarment shall apply. No person may be debarred unless there is a hearing, as prescribed in this section, and it has been determined by the Hearing Examiner, based on evidence of record, that one or more of the activities described in paragraph (a) of this section have occurred. Any debarment or suspension must be instituted within 2 years of the time when such acts or activities described in paragraph (a) of this section have occurred.

(e) *Notice of hearing.* The Director shall notify such person of the debarment hearing by registered or certified mail, return receipt requested. The notice shall set forth the time and place of the hearing, the specific acts or activities which are the basis for the debarment hearing, the time period of debarment being sought, and those processing establishments to which the debarment shall apply. Except for the debarment hearing provided for in paragraph (b) of this section the hearing will be set for a time not longer than 120 days after receipt of the notice of hearing.

(f) *Time and place of hearing.* The hearing shall be held at a time and place fixed by the Director: *Provided,* however, the Hearing Examiner may, upon a proper showing of inconvenience, change the time and place of the hearing. Motions for change of time or place of the hearing must be mailed to or served upon the Hearing Examiner no later than 10 days before the hearing.

(g) *Right to counsel.* In all proceedings under this section, all persons and the Department of Commerce shall have the right to be represented by counsel, in accordance with the rules and regulations set forth in title 15, Code of Federal Regulations, Part 906.

(h) *Form, execution, and service of documents.* (1) All papers to be filed under the regulations in this section shall be clear and legible; and shall be dated, signed in ink, contain the docket description and title of the proceeding, if any, and the address of the signatory. Documents filed shall be executed by:

(i) The person or persons filing same;

(ii) An authorized officer thereof if it be a corporation; or

(iii) An attorney or other person having authority with respect thereto.

(2) All documents, when filed, shall show that service has been made upon all parties to the proceeding. Such service shall be made by delivering one copy to each party in person or by mailing by first-class mail, properly addressed with postage prepaid. When a party has appeared by attorney or other representative, service on such attorney or other representative will be deemed service upon the party. The date of service of document shall be the day when the matter served is deposited in the U.S. mail, shown by the postmark thereon, or is delivered in person, as the case may be.

(3) A person is deemed to have appeared in a hearing by filing with the Director a written notice of their appearance or their authority to appear on behalf of one of the parties to the hearing.

(4) The original of every document filed under this section and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form: ''I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by: (1) Mailing postage prepaid, (2) delivering in person, or (3) electronically delivering a copy to each party.

Dated at_____this_____day of_____, 20____

Signature_____''

(i) *Procedures and evidence.* (1) All parties to a hearing shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the Hearing Examiner at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this section, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary.

(j) *Duties of Hearing Examiner.* The Hearing Examiner shall have the authority to:

(1) Take depositions or cause depositions to be taken;

(2) Regulate the course of the hearings;

(3) Prescribe the order in which evidence shall be presented;

(4) Dispose of procedural requests or similar matters;

(5) Hear and initially rule upon all motions and petitions before them;

(6) Administer oaths and affirmations;

(7) Rule upon offers of proof and receive competent, relevant, material, reliable, and probative evidence;

(8) Prevent the admission of irrelevant, immaterial, incompetent, unreliable, repetitious, or cumulative evidence;

(9) Hear oral arguments if the Hearing Examiner determined such requirement is necessary;

(10) Fix the time for filing briefs, motions, and other documents to be filed in connection with hearings;

(11) Issue the initial decision and dispose of any other pertinent matters that normally and properly arise in the course of proceedings; and

(12) Do all other things necessary for an orderly and impartial hearing.

(k) *The record.* (1) The Director will designate an official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and briefs filed therewith, shall be filed with the Director. Transcripts of testimony will be available in any proceeding under the regulations of this section at rates fixed by the contract between the United States of America and the reporter. If the reporter is an employee of the Department of Commerce, the Director will fix the rate.

(2) The transcript of testimony and exhibits, together with all briefs, papers, and all rulings by the Hearing Examiner shall constitute the record. The initial decision will be predicated on the same record, as will the final decision.

(l) *Decisions.* (1) The Hearing Examiner shall render the initial decision in all debarment proceedings before them. The same Hearing Examiner who presides at the hearing shall render the initial decision except when such Examiner becomes unavailable to the Department of Commerce. In such case, another Hearing Examiner will be designated by the Secretary or Director to render the initial decision. Briefs or other documents to be submitted after the hearing must be received not later than 20 days after the hearing unless otherwise extended by the Hearing Examiner upon motion by a party. The initial decision shall be made within 60 days after the receipt of all briefs. If no appeal from the initial decision is served upon the Director within 10 days of the date of the initial decision, it will become the final decision on the 20th day following the date of the initial decision. If an appeal is received, the appeal will be transmitted to the Secretary who will render the final decision after considering the record and the appeal.

(2) All initial and final decisions shall include a statement of findings and

conclusions, as well as the reasons or bases therefore, upon the material issues presented. A copy of each decision shall be served on the parties to the proceeding and furnished to interested persons upon request.

(3) It shall be the duty of the Hearing Examiner, and the Secretary where there is an appeal, to determine whether the person has engaged in one or more of the acts or activities described in paragraph (a) of this section, and, if there is a finding that the person has engaged in such acts or activities, the length of time the person shall be debarred and the processing establishments to which the debarment shall apply.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 241022–0278]

RIN 0648–BN08

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Fishery Management Plan; Amendment 33; 2025–26 Biennial Specifications and Management Measures

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

ACTION: Final rule.

SUMMARY: This final rule establishes the 2025–26 harvest specifications for groundfish caught in the U.S. exclusive economic zone (EEZ) seaward of Washington, Oregon, and California, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA) and the Pacific Coast Groundfish Fishery Management Plan (PCGFMP). This final rule also revises management measures intended to keep the total annual catch of each groundfish stock or stock complex within the annual catch limits. These measures are intended to help prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best scientific information available. Additionally, this final rule makes minor corrections (*e.g.,* correcting grammar, removing outdated regulations, revisions for clarity) to the regulations, as well as technical corrections recommended by the Pacific Fishery Management Council (Council) at their September 2024 meeting. Last, this final rule implements amendment 33 to the PCGFMP, which establishes a rebuilding plan for California quillback rockfish and revises the allocation framework for shortspine thornyhead.

DATES: Effective January 1, 2025.

ADDRESSES: The Analysis, which addresses the National Environmental Policy Act, Presidential Executive Order 12866, the Regulatory Flexibility Act, and the Magnuson-Stevens Fishery Conservation and Management Act, is accessible via the internet at the NMFS West Coast Region website at *https://www.fisheries.noaa.gov/region/west-coast.* The final 2024 Stock Assessment and Fishery Evaluation (SAFE) report for Pacific Coast groundfish, as well as the SAFE reports for previous years, are available from the Council's website at *https://www.pcouncil.org.* The final Council Analytical Document, which describes the Council's final recommendations on the 2025–26 harvest specifications and management measures and amendment 33, is also available from the Council's website at *https://www.pcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Lynn Massey, Fishery Management Specialist, at 562–900–2060 or *lynn.massey@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Harvest Specifications

This final rule sets 2025–26 harvest specifications and management measures for the 90+ groundfish stocks or management units which currently have annual catch limits (ACLs) or ACL contributions to stock complexes managed under the PCGFMP, except for Pacific whiting. Pacific whiting harvest specifications are established annually through a separate bilateral process with Canada.

The proposed overfishing limits (OFLs), acceptable biological catches (ABCs), and ACLs are based on the best available biological and socioeconomic data, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. See tables 1a and 2a to Part 660, Subpart C in the regulatory text supporting this rule for the 2025–26 OFLs, ABCs, and ACLs for each stock or stock complex.

A detailed description of each stock and stock complex for which the Council establishes harvest specifications set through this rule can be found in the 2024 SAFE document posted on the Council's website at *https://www.pcouncil.org/stock-assessments-star-reports-stat-reports-rebuilding-analyses-terms-of-reference/safe-documents-4/.* A summary of how the 2025–26 harvest specifications were developed, including a description of off-the-top deductions for Tribal, research, incidental open access (IOA), and experimental fisheries, was provided in the proposed rule (87 FR 70406, August 29, 2024) and is not repeated here. Additional information on the development of these harvest specifications is also provided in the Analysis.

For most stocks, the Council recommended harvest specifications based on the default harvest control rule used in the prior biennium. The Council recommended deviating from the default harvest control rule for four stocks in 2025–2026. Table 1 presents a summary of the changes to the harvest control rules for these stocks for the 2025–26 biennium. Each of these changes was discussed in the proposed rule and that discussion is not repeated here.

TABLE 1—CHANGES TO HARVEST CONTROL RULES FOR THE 2025–26 BIENNIUM

Stock	Default harvest control rule [a]	Alternative harvest control rule [a]
Rex Sole	ACL = ABC (P* 0.40)	ACL = ABC (P* 0.45).
Shortspine thornyhead [b]	ACL < ABC (P* 0.40)	ACL < ABC (P* 0.45), 40–10 HRC applied.
Dover sole	ACL = 50,000 metric tons (mt)	ACL = ABC (P* 0.45).
Quillback Rockfish off California	ACL contribution < ABC (SPR 0.55; P* 0.45) [c]	ABC Rule [d] (ACL = ABC; P* 0.45).

[a] The Default Harvest Control Rules were used to set the ACLs in 2023 and 2024. The Alternative Harvest Controls rules are the proposed changes for setting the ACLs in 2025 and 2026.

[b] The 40–10 adjustment applies where a precautionary reduction is warranted, per the PCGFMP at section 4.6.1. The 40–10 adjustment reduces the harvest rate to help the stock return to the maximum sustainable yield level.

[c] In 2023–24, the harvest control rule (ACL contribution < ABC, SPR 0.55; P* 0.45) specified an ACL contribution because quillback rockfish was still part of the Nearshore rockfish complex. For 2025–26, California quillback rockfish is proposed to be taken out of the Nearshore complex and managed pursuant to a stock-specific ACL.
[d] The Council recommended the ABC Rule as the alternative harvest control rule based on a range of harvest strategies analyzed in the California Quillback Rockfish Rebuilding Plan new management measure, which is described in section III, P of this preamble.

II. Management Measures

This final rule revises management measures, which are used to further allocate the ACLs to the various components of the fishery (*i.e.,* biennial fishery harvest guidelines and set-asides) and to control fishing. Management measures for the commercial fishery modify fishing behavior during the fishing year to ensure catch does not exceed the ACL, and include trip and cumulative landing limits, time/area closures, size limits, and gear restrictions. Management measures for the recreational fisheries include bag limits, size limits, gear restrictions, fish dressing requirements, and time/area closures. Each of these changes was discussed in the proposed rule and that discussion is not repeated here.

A. Deductions From the ACLs

Before making allocations to the primary commercial and recreational components of groundfish fisheries, the Council recommends ''off-the-top deductions,'' or deductions from the ACLs to account for anticipated mortality for certain types of activities, including: (1) harvest in Pacific Coast treaty Indian Tribal fisheries; (2) harvest in scientific research activities; (3) harvest in non-groundfish fisheries (*i.e.,* IOA catch); and (4) harvest that occurs under exempted fishing permits (EFPs). As part of NMFS' effort to simplify regulations pertaining to harvest specifications, the footnotes that typically specify these values in tables 1a, 1b, 2a, and 2b of subpart C have been removed, and all off-the-top deductions for individual stocks or stock complexes and are included in the 2024 SAFE. The details of the EFPs are discussed below in section II, I of this preamble and section III, I of the proposed rule.

B. Annual Catch Targets

As defined at 50 CFR 660.11, an annual catch target (ACT) is a management target set below the ACL that may be used as an accountability measure in cases where there is uncertainty in inseason catch monitoring to ensure against exceeding an ACL. Since the ACT is a target and not a limit, it can be used in lieu of harvest guidelines (HGs) or set strategically to accomplish other management objectives. Sector-specific ACTs can also be specified to accomplish management objectives. For the 2025–26 biennium, NMFS is implementing ACTs for yelloweye rockfish in the non-trawl sectors (both commercial and recreational), copper rockfish in the recreational sector south of 34° 27′ North latitude (N lat.), and shortspine thornyhead in the commercial non-trawl sector north of 34° 27′ N lat. Further, NMFS is removing the ACT from the 2023–24 biennium for California quillback rockfish. These ACTs can be found in the footnotes to tables 1a and 2a to part 660, subpart C in the regulatory text of this final rule.

C. Biennial Fishery Allocations

The Council routinely recommends 2-year trawl and non-trawl allocations during the biennial specifications process for stocks without formal allocations (as defined in section 6.3.2 of the PCGFMP) or stocks where the long-term allocation is suspended because the stock is declared overfished. The 2-year trawl and non-trawl allocations, with the exception of sablefish north of 36° N lat., are based on the fishery HG. The fishery HG is the tonnage that remains after subtracting the off-the-top deductions described in section II, A, entitled ''Deductions from the ACLs,'' in this preamble. The trawl and non-trawl allocations and recreational HGs are designed to accommodate anticipated mortality in each sector as well as variability and uncertainty in those mortality estimates. Additional information on the Council's allocation framework and formal allocations can be found in section 6.3 of the PCGFMP and 50 CFR 660.55 of the Federal regulations. Allocations are detailed in the harvest specification tables appended to 50 CFR part 660, subpart C in the regulatory text of this final rule and described in section III, C of the proposed rule. As proposed, allocations for shortspine thornyhead and widow rockfish are revised with this final rule.

D. Harvest Guideline Sharing Agreements

For each biennium, the Council can consider HG sharing agreements for other stocks or stock complexes separate from the standard list of biennial allocations discussed in section II, C of this preamble and in section III, C of the proposed rule. These sharing agreements can be arrangements on how the HG is split among separate states, fishery sectors, or both. For the 2025–26 biennium, NMFS is implementing sharing agreements for: bocaccio south of 40°10′ N lat., canary rockfish, cowcod, Nearshore rockfish complex north of 40°10′ N lat., sablefish south of 36° N lat., slope rockfish south of 40°10′ N lat., and blackgill rockfish. All sharing agreements are maintained from the 2023–24 biennium, with the exception of sablefish south of 36° N lat. NMFS is implementing a new sharing agreement for sablefish south of 36° N lat. (described in section III, D of the proposed rule) based on a new recreational set-aside. Refer to the Council Analytical Document (see **ADDRESSES**) for more information on how these HG sharing agreements were chosen. Each of the sharing agreements and the resulting shares between sectors and/or states are published in the SAFE.

E. Modifications to Waypoints for Rockfish Conservation Areas

Rockfish Conservation Areas (RCAs) are large area closures intended to reduce the catch of a rockfish stock or stock complex by restricting fishing activity at specific depths. The boundaries for RCAs are defined by straight lines connecting a series of latitude and longitude coordinates that approximate depth contours. These sets of coordinates, or lines, are not gear or fishery specific, but can be used in combination to define an area. NMFS then implements fishing restrictions for a specific gear and/or fishery within each defined area. For the 2025–26 biennium, NMFS is making coordinate modifications to six waypoints (#95 through 100) on the 50 fathom (fm) line seaward of California between Pt. Arena and Bodega Bay. These modifications would better align existing RCA coordinates with the 50-fm chart-based depth contour.

F. Limited Entry Trawl

The limited entry trawl fishery is made up of the shorebased individual fishing quota (IFQ) program (for whiting and non-whiting) and the at-sea whiting sectors (Mothership (MS) and catcher-processor (C/P)). For some stocks and stock complexes with a trawl allocation, an amount is first set-aside for the at-sea whiting sector with the remainder of the trawl allocation going to the Shorebased IFQ sector. Set-asides are not managed

by NMFS or the Council except in the case of a risk to the ACL.

At-Sea Set Asides

For several species, the trawl allocation is reduced by an amount set-aside for the at-sea whiting sector. This amount is designed to accommodate catch by the at-sea whiting sector when they are targeting Pacific whiting. This final rule adopts at-sea set asides as shown in section III, F, table 11 of the proposed rule.

Incidental Trip Limits for IFQ Vessels

For vessels fishing in the Shorebased IFQ Program, with either groundfish trawl gear or non-trawl gears, the following incidentally-caught stocks are managed with trip limits: Nearshore rockfish complex north and south of 40°10′ N lat., Washington black rockfish, Oregon black/blue/deacon rockfish complex, cabezon (46°16′ to 40°10′ N lat. and south of 40°10′ N lat.), Pacific spiny dogfish, longspine thornyhead south of 34°27′ N lat., big skate, California scorpionfish, longnose skate, Pacific whiting, and the Other Fish complex. As described in the proposed rule in section III, F, this rule maintains the same IFQ fishery trip limits for these stocks for the start of the 2025–26 biennium as those in place in 2024. Trip limits for the IFQ fishery can be found in table 1b (North) and table 1b (South) to part 660, subpart D in the regulatory text of this final rule. Changes to trip limits would be considered a routine measure under § 660.60(c), and may be implemented or adjusted, if determined necessary, through inseason action.

G. Limited Entry Fixed Gear (LEFG) and Open Access (OA) Non-Trawl Fishery

Management measures for the LEFG and OA non-trawl fisheries tend to be similar because the majority of participants in both fisheries use hook-and-line gear. Management measures, including area restrictions (*e.g.,* Non-Trawl RCA) and trip limits in these non-trawl fisheries, are generally designed to allow harvest of target stocks while keeping catch of overfished stocks low. LEFG trip limits are specified in table 2b (North) and table 2b (South) to subpart E in the regulatory text of this final rule. OA trip limits are specified in table 3b (North) and table 3b (South) to subpart F, in the regulatory text of this final rule. HG sharing agreements between non-trawl sectors are published in the SAFE.

LEFG and OA Trip Limits

NMFS is implementing status quo trip limits for LEFG and OA fisheries in 2025, with the exception of the OA trip limit for lingcod north of 42° N lat., which is being decreased from 11,000 pounds (lb) (4,990 kilograms (kg)) per 2 months, to 9,000 lb (4,082 kg) per 2 months, to ensure the OA trip limit is lower than the LEFG trip limit. NMFS is also modifying the temporal component (*i.e.,* monthly to bimonthly) of multiple OA and LEFG trip limits. Consolidating trip limits from monthly to bimonthly is expected to reduce regulatory complexity and confusion. With the exception of the trip limit for lingcod north of 42° N lat., trip limit amounts that were monthly will double for the bimonthly trip limit (*i.e.,* a trip limit that was 100 lb (45 kg) monthly will become a 200 lb (91 kg) trip limit in the bimonthly option). The Council could recommend further adjustment to the trip limits through additional inseason action, once more data on the current limits is collected and the effects on mortality, particularly discard mortality, are better understood. More information on these trip limits can be found in the Council Analytical Document (see **ADDRESSES**).

Primary Sablefish Tier Limits

The primary sablefish fishery tier program is a limited access privilege program set up under amendment 14 to PCGFMP (66 FR 41152, August 7, 2001). Participants hold limited entry permits with a pot gear and/or longline gear endorsement and a sablefish endorsement.

Under amendment 14, as set out in 50 CFR 660.231, the permit holder of a sablefish-endorsed permit receives a tier limit, which is an annual share of the sablefish catch allocation to this sector. NMFS sets three different tier limits through the biennial harvest specifications and management measures process and up to three permits may be stacked at one time on a vessel participating in the fishery. Stacked tier limits are combined to provide a cumulative catch limit for that vessel. After vessels have caught their full tier limits, they are allowed to move into other fisheries for sablefish, specifically the LEFG or OA trip limit fishery, or fisheries for other species. The tier limits for 2025 are as follows: Tier 1 at 246,824 lb (111,957 kg), Tier 2 at 112,193 lb (50,890 kg), and Tier 3 at 64,110 lb (29,080 kg). The tier limits for 2026 are as follows: Tier 1 at 234,312 lb (106,282 kg), Tier 2 at 106,506 lb (48,310 kg), and Tier 3 at 60,860 lb (27,606 kg).

H. Recreational Fisheries

Management measures for the recreational fisheries typically include depth restrictions and bag limits to constrain catch within the recreational HGs for each stock. These measures are designed to limit catch of overfished stocks found in the waters adjacent to each state while allowing target fishing opportunities in their particular recreational fisheries. Washington, Oregon, and California each proposed, and NMFS is implementing, different combinations of seasons, bag limits, area closures, and size limits for stocks targeted in recreational fisheries, as described in section III, H of the proposed rule. This final rule would set these measures for recreational fisheries occurring in the EEZ. Each state, respectively, typically sets measures for recreational fisheries in State waters. Changes to management measures for recreational fisheries off the coasts of Washington, Oregon and California can be found in § 660.360 of the regulatory text of this final rule.

I. Permit Program for the Directed OA Fishery Sector

NMFS is implementing a new permit program for the directed OA sector starting on March 1, 2025. The directed OA fishery is defined in 50 CFR 660.11 under ''open access fishery'' and includes those vessels targeting groundfish pursuant to the OA regulations under Part 660 subpart F. It does not include vessels that retain groundfish incidentally to non-groundfish target species (*e.g.,* the salmon troll fishery, which may retain incidentally caught groundfish). For more background information on this measure, see section III, J of the proposed rule.

The permit program will require vessels that intend to participate in the directed OA sector to register their information, pay an administrative fee, and obtain a permit on an annual basis. Permits will expire on the last day of the birth month of the permit holder. The number of permits will not be capped. Permits will be assigned to a vessel owner per vessel (*i.e.,* if an owner intends to use two vessels in the directed OA fishery, they would need to obtain two permits, one for each vessel). Applications will be available year-round with an estimated 2-week turnaround between when an applicant submits a complete application and when a permit is issued; therefore, directed OA participants will need to do some short-term planning ahead for their participation in the sector. NMFS will use its existing web-based application with digital submission and delivery of the permit applications and to allow participants to provide either digital or paper proof of permit upon

request. Required application information includes vessel ownership documentation from either the U.S. Coast Guard or state registration form. Permit lists would be shared with the West Coast Groundfish Observer Program for observer selection purposes.

All permits issued by NMFS carry an administrative cost, per the requirements for user fees based on the provision of a service. These costs vary based on the administrative costs of receiving applications, reviewing applications and any associated required documentation, and issuing permits, as a factor of the number of expected applications. The cost of the directed OA permit is estimated to be $73 per permit. This amount was determined in accordance with the NOAA Finance Handbook available at *https://www.corporateservices.noaa.gov/finance/documents/NOAAFinanceHBTOC_09.06.19.pdf* and will be specified on the application form. The fee must be submitted with the application for the application to be considered complete. NMFS periodically recalculates the cost of permits, and will notify affected users on the application form in the future if the cost changes.

In the proposed rule, NMFS solicited public comment on whether vessel monitoring system (VMS) information should be required during the application process for the directed OA permit. All directed OA vessels are required to obtain and activate VMS in accordance with 50 CFR 660.14. NMFS did not receive any formally-submitted public comment related to this aspect of the proposed rule and after additional consideration, NMFS has decided to include this requirement in this final action. Specifically, the directed OA application will require the ''passcode,'' which is a code given to a fisherman when NOAA's Office of Law Enforcement confirms that their VMS unit has been activated. If fishermen do not know their passcode, they can call the West Coast Groundfish Declarations Line at 1–888–585–5518 to obtain that information.

Additionally, in the proposed rule, NMFS solicited public comment on whether or not the ability to dual declare both a directed OA declaration code (codes 33 through 35 at § 660.13(d)(4)(iv)(A)) and an IOA declaration code should be restricted. The purpose of this restriction would be to better delineate directed OA fishermen from IOA fishermen. NMFS did not receive any written public comment related to this aspect of the proposed rule and, after additional consideration, NMFS has decided to not restrict this activity.

J. Update Electronic Monitoring Program Discard and Retention Requirements

NMFS is modifying the regulations pertaining to discard and retention requirements in the Electronic Monitoring (EM) program for non-IFQ species, to include sablefish and rex sole, and to exclude California halibut. The addition of sablefish and rex sole to the existing list in regulations, and removing California halibut from them, align current practices with the vessel monitoring plans that were approved under the Electronic Monitoring Program EFP. For more background information on this measure, see section III, K of the proposed rule.

K. Shortspine Thornyhead Allocation Framework

NMFS is modifying the allocation framework for shortspine thornyhead. These modifications include removing the management line at 34°27′ N lat. and combining the area-specific ACLs, off-the-top deductions, HGs, and trawl/non-trawl allocations that would have otherwise been assigned north and south of 34°27′ N lat. NMFS is also changing shortspine thornyhead to a 2-year allocation species (*i.e.,* trawl/non-trawl allocation amounts will be set biennially as opposed to specified in the PCGFMP). See table 1a and table 2a to subpart C in the regulatory text of this final rule for the new 2025 and 2026 ACLs, and see table 1b and table 2b to subpart C in the regulatory text of this final rule for the new biennial trawl/non-trawl allocations. These allocation amounts may be revisited by the Council in future biennia. For more background information on this measure, see section III, L of the proposed rule.

L. Requirement for Recreational Vessels To Possess a Descending Device

NMFS is implementing a new management measure that requires recreational vessels fishing in Federal waters seaward of Washington, Oregon, or California, to possess a functional descending device. The requirement is one functional descending device per vessel, regardless of the number of anglers onboard. Although each of the respective states have their own requirements, those requirements are only applicable in State waters. This management measure applies to any vessel fishing for groundfish under recreational catch limits in Federal waters, thus creating continuity across State and Federal regulations. Anglers are required to present the descending device at the request of an enforcement officer. For more background information on this measure, see section III, M of the proposed rule.

M. Modification to Continuous Transit Limitations for California Recreational Vessels

NMFS is modifying the continuous transit regulations for California recreational vessels. These changes allow recreational vessels to stop and/or anchor in Federal waters shoreward of a Recreational RCA line, provided that no hook-and-line gear is deployed. NMFS took temporary emergency action to modify the continuous transit regulations for the 2024 fishing year (89 FR 22352, April 1, 2024 and 89 FR 67326, August 20, 2024). NMFS is making the same modifications permanent through this action for the 2025–26 biennium and beyond. For more background information on this measure, see section III, N of the proposed rule.

N. Change to the Scientific Name of Pacific Sand Lance and the Common Name of Pacific Spiny Dogfish

NMFS is making administrative changes to the regulations that correct the scientific name of Pacific sand lance and the common name of Pacific spiny dogfish. The scientific name for Pacific sand lance at § 660.5(a) is incorrectly listed as *Ammodytes hexapterus.* The correct scientific name for this species is *Ammodytes personatus.* The common name for spiny dogfish *(Squalus suckleyi)* has changed to include ''Pacific'' thus the correct common name is Pacific Spiny Dogfish.

O. Rebuilding Plan for California Quillback Rockfish

NMFS is implementing a rebuilding plan for California quillback rockfish. NMFS declared California quillback rockfish overfished in December 2023 in response to a data-moderate assessment conducted by the Northwest Fisheries Science Center in 2021 (Agenda Item E.2, Attachment 4, November 2021). When NMFS declares a stock overfished, the Council must develop and manage the stock in accordance with a rebuilding plan (50 CFR 600.310(j)), which must include certain rebuilding parameters, including T_{MIN}, T_{MAX}, and T_{TARGET}. In March 2024, the Council adopted the California quillback rockfish rebuilding analysis (Agenda Item F.2 Attachment 1, March 2024), which specified the following rebuilding parameters: T_{MIN} = 2045, T_{MAX} = 2071, and mean generation time of 26 years. T_{TARGET} (2060) was selected

based on the chosen rebuilding strategy, which is the stock's ABC Rule (ACL = ABC; P* 0.45). As shown in the Analysis, this rebuilding strategy has a 50 percent probability of rebuilding the stock by 2060 (T_{TARGET}) and 73.6 percent probability of rebuilding by T_{MAX} (2071). Accordingly, this strategy will rebuild the stock within the MSA-mandated timeframe, while still providing some fishing opportunity to meet the needs of the fishing communities. For more information about how these rebuilding parameters were developed, see the Analysis and section III, P of the proposed rule.

The majority of quillback rockfish fishing mortality occurs in State waters. The rebuilding plan only applies in the EEZ. NMFS expects to work cooperatively with the California Department of Fish and Wildlife (CDFW) on any measures the state deems fit to apply in state waters to support rebuilding throughout the stock's range. Mortality of California quillback rockfish in state waters will be deducted from the Federal ACL.

P. Administrative Changes to 50 CFR Part 660

This final rule makes minor corrections to the regulations at 50 CFR part 660, which were included in the proposed rule. These minor corrections are necessary to reduce confusion and inconsistencies in the regulatory text, alleviate enforcement challenges, and ensure the regulations accurately implement the Council's intent.

At § 660.11, NMFS removed the definition for ''grandfathered or first generation'' because it is a term that is no longer used in Federal regulations.

At § 660.13, NMFS made various changes to the non-trawl logbook regulations. First, at § 660.13(a)(3)(ii)(A) and (B), NMFS amended the regulations to clarify that information on setting and retrieving gear must be recorded for every set. The regulations as previously written: ''Logbook entries for setting gear, including vessel information, gear specifications, set date/time/location, must be completed within 2 hours of setting gear'' created enforcement challenges because some fishermen interpreted the regulations to mean that they were only required to record information once all of their gear was deployed (*i.e.,* if they set a portion of their gear on one day, and the rest of their gear the next day, they interpreted that to mean the 2-hour requirement starts after the last piece of gear is set). Amending these regulations clarifies that the 2-hour and 4-hour requirements for setting and retrieving gear apply to each individual set. Second, at § 660.13(a)(3)(ii)(A) and (B), NMFS clarified that all logbook information, whether recorded inside or outside of the electronic application, must be available at-sea for review by an enforcement officer. The regulations as written: ''Information recorded outside of the logbook entry must be available for review at-sea by authorized law enforcement personnel upon request'' have led to enforcement challenges because some fishermen have interpreted the regulations to mean they are only required to show enforcement officers logbook data that they have recorded outside of the electronic application. Amending these regulations clarifies that all logbook data, whether recorded in the electronic application or by some other method, must be available for review by an enforcement officer. Third, NMFS removed the paragraph at § 660.13(a)(4), as the non-trawl paper logbook provision will expire at the end of 2024 and this regulation will no longer be relevant starting in 2025.

At § 660.55(i)(2), NMFS clarified that at-sea set-asides are described in the biennial specifications process and not ''in Tables 1D and 2D of this subpart'' as previously stated.

At § 660.60(c)(1)(i), NMFS removed the cross reference to ''(c)(1)(i)(A) and (B) of this section'' as those references no longer exist.

At § 660.60(g) and § 660.65, NMFS clarified the language about how catch of groundfish species in state waters is accounted for under Federal harvest specifications.

At § 660.140(g), NMFS added a sentence clarifying that IFQ species with discard mortality rates (DMRs) should be appropriately accounted for when deducting discard amounts from quota pounds (QP) in vessel accounts. As previously written, the regulations stated that discarded species must be accounted for and deducted from QP in vessels accounts, but they did not state that the species with reduced discard amounts because of DMRs should be accounted for when deducting discard amounts from QP in vessels accounts. Revising this regulation clarifies that IFQ species with DMRs should also be accounted for when deducting discard amounts from QP in vessel accounts.

At § 660.230(b) and § 660.330(b), NMFS removed the 25-hook maximum limit on each mainline. As previously written, the regulations precluded fishermen from adjusting the number of hooks on mainlines if they were using fewer than four mainlines. For example, if a fisherman chooses to only have two mainlines in the water, then the intent of the regulations is to allow a maximum of 50 hooks on each mainline. However, as previously written, the fisherman would still only be able to use 25 hooks per mainline. The gear specifications require that no more than 100 hooks may be in the water, therefore, removing the 25-hook maximum does not change the intent of the regulations.

At § 660.231, NMFS revised the paragraph at (b)(3)(iv) to improve readability. The purpose of these revisions is to make the regulatory text less confusing for fishermen and enforcement to interpret. No substantive changes to this regulation were made.

III. Comments and Responses

The notice of availability (NOA) for amendment 33 to the PCGFMP was published on August 2, 2024 (89 FR 63153). NMFS received one supportive public comment on the NOA. The proposed rule was published on August 29, 2024 (87 FR 70406). NMFS received two public comments which were generally supportive of the proposed rule, one of which offered technical corrections. All public comments pertaining to the changes to the PCGFMP and harvest specification and management measures described in the proposed rule are summarized and addressed below.

Comment 1: CDFW submitted a public comment that supported the proposed rule. CDFW also provided NMFS with a list of technical corrections and clarifications to the text in the preamble of the proposed rule.

Response: NMFS thanks CDFW for their support and thorough review of the proposed rule. All technical corrections and clarifications requested by CDFW were to text or tables in the preamble of the proposed rule; none of which are carried forward in the preamble of this final rule. However, NMFS affirms the below technical corrections and clarifications to the proposed rule preamble text and tables.

On page 70414, the cabezon IOA set-aside for 2025 in table 5 was incorrectly listed as 0.06 mt. The correct value is 0.6 mt. With the implementation of this final rule, IOA set-asides are no longer specified in regulatory text, but will be available in the SAFE posted on the Council's website (see **ADDRESSES**).

On page 70416, the 2026 bocaccio south of 40°10′ N lat. non-trawl percentage and value in table 8 was incorrectly listed as 60 percent and 1,025.1 mt. The correct values are 61 percent and 1,012.7 mt. These values were correctly listed in the proposed regulatory text in table 2b to Part 660, Subpart C on page 70436.

On page 70421, the season dates for the Northern Mendocino, San Francisco, and part of the Central Groundfish Management Areas (GMAs) were incorrectly listed as April 1–April 31. The correct dates are April 1–April 30. Additionally, on page 70421 in the same paragraph, the ''closed in the EEZ'' text, listed between the October and December seaward of 50 fm fisheries, did not provide a corresponding time for that closure, which should be November 1–November 30. These season dates and time ranges were accurately listed in table 13 on page 70421. Last, on page 70421, CDFW recommended that NMFS use consistent naming conventions for the Central Management Areas, as CDFW uses in their state regulations. NMFS lists these two areas as Central Management Area (37°11′ N lat. to 36° N lat.) and Central Management Area (36° N lat. to 34°27′ N lat.), whereas CDFW refers to these areas as ''Central north'' and ''Central south.'' NMFS will consider this recommendation in the drafting of future rulemakings.

On page 70422, CDFW commented that NMFS mis-characterized how RCA lines have historically been used for recreational fisheries. NMFS agrees that using a range of depths, *i.e.,* implementing an RCA closure between two fathom lines, is a standard practice for the commercial non-trawl fishery, and not the recreational fishery as the proposed rule text suggests. Additionally, on page 70422, CDFW commented that NMFS incorrectly identified the first time that the 50 fm ''offshore fishery'' management measure was enacted. NMFS cited the Council's September 2023 inseason action (88 FR 67656, October 2, 2023) as the first time the 50 fm ''offshore fishery'' came into effect, while CDFW commented that such an ''offshore fishery'' was in effect from May 15 to July 15, 2023, in the San Francisco and Mendocino GMAs, and that offshore only fisheries were also scheduled to occur from October 1 through December 31, 2023, in the Central GMA, and from September 16 through December 31, 2023, in the Southern GMA. These scheduled offshore fishery management measure actions identified by CDFW were enacted by CDFW through their State regulations. Thus, NMFS correctly cited the September 2023 inseason action as the first time that an ''offshore fishery'' management measure was enacted in Federal waters through the Council process. Next, on page 70422, NMFS affirms CDFW's comment that the seasonal Recreational RCA boundaries listed in table 13 are not an ''exception'' to the recreational management measures to be carried forward from 2024 to the 2025–26 biennium, as the text suggests. No changes were made to the season structure and depth limits by management area between 2024 and 2025–26. NMFS did however change the language used in table 13 to describe when recreational vessels are required to fish shoreward of 20 fm (*i.e.,* NMFS denotes ''closed in the EEZ'' instead of ''<20 fm''). Last, on page 70422, when discussing the modification of filet requirements for select groundfish species, CDFW recommended that NMFS specify the ''entire skin'' when referring to the skin that is required to be left on the filet. NMFS affirms that the intent is for the ''entire skin'' to be left on the filet in the modified requirements.

The remainder of CDFW's suggestions, such as deleting commas and rearranging paragraphs, do not apply in this final rule as the text commented on is not being carried forward in this final rule.

Comment 2: The Pacific Whiting Conservation Cooperative (PWCC) submitted a comment that supports the proposed rule; specifically the proposed set-asides for the at-sea Pacific whiting sectors.

Response: NMFS thanks the PWCC for their support and appreciates their collaboration on the development of the set-asides.

Comment 3: An anonymous individual submitted a comment on the NOA that supports the proposed amendment, including the California Quillback Rockfish Rebuilding Plan and the revised allocation framework for shortspine thornyhead.

Response: NMFS thanks the commenter for their support of the proposed amendment.

IV. Council-Recommended Corrections to the Proposed Rule

At the September 2024 meeting, the Council discussed and recommended necessary corrections to the proposed rule that were discovered by Council and NMFS staff during the preparation of the proposed rule. The Council also recommended that certain inseason changes for 2024 be carried over to the start of 2025. In alignment with the Council's recommendations, NMFS offers the following corrections and carryover changes in this final rule. These corrections and changes to the proposed rule do not change the substance or intent of this action.

In tables 1a, 1b, 2a, and 2b to 50 CFR part 660 Subpart C in the regulatory text of the proposed rule (see 87 FR 70434 through 87 FR 70438), the OFLs, ABCs, ACLs, and biennial allocations for the Shelf Rockfish complexes north and south of 40°10′ N lat are incorrect. In addition, the trawl IFQ allocations for north of 40°10′ N lat on table 1 to paragraph (d)(1)(ii)(D) to Part 660 Subpart D are incorrect (see 87 FR 70439). These errors occurred because the harvest specifications for greenspotted rockfish, which is a component species of the Shelf Rockfish complexes, were incorrect in the Council's final Analytical Document (see **ADDRESSES**), and those specifications contributed to the overall OFLs, ABCs, ACLs, and allocations for the Shelf Rockfish complexes specified in the proposed rule. The Council's Scientific and Statistical Committee reviewed and approved the revised OFLs and ABCs at the Council's September 2024 meeting. Specifically, the corrected harvest specifications, biennial allocations, and trawl IFQ allocations for the Shelf Rockfish complexes can be found in Agenda Item I.6 Supplemental Revised Attachment 1 September 2024 (see *pcouncil.org*) and in tables 2 through 5 below. These corrections are incorporated into tables 1a, 1b, 2a, and 2b to CFR 50 Part 660 Subpart C and table 1 to paragraph (d)(1)(ii)(D) to Part 660 Subpart D in the regulatory text of this final rule.

TABLE 2—2025 HARVEST SPECIFICATIONS FOR THE SHELF ROCKFISH COMPLEX NORTH AND SOUTH OF 40°10′ N LAT., CORRECTED, VALUES IN mt

Area	2025 OFL	2025 ABC	2025 ACL	2025 HG
North of 40°10′ N lat	1,668.66	1,329.7	1,329.6	1,250.4
South of 40°10′ N lat	1,827.6	1,457.7	1,457.12	1,430.52

TABLE 3—2026 HARVEST SPECIFICATIONS FOR THE SHELF ROCKFISH COMPLEX NORTH AND SOUTH OF 40°10′ N LAT., CORRECTED, VALUES IN mt

Area	2026 OFL	2026 ABC	2026 ACL	2026 HG
North of 40°10′ N lat	1,654.54	1,316.3	1,316.2	1,263.8
South of 40°10′ N lat	1,827.12	1,455.37	1,454.89	1,428.4

TABLE 4—2025 AND 2026 TRAWL/NON-TRAWL ALLOCATIONS FOR THE SHELF ROCKFISH COMPLEX NORTH AND SOUTH OF 40°10′ N LAT., CORRECTED, VALUES IN mt

Area	2025 Trawl	2025 Non-trawl	2026 Trawl	2026 Non-trawl
North of 40°10′ N lat	760.81	502.99	752.74	497.66
South of 40°10′ N lat	174.52	1,256.0	174.27	1,254.14

TABLE 5—2025 AND 2026 TRAWL IFQ ALLOCATIONS FOR THE SHELF ROCKFISH COMPLEX NORTH OF 40°10′ N LAT., CORRECTED, VALUES IN mt

Area	2025	2026
Trawl allocation	760.81	752.74
At-sea Set-Aside	35	35
IFQ	725.81	717.74

In table 3b (South) to Part 660 Subpart F in the regulatory text of the proposed rule (see 87 FR 70446), the trip limit for sablefish between 40°10′ N lat. and 36° N lat. is incorrect. In alignment with the Council's recommendation, NMFS is changing the trip limit to 3,250 lbs. (1,474 kg) per week not to exceed 6,500 lbs. (2,948 kg) per 2 months. More information on the corrected trip limit can be found in Agenda Item I.6.a Supplemental GMT Report 1 September 2024 (see *pcouncil.org*).

Additionally, in alignment with the Council's recommendation, NMFS is changing the LEFG and OA trip limits for cabezon and the Nearshore Rockfish complex in the area south of 40°10′ N lat. The purpose of these changes is to align Federal trip limits with California state trip limits at the beginning of 2025, which will reduce enforcement complexity and simplify regulations for fishermen. For more information on these trip limit changes, see Agenda Item I.6.a Supplemental GMT Report 1 September 2024 at *pcouncil.org.* The trip limit changes in table 6 below are incorporated into tables 2b (South) and 3b (South) to Part 660 Subpart F in the regulatory text of this final rule.

TABLE 6—LEFG AND OA TRIP LIMITS FOR CABEZON AND THE NEARSHORE ROCKFISH COMPLEX FOR SOUTH OF 40°10′ N LAT., REVISED

Species	Trip limit
Cabezon (40°10′ N lat.–37°07′ N lat.)	CLOSED.
Cabezon (south of 37°07′ N lat.)	Unlimited.
Nearshore rockfish complexes:	
Shallow nearshore rockfish complex (40°10′ N lat.–37°07′ N lat.)	CLOSED.
Shallow nearshore rockfish complex (south of 37°07′ N lat.)	2,000 lb/2 months.
Deeper nearshore rockfish complex (40°10′ N lat.–37°07′ N lat.)	CLOSED.
Deeper nearshore rockfish complex (south of 37°07′ N lat.)	2,000 lb/2 months, of which no more than 75 lb may be copper rockfish.

V. Other Changes to the Proposed Rule

NMFS offers the below additional changes to the proposed rule. These changes are additional clarifying changes that NMFS deems necessary to achieve regulatory consistency and accuracy. These clarifications and corrections to the information provided in the proposed rule do not change the substance or intent of this action.

Table 2a to Part 660, Subpart C in the regulatory text of the proposed rule (see 87 FR 70436) shows an incorrect area delineation for the Nearshore Rockfish North complex. The area delineation is listed as N of 42° N lat., whereas it should be listed as N of 40°10′ N lat. NMFS has corrected this error in Table 2a to Part 660, Subpart C in the regulatory text of this final rule.

In table 1b to Part 660 Subpart C of the regulatory text of the proposed rule (see 87 FR 70434), the 2025 non-trawl allocation (*i.e.,* the non-trawl HG) of 38.5 mt for yelloweye rockfish is incorrect. The correct value of 37.7 mt is incorporated into table 2b Part 660 Subpart C of the regulatory text of this final rule.

In table 1 to Paragraph (d)(1)(ii)(D), the 2025 Shorebased trawl allocations were incorrect for arrowtooth flounder, dover sole, lingcod north of 40°10′ N lat., widow rockfish, the Other flatfish complex, and the Shelf Rockfish complex north of 40°10′ N lat. Additionally, the 2026 Shorebased trawl allocations were incorrect for yelloweye rockfish, arrowtooth flounder, cowcod south of 40°10′ N lat., canary rockfish, sablefish north of 36° N lat., sablefish south of 36° N lat., widow rockfish, the Shelf Rockfish complex north of 40°10′ N lat., and the Shelf Rockfish complex south of 40°10′ N lat.. These errors occurred either because of rounding

error or because of a miscalculation in subtracting the 2025–26 at-sea set-asides for the at-sea Pacific whiting sectors. NMFS has corrected these values in table 1 to paragraph (d)(1)(ii)(D) in the regulatory text of this final rule.

Since the proposed rule (87 FR 70406) published, NMFS has recognized that there may be confusion about how renewal of the directed OA permit will work during 2025. NMFS has set the expiration date for the directed OA permits as the last day of the permit holder's birthday month. Therefore, there was ambiguity regarding whether a permit holder would need to pay for the directed OA permit twice if, for example, they receive a directed OA permit in January 2025, but their birthday month is in March 2025. To prevent multiple charges for directed OA permits in 2025, NMFS has added a paragraph under § 660.25(i)(2)(iv)(A) to clarify that directed OA permits issued in 2025 will be valid for the remainder of 2025 and through the permit holder's birthday month in 2026. For directed OA permits issued in 2026, and after, the duration of a directed OA permit will be no longer than 1 year and the expiration will be on the last day of the permit holder's birthday month. NMFS also added additional language at § 660.14(d)(4)(iii) to allow a VMS exemption if a directed OA permit has not been renewed and the vessel is not participating in a different fishery that requires VMS. If NMFS does not provide this exemption, then the vessel would be required to have VMS for the remainder of the fishing year, regardless of its fishing activity.

Additionally, NMFS is making a minor administrative revision to a regulation promulgated in this final rule to clarify existing requirements for logbooks. NMFS added a sentence under § 660.13(a)(3)(ii) explaining that non-trawl logbook submissions are not required if no fish were caught or discarded on a fishing trip. In reviewing the corrections to the non-trawl logbook regulations in 50 CFR part 660 noticed in the proposed rule, NMFS noted ambiguity in the current regulations regarding whether logbook submissions are required if no fish are caught or discarded on a fishing trip and accordingly added a sentence under § 660.13(a)(3)(ii) to clarify logbook submission is not required in such circumstances.

Lastly, NMFS included regulations in the proposed rule that remove the Farallon Islands from the list of Groundfish Conservation Areas at §§ 660.11, 660.70, 660.230, and 660.330. The reason for removing the Farallon Islands from these lists is because the only fishery regulations pertaining to the Farallon Islands apply within 10 fm (18 m), which is entirely in State waters. Therefore, NMFS removed the closure from Federal regulations. Although the regulatory revisions were included in the proposed rule, NMFS did not describe the change in the preamble and is therefore highlighting the changes in this final rule.

VI. Classification

Pursuant to section 304(b)(1)(A) and section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the PCGFMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective on January 1, 2025. This action establishes the final specifications (*i.e.,* annual catch limits) for the Pacific Coast groundfish fisheries for the 2025 fishing year, which begins on January 1, 2025. If this final rule is not effective on January 1, 2025, then the fishing year begins using the catch limits and management measures from 2024.

Pursuant to Executive Order 13175, this rulemaking was developed after meaningful consultation and collaboration with Tribal officials from the area covered by the PCGFMP. Under the MSA at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian Tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the PCGFMP establish a procedure by which the Tribes with treaty fishing rights in the area covered by the PCGFMP request new allocations or regulations specific to the Tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.50 further direct NMFS to develop Tribal allocations and regulations in consultation with the affected Tribes. The Tribal management measures in this rule have been developed following these procedures. The Tribal representative on the Council made a motion to adopt the non-whiting Tribal management measures, which was passed by the Council. Those management measures, which were developed and proposed by the Tribes, are included in this final rule.

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

NMFS prepared an Analysis for this action, which addresses the statutory requirements of the MSA, Presidential Executive Order 12866, and the Regulatory Flexibility Act. The full suite of alternatives analyzed by the Council can be found on the Council's website at *www.pcouncil.org.* NMFS addressed the statutory requirements of the National Environmental Policy Act through preparation of an Environmental Assessment (EA), which is included in the Analysis. The EA concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the Analysis is available from NMFS (see **ADDRESSES**).

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 final regulatory flexibility analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule revises existing requirements for information collection 0648–0203, Northwest Region Federal Fisheries Permits. The main change to this collection is the addition of a new directed groundfish OA fishery permit. The addition of this permit will increase the number of respondents for this collection by 400 respondents. The public reporting burden for the directed groundfish OA permit is estimated to average 20 minutes per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This results in an additional 133 hours for the time burden for this collection (1,953 hours to 2,086 hours). The additional permit will also result in additional labor costs of $2,226.67 and $40,000 in miscellaneous costs to the public.

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this

information collection should be submitted at the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648–0203.

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.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 22, 2024.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Amend part 660 by:
■ a. Removing the word ''non-coop'' and adding in its place the word ''non-cooperative'' wherever it appears;
■ b. Removing the word ''coop's'' and adding in its place the word ''cooperative's'' wherever it appears;
■ c. Removing the name ''nontrawl RCA'' and adding in its place the name ''Non-Trawl RCA'' wherever it appears; and
■ d. Removing the word ''nontrawl'' and adding in its place the word ''non-trawl'' wherever it appears.

■ 3. Amend § 660.5 by revising paragraph (a)(3) to read as follows:

§ 660.5 Shared Ecosystem Component Species.

(a) * * *

(3) Pacific sand lance (*Ammodytes personatus*)

* * * * *

■ 4. Amend § 660.11:
■ a. In the definition of ''Conservation areas(s)'' by removing paragraph (1)(v); redesignating paragraphs (1)(vi), (vii), and (viii) as paragraphs (1)(v), (vi), and (vii); and revising newly redesignated paragraphs (1)(vi)(A) and (B);
■ b. By removing the definition of ''Grandfathered or first generation'';
■ c. In the definition of ''Groundfish'' by revising paragraphs (1) and (7); and
■ d. In the definition of ''Open access fishery'' by revising paragraph (1) and adding paragraph (2).

The revisions and addition read as follows:

§ 660.11 General definitions.

* * * * *

Conservation area(s) * * *

(1) * * *

(vi) * * *

(A) *Trawl (Limited Entry and Open Access Non-groundfish Trawl Gears) RCAs.* The Trawl RCAs are intended to protect a complex of species, such as overfished shelf rockfish species, and have boundaries defined by specific latitude and longitude coordinates approximating depth contours. Boundaries for the limited entry Trawl RCA throughout the year are provided in table 1a (North) subpart D of this part. Boundaries for the open access non-groundfish Trawl RCA throughout the year are provided in § 660.333(e). Boundaries of the Trawl RCAs may be modified by NMFS inseason pursuant to § 660.60(c).

(B) *Non-Trawl (Limited Entry Fixed Gear and Open Access Non-Trawl Gears) RCAs.* Non-Trawl RCAs are intended to protect a complex of species, such as overfished shelf rockfish species, and have boundaries defined by specific latitude and longitude coordinates approximating depth contours. Boundaries for the Non-Trawl RCA throughout the year are provided in tables 2a (North) and 2a (South) of subpart E of this part and tables 3a (North) and 3a (South) of subpart F of this part and may be modified by NMFS inseason pursuant to § 660.60(c).

* * * * *

Groundfish * * *

(1) *Sharks:* Leopard shark, *Triakis semifasciata;* soupfin shark, *Galeorhinus zyopterus;* Pacific spiny dogfish, *Squalus suckleyi.*

* * * * *

(7) *Rockfish:* ''Rockfish'' in the PCGFMP include all genera and species of the family Scorpaenidae that occur off Washington, Oregon, and California, even if not listed below, including longspine thornyhead, *Sebastolobus altivelis,* and shortspine thornyhead, *S. alascanus.* Where species below are listed both in a geographic category (nearshore, shelf, slope) and as an area-specific listing (north or south of 40°10′ N lat.) those species are managed within a complex in that area-specific listing.

(i) Nearshore rockfish includes black rockfish, *Sebastes melanops* (off Washington and California) and the following nearshore rockfish species managed in complexes:

(A) *Nearshore Rockfish Complex North of 46°16′ N lat. (Washington):* Black and yellow rockfish, *S. chrysomelas;* blue rockfish, *S. mystinus;* brown rockfish, *S. auriculatus;* calico rockfish, *S. dalli;* China rockfish, *S. nebulosus;* copper rockfish, *S. caurinus;* deacon rockfish, *S. diaconus,* gopher rockfish, *S. carnatus;* grass rockfish, *S. rastrelliger;* kelp rockfish, *S. atrovirens;* olive rockfish, *S. serranoides;* quillback rockfish, *S. maliger;* treefish, *S. serriceps.*

(B) *Nearshore Rockfish Complex between 46°16′ N lat. and 42° N lat. (Oregon):* Black and yellow rockfish, *S. chrysomelas;* brown rockfish, *S. auriculatus;* calico rockfish, *S. dalli;* China rockfish, *S. nebulosus;* copper rockfish, *S. caurinus;* gopher rockfish, *S. carnatus;* grass rockfish, *S. rastrelliger;* kelp rockfish, *S. atrovirens;* olive rockfish, *S. serranoides;* quillback rockfish, *S. maliger;* treefish, *S. serriceps.*

(C) *Black/blue/deacon Rockfish Complex between 46°16′ N lat. and 42° N lat. (Oregon):* Black rockfish, *S. melanops,* blue rockfish, *S. mystinus,* and deacon rockfish, *S. diaconus.*

(D) *Nearshore Rockfish Complex between 42° N lat. and 40°10′ N lat. (northern California):* Black and yellow rockfish, *S. chrysomelas;* blue rockfish, *S. mystinus;* brown rockfish, *S. auriculatus;* calico rockfish, *S. dalli;* China rockfish, *S. nebulosus;* copper rockfish, *S. caurinus;* deacon rockfish, *S. diaconus,* gopher rockfish, *S. carnatus;* grass rockfish, *S. rastrelliger;* kelp rockfish, *S. atrovirens;* olive rockfish, *S. serranoides;* treefish, *S. serriceps.*

(E) *Nearshore Rockfish Complex South of 40°10′ N lat. (Southern California):* Nearshore rockfish are divided into three management categories:

(*1*) Shallow nearshore rockfish consists of black and yellow rockfish, *S. chrysomelas;* China rockfish, *S. nebulosus;* gopher rockfish, *S. carnatus;* grass rockfish, *S. rastrelliger;* kelp rockfish, *S. atrovirens.*

(*2*) Deeper nearshore rockfish consists of black rockfish, *S. melanops;* blue rockfish, *S. mystinus;* brown rockfish, *S. auriculatus;* calico rockfish, *S. dalli;* copper rockfish, *S. caurinus;* deacon rockfish, *S. diaconus;* olive rockfish, *S. serranoides;* treefish, *S. serriceps.*

(*3*) California scorpionfish, *Scorpaena guttata.*

(ii) *Shelf rockfish* includes bocaccio, *Sebastes paucispinis;* canary rockfish, *S. pinniger;* chilipepper, *S. goodei;*

cowcod, *S. levis;* shortbelly rockfish, *S. jordani;* widow rockfish, *S. entomelas;* yelloweye rockfish, *S. ruberrimus;* yellowtail rockfish, *S. flavidus* and the following shelf rockfish species managed in complexes:

(A) *Shelf Rockfish Complex North of 40°10′ N lat.:* Bronzespotted rockfish, *S. gilli;* bocaccio, *S. paucispinis;* chameleon rockfish, *S. phillipsi;* chilipepper, *S. goodei;* cowcod, *S. levis;* dusky rockfish, *S. ciliatus;* dwarf-red rockfish, *S. rufianus;* flag rockfish, *S. rubrivinctus;* freckled rockfish, *S. lentiginosus;* greenblotched rockfish, *S. rosenblatti;* greenspotted rockfish, *S. chlorostictus;* greenstriped rockfish, *S. elongatus;* halfbanded rockfish, *S. semicinctus;* harlequin rockfish, *S. variegatus;* honeycomb rockfish, *S. umbrosus;* Mexican rockfish, *S. macdonaldi;* pink rockfish, *S. eos;* pinkrose rockfish, *S. simulator;* pygmy rockfish, *S. wilsoni;* redstripe rockfish, *S. proriger;* rosethorn rockfish, *S. helvomaculatus;* rosy rockfish, *S. rosaceus;* silvergray rockfish, *S. brevispinis;* speckled rockfish, *S. ovalis;* squarespot rockfish, *S. hopkinsi;* starry rockfish, *S. constellatus;* stripetail rockfish, *S. saxicola;* sunset rockfish, *S. crocotulus;* swordspine rockfish, *S. ensifer;* tiger rockfish, *S. nigrocinctus;* vermilion rockfish, *S. miniatus.*

(B) *Shelf Rockfish Complex South of 40°10′ N lat.:* Bronzespotted rockfish, *S. gilli;* chameleon rockfish, *S. phillipsi;* dusky rockfish, *S. ciliatus;* dwarf-red rockfish, *S. rufianus;* flag rockfish, *S. rubrivinctus;* freckled rockfish, *S. lentiginosus;* greenblotched rockfish, *S. rosenblatti;* greenspotted rockfish, *S. chlorostictus;* greenstriped rockfish, *S. elongatus;* halfbanded rockfish, *S. semicinctus;* harlequin rockfish, *S. variegatus;* honeycomb rockfish, *S. umbrosus;* Mexican rockfish, *S. macdonaldi;* pink rockfish, *S. eos;* pinkrose rockfish, *S. simulator;* pygmy rockfish, *S. wilsoni;* redstripe rockfish, *S. proriger;* rosethorn rockfish, *S. helvomaculatus;* rosy rockfish, *S. rosaceus;* silvergray rockfish, *S. brevispinis;* speckled rockfish, *S. ovalis;* squarespot rockfish, *S. hopkinsi;* starry rockfish, *S. constellatus;* stripetail rockfish, *S. saxicola;* sunset rockfish, *S. crocotulus;* swordspine rockfish, *S. ensifer;* tiger rockfish, *S. nigrocinctus;* vermilion rockfish, *S. miniatus;* yellowtail rockfish, *S. flavidus.*

(iii) *Slope rockfish* includes darkblotched rockfish, *Sebastes crameri;* Pacific ocean perch, *S. alutus;* splitnose rockfish, *S. diploproa;* and the following slope rockfish species managed in complexes:

(A) *Slope Rockfish Complex North of 40°10′ N lat.:* Aurora rockfish, *S. aurora;* bank rockfish, *S. rufus;* blackgill rockfish, *S. melanostomus;* blackspotted rockfish, *S. melanostictus;* redbanded rockfish, *S. babcocki;* rougheye rockfish, *S. aleutianus;* sharpchin rockfish, *S. zacentrus;* shortraker rockfish, *S. borealis;* splitnose rockfish, *S. diploproa;* yellowmouth rockfish, *S. reedi.*

(B) *Slope Rockfish Complex South of 40°10′ N lat.:* Aurora rockfish, *S. aurora;* bank rockfish, *S. rufus;* blackgill rockfish, *S. melanostomus;* blackspotted rockfish, *S. melanostictus;* Pacific ocean perch, *S. alutus;* redbanded rockfish, *S. babcocki;* rougheye rockfish, *S. aleutianus;* sharpchin rockfish, *S. zacentrus;* shortraker rockfish, *S. borealis;* yellowmouth rockfish, *S. reedi.*

* * * * *

Open access fishery * * *

(1) *Directed open access fishery* means that a fishing vessel is target fishing (defined at § 660.11) for groundfish and is only declared into a directed open access groundfish gear type or sector as defined in § 660.13(d)(4)(iv)(A). In addition to the requirements in subpart F of this part, fishing vessels participating in the directed open access fishery must be registered to a directed open access permit described at § 660.25(i) and are also subject to the non-trawl logbook requirement at § 660.13(a)(3).

(2) *Incidental open access fishery* means that a fishing vessel is retaining groundfish incidentally to a non-groundfish target species (see ''Incidental catch or incidental species'').

* * * * *

■ 5. Amend § 660.12 by adding paragraph (a)(22) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(22) Take and retain, possess, or land groundfish in the directed open access fishery without having a valid directed open access permit for the vessel.

* * * * *

■ 6. Amend § 660.13 by:

■ a. Revising paragraphs (a)(2)(ii) and (a)(3)(ii)(A) and (B);

■ b. Adding paragraph (a)(3)(iii);

■ c. Removing paragraph (a)(4); and

■ d. Revising paragraphs (d)(3), (d)(4)(iv) introductory text, and (d)(4)(iv)(A)(*21*), (*23*), and (*27*) through (*29*).

The revisions and addition read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(a) * * *

(2) * * *

(ii) The limited entry fixed gear trip limit fisheries subject to the trip limits in tables 2b (North) and 2b (South) to subpart E of this part, and primary sablefish fisheries, as defined at § 660.211; and

* * * * *

(3) * * *

(ii) * * *

(A) *Setting gear.* Logbook entries for setting gear, including vessel information, gear specifications, set date/time/location, must be completed within 2 hours of setting each piece of string or gear. The authorized representative of each vessel may record or document this information in a format outside of the electronic logbook application (*e.g.,* waterproof paper). All logbook information whether recorded inside or outside of the electronic application must be available for immediate review by at-sea authorized law enforcement personnel.

(B) *Retrieving gear.* Logbook entries for retrieving gear, including date/time recovered and catch/discard information, must be completed within 4 hours of retrieving each piece of string or gear. The authorized representative of each vessel may record or document this information in a format outside of the electronic logbook application (*e.g.,* waterproof paper). All logbook information whether recorded inside or outside of the electronic application must be available for immediate review by at-sea authorized law enforcement personnel.

* * * * *

(iii) If no fish are retained or discarded on a fishing trip, then a non-trawl logbook submission is not required for that fishing trip.

* * * * *

(d) * * *

(3) *Declaration reports for open access vessels using non-trawl gear* (all types of open access gear other than non-groundfish trawl gear). The operator of any vessel that is not registered to a limited entry permit or is registered to a directed open access permit, must provide NMFS with a declaration report, as specified at paragraph (d)(4)(iv) of this section, before the vessel leaves port on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ.

(4) * * *

(iv) Declaration reports will include: The vessel name and/or identification number, gear type, and monitoring type where applicable, (as defined in paragraph (d)(4)(iv)(A) of this section). Upon receipt of a declaration report,

NMFS will provide a confirmation code or receipt to confirm that a valid declaration report was received for the vessel. Retention of the confirmation code or receipt to verify that a valid declaration report was filed and the declaration requirement was met is the responsibility of the vessel owner or operator. Vessels using non-trawl gear may declare more than one gear type, with the exception of vessels participating in the Shorebased IFQ Program (*i.e.,* gear switching) and those vessels declaring to fish inside the Non-Trawl RCA with non-bottom contact stationary vertical jig gear or groundfish troll gear (*i.e.,* if one of these declarations is used, no other declaration may be made on that fishing trip). For the purpose of the directed open access permit defined at § 660.65, declaration codes for the directed open access fishery include codes 33 through 37. Vessels using trawl gear may only declare one of the trawl gear types listed in paragraph (d)(4)(iv)(A) of this section on any trip and may not declare non-trawl gear on the same trip in which trawl gear is declared.

(A) * * *

(*21*) Directed open access bottom contact hook-and-line gear for groundfish (*e.g.,* bottom longline, commercial vertical hook-and-line, rod and reel, dinglebar) (declaration code 33);

* * * * *

(*23*) Directed open access groundfish trap or pot gear (declaration code 34);

* * * * *

(*27*) Directed open access non-bottom contact hook and line gear for groundfish (*e.g.,* troll, jig gear, rod & reel gear) (outside the Non-Trawl RCA only) (declaration code 35);

(*28*) Directed open access non-bottom contact stationary vertical jig gear (allowed inside or outside the Non-Trawl RCA) (declaration code 36);

(*29*) Directed open access non-bottom contact troll gear (allowed inside or outside the Non-Trawl RCA) (declaration code 37);

* * * * *

■ 7. Amend § 660.14 by revising paragraph (d)(4)(iii) to read as follows:

§ 660.14 Vessel Monitoring System (VMS) requirements.

* * * * *

(d) * * *

(4) * * *

(iii) *Permit exemption.* If a limited entry permit had a change in vessel registration so that it is no longer registered to the vessel (for the purposes of this section, this includes permits placed into ''unidentified'' status); or if a directed open access permit has not yet been renewed, NMFS may exempt the vessel from VMS requirements providing the vessel is not used in a fishery requiring VMS off the States of Washington, Oregon, or California (0–200 nm (5.6–370.4 km) offshore) for the remainder of the fishing year.

* * * * *

■ 8. Amend § 660.25 by adding paragraph (i) to read as follows:

§ 660.25 Permits.

* * * * *

(i) *Directed open access permit*—(1) *Permit information.* This section applies to vessels that take and retain, possess, or land groundfish in the West Coast groundfish directed open access fishery, as defined in § 660.11 under ''Open Access Fishery''. Starting on March 1, 2025, no person shall take and retain, possess, or land groundfish as part of the directed open access fishery, unless SFD has issued them a permit valid for the groundfish directed open access fishery.

(i) *Validity.* The following section applies to vessel for permits under this paragraph (i):

(A) A permit issued under this paragraph (i) is valid only for the vessel for which it is registered.

(B) A permit issued under this paragraph (i) not registered for use with a particular vessel is not valid.

(C) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12103 may be issued or may hold a directed open access vessel permit.

(D) No individual may alter, erase, mutilate, or forge any permit or document issued under this section. Any such permit or document that is intentionally altered, erased, mutilated, or forged is invalid.

(ii) *Transferability.* Permits are not transferable. A permit issued under this paragraph (i) is valid only for the vessel for which it is registered. A change in ownership, documentation, or name of the registered vessel, or transfer of the ownership of the registered vessel will render the permit invalid.

(A) A vessel owner must contact SFD if the vessel for which the permit is issued is sold, ownership of the vessel is transferred, the vessel is renamed, or any other reason for which the documentation of the vessel is changed as the change may invalidate the current permit.

(B) In the case where a permit is invalidated due to a change in documentation, a new permit application is required. To submit a new application, please complete the process outlined in paragraph (i)(2) of this section.

(iii) *Civil Procedures.* SFD may suspend, revoke, or modify any permit issued under this section under policies and procedures in title 15 CFR part 904, or other applicable regulations in this chapter.

(2) *Applications.* A vessel owner who wants to engage in the West Coast groundfish directed open access fishery, as defined in section § 660.11, must apply for the directed open access permit using the application form in paragraph (i)(2)(i) of this section.

(i) *Application form.* To apply for a directed open access permit, an individual must submit a complete permit application to the SFD West Coast Region through the NOAA Fisheries Pacific Coast Groundfish and Halibut Portal—Log In web page at *https://www.webapps.nwfsc.noaa.gov/apex/ifq/f?p=120:LOGIN_DESKTOP.*

(ii) *Required documentation.* A complete application consists of:

(A) An application form that contains valid responses for all required data fields, information, and signatures.

(B) A copy of the current (not expired) U.S. Coast Guard Documentation Form or state registration form for the vessel.

(C) Payment of required fees as required at paragraph (f) of this section.

(D) Additional documentation SFD may require as it deems necessary to make a determination on the application.

(iii) *Application review, approval or denial, and appeals*—(A) *Application review.* Applications for groundfish directed open access permits issued under this paragraph (i) must be received a minimum of 15 days before intending to participate in the fishery to allow for processing time.

(B) *Approved application.* SFD shall issue a vessel permit upon receipt of a completed permit application, including all required information listed in paragraph (i)(2)(ii) of this section, submitted through the Pacific Coast Groundfish and Halibut Portal, and a cleared sanctions check.

(C) *Denied application.* If the application is denied, SFD will issue an initial administrative decision (IAD) that will explain the denial in writing. SFD may decline to act on a permit application that is incomplete, or if the vessel or vessel owner is subject to sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D.

(D) *Appeals.* In cases where the applicant disagrees with SFD's decision on a permit application, the applicant may file an appeal following the

procedures described at paragraph (g) of this section.

(iv) *Issuance.* Upon review and approval of a directed open access permit application, SFD will issue a permit under this paragraph (i) electronically to the permit owner.

(A) *Duration.* A permit issued under this paragraph (i) is valid until the first date of renewal, except as provided in this paragraph (i). The date of renewal will be the last day of the vessel owner's birth month, following the year after the permit is issued (*e.g.,* if the birth month is March and the permit is issued on October 3, 2026, the permit will remain valid through March 31, 2027). The permit owner is responsible for renewing their directed open access permit. Any permit not renewed by the renewal date will expire and is no longer valid.

(*1*) For permits issued in 2025, the date of renewal will be the last day of the vessel owner's birth month in 2026 (*e.g.,* if the birth month is October and the permit is issued on March 3, 2025, the permit will remain valid through October 31, 2026).

(*2*) [Reserved]

(B) *Display.* A copy (electronic or paper) of the permit issued under this subpart must be available for inspection by an authorized officer when the vessel is operating in the groundfish open access fishery, defined at § 660.11.

■ 9. Amend § 660.40 by adding paragraph (b) to read as follows:

§ 660.40 Rebuilding plans.

* * * * *

(b) *Quillback rockfish off California.* Quillback rockfish off California was declared overfished in 2023. The target year for rebuilding the California quillback rockfish stock to B_{MSY} is 2060. The harvest control rule to be used to rebuild the quillback rockfish stock off California is the ABC Rule (P* 0.45).

■ 10. Amend § 660.50 by revising paragraphs (f) and (g) to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) *Pacific Coast treaty Indian fisheries allocations, harvest guidelines, and set-asides.* Trip limits for certain species were recommended by the Tribes and the Council and are specified in paragraph (g) of this section.

(1) *Arrowtooth flounder.* The Tribal harvest guideline is 2,041 mt per year.

(2) *Big skate.* The Tribal harvest guideline is 15 mt per year.

(3) *Black rockfish off Washington.* (i) Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian Tribes using hook-and-line gear will be established biennially for two subsequent 1-year periods for the areas between the U.S.-Canadian border and Cape Alava (48°09.50′ N lat.) and between Destruction Island (47°40′ N lat.) and Leadbetter Point (46°38.17′ N lat.), in accordance with the procedures for implementing harvest specifications and management measures. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in subparts C through G of this part.

(ii) For the commercial harvest of black rockfish off Washington State, a treaty Indian Tribes' harvest guideline is set at 30,000 lb (13,608 kg) for the area north of Cape Alava, WA (48°09.50′ N lat.) and 10,000 lb (4,536 kg) for the area between Destruction Island, WA (47°40′ N lat.) and Leadbetter Point, WA (46°38.17′ N lat.). This harvest guideline applies and is available to the Pacific Coast treaty Indian Tribes. There are no Tribal harvest restrictions for black rockfish in the area between Cape Alava and Destruction Island.

(4) *Canary rockfish.* The Tribal harvest guideline is 50 mt per year.

(5) *Darkblotched rockfish.* The Tribal harvest guideline is 5 mt per year.

(6) *Dover sole.* The Tribal harvest guideline is 1,497 mt per year.

(7) *English sole.* The Tribal harvest guideline is 200 mt per year.

(8) *Lingcod.* The Tribal harvest guideline is 250 mt per year.

(9) *Longnose skate.* The Tribal harvest guideline is 220 mt per year.

(10) *Minor nearshore rockfish.* The Tribal harvest guideline is 1.5 mt per year.

(11) *Minor shelf rockfish.* The Tribal harvest guideline is 30 mt per year.

(12) *Minor slope rockfish.* The Tribal harvest guideline is 36 mt per year.

(13) *Other flatfish.* The Tribal harvest guideline is 60 mt per year.

(14) *Pacific cod.* The Tribal harvest guideline is 500 mt per year.

(15) *Pacific ocean perch.* The Tribal harvest guideline is 130 mt per year.

(16) *Pacific spiny dogfish.* The Tribal harvest guideline is 275 mt per year.

(17) *Pacific whiting.* The Tribal whiting allocation will be announced annually in conjunction with the Total Allowable Catch (TAC) setting process of the Whiting Act.

(18) *Petrale sole.* The harvest guideline is 290 mt per year.

(19) *Sablefish.* (i) The sablefish allocation to Pacific coast treaty Indian Tribes is 10 percent of the sablefish ACL for the area north of 36° N lat. This allocation represents the total amount available to the treaty Indian fisheries before deductions for discard mortality.

(ii) The Tribal allocation is 2,869 mt in 2025 and 2,724 mt in 2026. This allocation is, for each year, 10 percent of the Monterey through Vancouver area (North of 36° N lat.) ACL, including estimated discard mortality.

(20) *Starry flounder.* The Tribal harvest guideline is 2 mt per year.

(21) *Thornyheads.* The Tribal harvest guideline for shortspine thornyhead is 50 mt per year and the Tribal harvest guideline for longspine thornyhead is 30 mt per year.

(22) *Washington cabezon/kelp greenling.* The Tribal harvest guideline is 2 mt per year.

(23) *Widow rockfish.* Widow rockfish taken in the directed Tribal midwater trawl fisheries are subject to a catch limit of 200 mt for the entire fleet, per year.

(24) *Yelloweye rockfish.* The Tribal harvest guideline is 8 mt per year.

(25) *Yellowtail rockfish.* Yellowtail rockfish taken in the directed Tribal mid-water trawl fisheries are subject to a catch limit of 1,000 mt for the entire fleet, per year.

(g) *Pacific coast treaty Indian fisheries management measures.* Trip limits for certain species were recommended by the Tribes and the Council and are specified here.

(1) *Rockfish.* The Tribes will require full retention of all overfished rockfish species and all other marketable rockfish species during treaty fisheries.

(2) *Yelloweye rockfish.* Subject to a 200-lb (90-kg) trip limit.

(3) *Pacific whiting.* Tribal whiting processed at-sea by non-Tribal vessels, must be transferred within the Tribal U&A from a member of a Pacific Coast treaty Indian Tribe fishing under this section.

(4) *Groundfish without a Tribal allocation.* Makah Tribal members may use midwater trawl gear to take and retain groundfish for which there is no Tribal allocation and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery.

(5) *EFH.* Measures implemented to minimize adverse impacts to groundfish EFH, as described in § 660.12, do not apply to Tribal fisheries in their U&A fishing areas described at § 660.4, subpart A.

(6) *Small footrope trawl gear.* Makah Tribal members fishing in the bottom trawl fishery may use only small footrope (less than or equal to 8 inches (20.3 cm)) bottom trawl gear.

* * * * *

■ 11. Amend § 660.55 by revising table 1 to paragraph (c)(1) and paragraph (i)(2) to read as follows:

§ 660.55 Allocations.

* * * * *

(c) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (c)(1)—ALLOCATION AMOUNTS AND PERCENTAGES FOR LIMITED ENTRY TRAWL AND NON-TRAWL SECTORS SPECIFIED FOR FMP GROUNDFISH STOCKS AND STOCK COMPLEXES

Stock or complex	All non-treaty LE trawl sectors (%)	All non-treaty non-trawl sectors (%)
Arrowtooth Flounder	95	5
Chilipepper Rockfish S. of 40°10′ N lat.	75	25
Darkblotched Rockfish	95	5
Dover Sole	95	5
English Sole	95	5
Lingcod N of 40°10′ N lat.	45	55
Longspine Thornyhead N of 34°27′ N lat.	95	5
Pacific Cod	95	5
Pacific Ocean Perch	95	5
Sablefish S of 36° N lat.	42	58
Splitnose Rockfish S. of 40°10′ N lat.	95	5
Starry Flounder	50	50
Yellowtail Rockfish N of 40°10′ N lat.	88	12
Minor Slope Rockfish North of 40°10′ N lat.	81	19
Other Flatfish	90	10

* * * * *

(i) * * *

(2) The fishery harvest guideline for Pacific whiting is allocated among three sectors, as follows: 34 percent for the C/P Co-op Program; 24 percent for the MS Co-op Program; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N lat. before the start of the primary Pacific whiting season north of 42° N lat. Specific sector allocations for a given calendar year are found in tables 1a through c and 2a through c of this subpart. Set-asides for other species for the at-sea whiting fishery for a given calendar year are established through the biennial specifications process.

* * * * *

■ 12. Amend § 660.60 by revising paragraphs (b)(1), (c) introductory text, (c)(1)(i), (g), (h)(1), (h)(7)(i)(D), and (h)(7)(ii)(A)(*2*) to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(b) * * *

(1) Except for Pacific whiting, every biennium, NMFS will implement OFLs, ABCs, and ACLs, if applicable, for each species or species group based on the harvest controls used in the previous biennium (referred to as default harvest control rules) applied to the best available scientific information. The default harvest control rules for each species or species group are listed in the biennial SAFE document. NMFS may implement OFLs, ABCs, and ACLs, if applicable, that vary from the default harvest control rules based on a Council recommendation.

* * * * *

(c) *Routine management measures.* Catch restrictions that are likely to be adjusted on a biennial, or more frequent, basis may be imposed and announced by a single notification in the **Federal Register**, if good cause exists under the Administrative Procedure Act (APA) to waive notice and comment, and if they have been designated as routine through the two-meeting process described in the PCGFMP. Routine management measures that may be revised during the fishing year, via this process, are implemented in paragraph (h) of this section, and in subparts C through G of this part, including tables 1a through 1c, and 2a through 2c to subpart C of this part, tables 1a and 1b (North) and tables 1a and 1b (South) of subpart D of this part, tables 2a and 2b (North) and tables 2a and 2b (South) of subpart E of this part, and tables 3a and 3b (North) and tables 3a and 3b (South) of subpart F of this part. Most trip, bag, and size limits, and some Groundfish Conservation Area closures in the groundfish fishery have been designated ''routine,'' which means they may be changed rapidly after a single Council meeting. Council meetings are held in the months of March, April, June, September, and November. Inseason changes to routine management measures are announced in the **Federal Register** pursuant to the requirements of the APA. Changes to trip limits are effective at the times stated in the **Federal Register**. Once a trip limit change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect. The following catch restrictions have been designated as routine:

(1) * * *

(i) *Trip landing and frequency limits, size limits, all gear.* Trip landing and frequency limits have been designated as routine for the following species or species groups: Widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, black rockfish, blue/deacon rockfish, splitnose rockfish, blackgill rockfish in the area south of 40°10′ N lat., chilipepper, bocaccio, cowcod, Minor Nearshore Rockfish or shallow and deeper Minor Nearshore Rockfish, shelf or Minor Shelf Rockfish, and Minor Slope Rockfish; Dover sole, sablefish, shortspine thornyheads, and longspine thornyheads; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, big skate, and the Other Flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.11; Pacific whiting; lingcod; Pacific cod; Pacific spiny dogfish; longnose skate; cabezon in Oregon and California; and ''Other Fish'' as defined at § 660.11. In addition to the species and species groups listed above, sub-limits or aggregate limits may be specified, specific to the Shorebased IFQ Program, for the following species: big skate, California skate, California scorpionfish, leopard shark, soupfin shark, finescale codling, Pacific rattail (grenadier), ratfish, kelp greenling, shortbelly rockfish, and

cabezon in Washington. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS.

* * * * *

(g) *Applicability.* These specifications account for fish caught in state ocean waters (0–3 nm offshore) though that fishing activity is governed by the States of Washington, Oregon, and California, respectively. Catch of a stock in State waters is taken off the top of the harvest specifications for the stock in the EEZ (3–200 nm (5.6–370.4 km) offshore).

(h) * * *

(1) *Commercial trip limits and recreational bag and boat limits.* Commercial trip limits and recreational bag and boat limits defined in tables 1a through 2d of this subpart, and those specified in subparts D through G of this part, including tables 1b (North) and 1b (South) of subpart D of this part, tables 2b (North) and 2b (South) of subpart E of this part, and tables 3b (North) and 3b (South) of subpart F of this part must not be exceeded.

* * * * *

(7) * * *

(i) * * *

(D) *Rockfish complexes.* Several rockfish species are designated with species-specific limits on one side of the 40°10′ N lat. management line and are included as part of a rockfish complex on the other side of the line. A vessel that takes and retains fish from a rockfish complex (nearshore, shelf, or slope) on both sides of a management line during a single cumulative limit period is subject to the more restrictive cumulative limit for that rockfish complex during that period.

(*1*) If a vessel takes and retains species from the slope rockfish complex north of 40°10′ N lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 40°10′ N lat., even if splitnose rockfish were a part of the landings from slope rockfish complex taken and retained north of 40°10′ N lat.

(*2*) If a vessel takes and retains species from the slope rockfish complex south of 40°10′ N lat., that vessel is also permitted to take and retain, possess or land Pacific ocean perch up to its cumulative limit north of 40°10′ N lat., even if Pacific ocean perch were a part of the landings from slope rockfish complex taken and retained south of 40°10′ N lat.

(ii) * * *

(A) * * *

(*2*) Vessels with a valid limited entry permit endorsed for bottom longline and/or pot gear fishing inside the Non-Trawl RCA with stationary vertical jig gear or groundfish troll gear as defined at § 660.320(b)(6). Vessels fishing with one of these two approved hook-and-line gear configurations may fish up to the limited entry fixed gear trip limits in table 2b (North) and table 2b (South) of subpart E, either inside or outside the Non-Trawl RCA. This provision only applies on fishing trips where the vessel made the appropriate declaration (specified at § 660.13(d)(4)(iv)(A)).

* * * * *

■ 13. Revise § 660.65 to read as follows:

§ 660.65 Groundfish harvest specifications.

Harvest specifications include OFLs, ABCs, and the designation of OYs and ACLs. Management measures necessary to keep catch within the ACL include ACTs, HGs, or quotas for species that need individual management, the allocation of fishery HGs between the trawl and non-trawl segments of the fishery, and the allocation of commercial HGs between the open access and limited entry segments of the fishery. These specifications account for fish caught in state ocean waters (0–3 nm (0–5.6 km) offshore), though that fishing activity is governed by the States of Washington, Oregon, and California respectively. Catch of a stock in State waters is taken off the top of the harvest specifications for the stock in the EEZ (3–200 nm (5.6–370.4 km) offshore). Harvest specifications are provided in tables 1a through 2d of this subpart.

§ 660.70 [Amended]

■ 14. Amend § 660.70 by removing paragraph (u) and redesignating paragraph (v) as paragraph (u).

■ 15. Amend § 660.72 by revising paragraphs (a)(95) through (100) to read as follows:

§ 660.72 Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.

* * * * *

(a) * * *

(95) 39°32.47′ N lat., 123°52.25′ W long.;

(96) 39°21.86′ N lat., 123°54.13′ W long.;

(97) 39°8.35′ N lat., 123°49.67′ W long.;

(98) 38°57.50′ N lat., 123°49.42′ W long.;

(99) 38°51.20′ N lat., 123°46.09′ W long.;

(100) 38°29.47′ N lat., 123°20.19′ W long.;

* * * * *

■ 16. Revise tables 1a through 1c to part 660, subpart C to read as follows:

TABLE 1a TO PART 660, SUBPART C—2025, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HG (WEIGHTS IN METRIC TONS). CAPITALIZED STOCKS ARE REBUILDING

Species/stock	Area	OFL	ABC	ACL [a]	Fishery HG [b]
QUILLBACK ROCKFISH OFF CALIFORNIA	California	1.52	1.3	1.3	1.2
YELLOWEYE ROCKFISH [c]	Coastwide	105.8	87.2	55.8	41
Arrowtooth Flounder	Coastwide	16,460	11,193	11,193	9,098
Big Skate	Coastwide	1,456	1,224	1,224	1,164.6
Black Rockfish	Washington (N of 46°16′ N lat.).	262	244.6	244.6	226
Black Rockfish	California (S of 42° N lat.).	250	234	224	222.3
Bocaccio	S of 40°10′ N lat.	1,849	1,681	1,681	1,673.2

TABLE 1a TO PART 660, SUBPART C—2025, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HG (WEIGHTS IN METRIC TONS). CAPITALIZED STOCKS ARE REBUILDING—Continued

Species/stock	Area	OFL	ABC	ACL [a]	Fishery HG [b]
Cabezon	California (S of 42° N lat.).	176	162	162	161.2
California Scorpionfish	S of 34°27′ N lat.	273	244	244	242
Canary Rockfish	Coastwide	647	605	572	508.4
Chilipepper	S of 40°10′ N lat.	3,128	2,815	2,815	2,788
Cowcod	S of 40°10′ N lat.	111	77	77	66.5
Cowcod	(Conception).	93	66	66	.....
Cowcod	(Monterey).	18	11	11	.....
Darkblotched Rockfish	Coastwide	830	754	754	729.8
Dover Sole	Coastwide	52,214	47,424	47,424	45,840
English Sole	Coastwide	11,175	8,884	8,884	8,669.4
Lingcod	N of 40°10′ N lat.	4,237	3,631	3,631	3,349.9
Lingcod	S of 40°10′ N lat.	897	768	748	736.4
Longnose Skate	Coastwide	1,922	1,616	1,616	1,365.4
Longspine Thornyhead	Coastwide	4,284	2,698	2,698	.....
Longspine Thornyhead	N of 34°27′ N lat.	.....	.....	2,050	2,000.7
Longspine Thornyhead	S of 34°27′ N lat.	.....	.....	648	646
Pacific Cod	Coastwide	3,200	1,926	1,600	1,098.6
Pacific Ocean Perch	N of 40°10′ N lat.	4,029	3,328	3,328	3,182.5
Pacific Spiny Dogfish	Coastwide	1,857	1,361	1,361	1,037.6
Pacific Whiting	Coastwide	[d]	[d]	[d]	[d]
Petrale Sole	Coastwide	2,518	2,354	2,354	2,035.5
Sablefish	Coastwide	39,085	36,545	36,545	.....
Sablefish	N of 36° N lat.	.....	.....	28,688	See Table 1c
Sablefish	S of 36° N lat.	.....	.....	7,857	7,829.80
Shortspine Thornyhead [e]	Coastwide	940	821	815	743.3
Splitnose	S of 40°10′ N lat.	1,724	1,508	1,508	1,493.9
Starry Flounder	Coastwide	652	392	392	375.3
Widow Rockfish	Coastwide	12,254	11,237	11,237	11,018.7
Yellowtail Rockfish	N of 40°10′ N lat.	6,866	6,241	6,241	5,216.1
Species/Stock Complexes					
Blue/Deacon/Black Rockfish	Oregon	464	423	423	421.7
Cabezon/Kelp Greenling	Washington.	19	15	15	12.2
Cabezon/Kelp Greenling	Oregon	196	177	177	176.1
Nearshore Rockfish North	N of 40°10′ N lat.	106	88	88	84.8
Nearshore Rockfish South	S of 40°10′ N lat.	1,137	934	932	929.3
Other Fish	Coastwide	286	223	223	213.2
Other Flatfish	Coastwide	10,895	7,974	7,974	7,803

TABLE 1a TO PART 660, SUBPART C—2025, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HG (WEIGHTS IN METRIC TONS). CAPITALIZED STOCKS ARE REBUILDING—Continued

Species/stock	Area	OFL	ABC	ACL [a]	Fishery HG [b]
Shelf Rockfish North	N of 40°10′ N lat.	1,668.7	1,329.7	1,329.6	1,250.4
Shelf Rockfish South	S of 40°10′ N lat.	1,827.6	1,457.7	1,457.1	1,430.5
Slope Rockfish North	N of 40°10′ N lat.	1,779	1,488	1,488	1,430
Slope Rockfish South	S of 40°10′ N lat.	866	693	693	674

[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.
[b] Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian Tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT. These deductions, as well as any HG sharing agreements between states and/or sectors, are published in the SAFE.
[c] Yelloweye rockfish has a non-trawl ACT of 29.6 mt and a non-nearshore ACT of 6.2 mt. The recreational ACTs are: 7.6 mt (Washington), 6.9 mt (Oregon), and 8.9 mt (California).
[d] Pacific whiting are assessed annually. The final specifications will be determined consistent with the U.S.-Canada Pacific Whiting Agreement and will be announced in 2025.
[e] Shortspine thornyhead has a commercial ACT of 67 mt for north of 34° 27′ N lat.
[f] Copper rockfish has a recreational ACT of 15.8 for south of 34° 27′ N lat.

TABLE 1b TO PART 660, SUBPART C—2025, ALLOCATIONS BY SPECIES OR SPECIES GROUP

[Weight in metric tons]

Species/stock & complexes	Area	Fishery HG or ACT	Trawl		Non-trawl	
			%	mt	%	mt
YELLOWEYE ROCKFISH	Coastwide	41	8	3.3	92	37.7
Arrowtooth flounder	Coastwide	9,098	95	8,643.1	5	454.9
Big skate	Coastwide	1,164.6	95	1,106.4	5	58.2
Bocaccio	S of 40°10′ N lat	1,673.2	39	652.5	61	1,020.6
Canary rockfish	Coastwide	508.4	72.3	367.6	27.7	140.8
Chilipepper rockfish	S of 40°10′ N lat	2,788	75	2,091	25	697
Cowcod	S of 40°10′ N lat	66.5	36	23.90	64	42.6
Darkblotched rockfish	Coastwide	729.8	95	693.3	5	36.5
Dover sole	Coastwide	45,840	95	43,459.8	5	2,290.2
English sole	Coastwide	8,669.4	95	8,235.9	5	433.5
Lingcod	N of 40°10′ N lat	3,349.9	45	1,507.5	55	1,842.4
Lingcod	S of 40°10′ N lat	736.4	40	294.6	60	441.8
Longnose skate	Coastwide	1,365.4	90	1,228.9	10	136.5
Longspine thornyhead	N of 34°27′ N lat	2,000.7	95	1,900.7	5	100
Pacific cod	Coastwide	1,098.6	95	1,043.7	5	54.9
Pacific Ocean perch	N of 40°10′ N lat	3,182.5	95	3,023.4	5	159.1
Pacific whiting	Coastwide		100		0	0
Petrale sole	Coastwide	2,035.5		2,005.5		30
Sablefish	N of 36° N lat	25,729.3	See Table 1c			
Sablefish	S of 36° N lat	7,829.8	42	3,288.5	58	4,541.3
Shortspine thornyhead	Coastwide	743.3	64	475.71	36	267.59
Splitnose rockfish	S of 40°10′ N lat	1,493.9	95	1,419.2	5	74.7
Starry flounder	Coastwide	375.3	50	187.7	50	187.7
Widow rockfish	Coastwide	11,018.7		10,718.7		300
Yellowtail rockfish	N of 40°10′ N lat	5,216.1	88	4,590.2	12	625.9
Shelf rockfish north	N of 40°10′ N lat	1,250.4	60.2	760.8	39.8	503
Shelf rockfish south	S of 40°10′ N lat	1,430.5	12.2	174.5	87.8	1,256
Slope rockfish north	N of 40°10′ N lat	1,430	81	1,158.3	19	271.7
Slope rockfish south	S of 40°10′ N lat	674	63	424.6	37	249.4
Other flatfish	Coastwide	7,803	90	7,022.7	10	780.3

TABLE 1c TO PART 660, SUBPART C—SABLEFISH NORTH OF 36° N LAT. ALLOCATIONS, 2025

[Weight in metric tons]

	Percent	Allocation (mt)
Non-Tribal Commercial HG [a]		25,729.3
LE Share	90.6	23,310.7
LE Trawl	58	13,520.2

TABLE 1c TO PART 660, SUBPART C—SABLEFISH NORTH OF 36° N LAT. ALLOCATIONS, 2025—Continued

[Weight in metric tons]

	Percent	Allocation (mt)
LEFG	42	9,791.9
Primary	85	8,323.1
Trip limit	15	1,468.8
OA Share	9.4	2,418.6

[a] Off-the-top deductions from the ACL that result in the HG are in the SAFE.

■ 17. Revise tables 2a through 2c to part 660, subpart C, to read as follows:

TABLE 2a TO PART 660, SUBPART C—2026, AND BEYOND, SPECIFICATIONS OF OFL, ABC, ACL, ACT, AND FISHERY HG (WEIGHTS IN METRIC TONS). CAPITALIZED STOCKS ARE REBUILDING

Species/stock	Area	OFL	ABC	ACL [a]	Fishery HG [b]
QUILLBACK ROCKFISH OFF CALIFORNIA	California	1.77	1.5	1.5	1.4
YELLOWEYE ROCKFISH [c]	Coastwide	108.3	88.5	56.6	41.8
Arrowtooth Flounder	Coastwide	13,833	9,227	9,227	7,132
Big Skate	Coastwide	1,426	1,188	1,188	1,128.6
Black Rockfish	Washington (N of 46°16′ N lat.).	259	241	241	226.6
Black Rockfish	California (S of 42° N lat.).	265	247	236	234.4
Bocaccio	S of 40°10′ N lat.	1,846	1,668	1,668	1,660.2
Cabezon	California (S of 42° N lat.).	170	155	155	154.5
California Scorpionfish	S of 34°27′ N lat.	267	238	238	236
Canary Rockfish	Coastwide	655	609	573	509.6
Chilipepper Rockfish	S of 40°10′ N lat.	2,949	2,643	2,643	2,615.2
Cowcod	S of 40°10′ N lat.	111	75	75	65.2
Cowcod	(Conception).	92	64	64	.....
Cowcod	(Monterey).	19	11	11	.....
Darkblotched Rockfish	Coastwide	810	732	732	707.8
Dover Sole	Coastwide	46,049	42,457	42,457	40,873
English Sole	Coastwide	11,192	8,819	8,819	8,604.4
Lingcod	N of 40°10′ N lat.	4,163	3,534	3,534	3,252.9
Lingcod	S of 40°10′ N lat.	937	795	773	761.5
Longnose Skate	Coastwide	1,895	1,579	1,579	1,328.4
Longspine Thornyhead	Coastwide	4,166	2,575	2,575	.....
Longspine Thornyhead	N of 34°27′ N lat.	.....	.....	1,957	1,907.3
Longspine Thornyhead	S of 34°27′ N lat.	.....	.....	618	616.5
Pacific Cod	Coastwide	3,200	1,926	1,600	1,098.6

TABLE 2a TO PART 660, SUBPART C—2026, AND BEYOND, SPECIFICATIONS OF OFL, ABC, ACL, ACT, AND FISHERY HG (WEIGHTS IN METRIC TONS). CAPITALIZED STOCKS ARE REBUILDING—Continued

Species/stock	Area	OFL	ABC	ACL [a]	Fishery HG [b]
Pacific Ocean Perch	N of 40°10′ N lat.	3,937	3,220	3,220	3,074.5
Pacific Spiny Dogfish	Coastwide	1,833	1,318	1,318	994.2
Pacific Whiting	Coastwide	([d])	([d])	([d])	([d])
Petrale Sole	Coastwide	2,424	2,255	2,238	1,919.5
Sablefish	Coastwide	37,310	34,699	34,699	.....
Sablefish	N of 36° N lat.	.....	.....	27,238	See Table 2c
Sablefish	S of 36° N lat.	.....	.....	7,460	7,432.9
Shortspine Thornyhead [e]	Coastwide	961	831	825	752.7
Splitnose Rockfish	S of 40°10′ N lat.	1,686	1,469	1,469	1,454.9
Starry Flounder	Coastwide	652	392	392	375.3
Widow Rockfish	Coastwide	11,382	10,392	10,392	10,173.7
Yellowtail Rockfish	N of 40°10′ N lat.	6,662	6,023	6,023	4,997.5
Species/stock Complexes					
Blue/Deacon/Black Rockfish	Oregon	472	428	428	426.5
Cabezon/Kelp Greenling	Washington.	19	15	15	12.1
Cabezon/Kelp Greenling	Oregon	194	174	174	173.6
Nearshore Rockfish North	N of 40°10′ N lat.	105	86	86	83
Nearshore Rockfish South [f]	S of 40°10′ N lat.	1,143	933	931	928.1
Other Fish	Coastwide	286	223	223	212.7
Other Flatfish	Coastwide	9,988	7,144	7,144	6,972.6
Shelf Rockfish North	N of 40°10′ N lat.	1,654.5	1,316.3	1,316.2	1,263.8
Shelf Rockfish South	S of 40°10′ N lat.	1,827.1	1,455.4	1,454.9	1,428.4
Slope Rockfish North	N of 40°10′ N lat.	1,754	1,460	1,460	1,402.2
Slope Rockfish South	S of 40°10′ N lat.	865	690	690	671

[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.
[b] Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian Tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT. These deductions, as well as any HG sharing agreements between states and/or sectors, are published in the SAFE.
[c] Yelloweye rockfish has a non-trawl ACT of 30.2 mt and a non-nearshore ACT of 6.3 mt. The recreational ACTs are: 7.7 mt (Washington), 7.0 mt (Oregon), and 9.1 mt (California).
[d] Pacific whiting are assessed annually. The final specifications will be determined consistent with the U.S.-Canada Pacific Whiting Agreement and will be announced in 2026.
[e] Shortspine thornyhead has a commercial ACT of 55 mt for north of 34° 27′ N lat.
[f] Copper rockfish has a recreational ACT of 18.0 for south of 34° 27′ N lat.

TABLE 2b TO PART 660, SUBPART C—2026, AND BEYOND, ALLOCATIONS BY SPECIES OR SPECIES GROUP

Species/stock & complexes	Area	Fishery HG or ACT	Trawl		Non-trawl	
			%	mt	%	mt
YELLOWEYE ROCKFISH	Coastwide	41.8	8	3.3	92	38.5
Arrowtooth flounder	Coastwide	7,132	95	6,775.4	5	356.6
Big skate	Coastwide	1,128.6	95	1,072.2	5	56.4
Bocaccio	S of 40°10′ N lat	1,660.2	39	647.5	61	1,012.7
Canary rockfish	Coastwide	509.6	72.3	368.4	27.7	141.2
Chilipepper rockfish	S of 40°10′ N lat	2,615.2	75	1,961.4	25	653.8
Cowcod	S of 40°10′ N lat	65.2	36	23.5	64	41.7

TABLE 2b TO PART 660, SUBPART C—2026, AND BEYOND, ALLOCATIONS BY SPECIES OR SPECIES GROUP—Continued

Species/stock & complexes	Area	Fishery HG or ACT	Trawl		Non-trawl	
			%	mt	%	mt
Darkblotched rockfish	Coastwide	707.8	95	672.4	5	35.4
Dover sole	Coastwide	40,873	95	38,829.4	5	2,043.7
English sole	Coastwide	8,604.4	95	8,174.2	5	430.2
Lingcod	N of 40°10′ N lat	3,252.9	45	1,463.8	55	1,789.1
Lingcod	S of 40°10′ N lat	761.5	40	304.6	60	456.9
Longnose skate	Coastwide	1,328.4	90	1,195.6	10	132.8
Longspine thornyhead	N of 34°27′ N lat	1,907.3	95	1,811.9	5	95.4
Pacific cod	Coastwide	1,098.6	95	1,043.7	5	54.9
Pacific Ocean perch	N of 40°10′ N lat	3,074.5	95	2,920.8	5	153.7
Pacific whiting	Coastwide		100	0.0		0
Petrale sole	Coastwide	1,919.5		1,889.5		30
Sablefish	N of 36° N lat	24,425.1	See Table 2c			
Sablefish	S of 36° N lat	7,432.9	42	3,121.8	58	4,311.1
Shortspine thornyhead	Coastwide	752.7	71	534.4	29	218.3
Splitnose rockfish	S of 40°10′ N lat	1,454.9	95	1,382.2	5	72.7
Starry flounder	Coastwide	375.3	50	187.7	50	187.7
Widow rockfish	Coastwide	10,173.7		9,873.7		300
Yellowtail rockfish	N of 40°10′ N lat	4,997.5	88	4,397.8	12	599.7
Shelf rockfish north	N of 40°10° N lat	1,263.8	60.2	760.8	39.8	503
Shelf rockfish south	S of 40°10′ N lat	1,428.4	12.2	174.3	87.8	1,254.1
Slope rockfish north	N of 40°10′ N lat	1,402.2	81	1,135.8	19	266.4
Slope rockfish south	S of 40°10′ N lat	671	63	422.7	37	248.3
Other flatfish	Coastwide	6,972.6	90	6,275.3	10	697.3

TABLE 2c TO PART 660, SUBPART C—SABLEFISH NORTH OF 36° N LAT. ALLOCATIONS, 2026 AND BEYOND

[Weights in metric tons]

	Percent	Allocation (mt)
Non-Tribal Commercial HG [a]		24,425.1
LE Share	90.6	22,129.1
LE Trawl	58	12,834.9
LEFG	42	9,294
Primary	85	7,899.9
Trip limit	15	1,394.1
OA Share	9.4	2,296

[a] Off-the-top deductions from the ACL that result in the HG are in the SAFE.

■ 18. Amend § 660.111 by revising the definition of ''Block area closures or BACs'' to read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Block area closures or *BACs* are a type of groundfish conservation area, defined at § 660.11, bounded on the north and south by commonly used geographic coordinates, defined at § 660.11, and on the east and west by the EEZ, and boundary lines approximating depth contours, defined with latitude and longitude coordinates at §§ 660.71 through 660.74 (10 fm (18 m) through 250 fm (457 m)), and § 660.76 (700 fm (1,280 m)). BACs may be implemented or modified as routine management measures, per regulations at § 660.60(c). BACs may be implemented in the EEZ seaward of Washington, Oregon, and California for vessels using limited entry bottom trawl and/or midwater trawl gear. BACs may be implemented within Tribal Usual and Accustomed fishing areas but may only apply to non-Tribal vessels. BACs may close areas to specific trawl gear types (*e.g.,* closed for midwater trawl, bottom trawl, or bottom trawl unless using selective flatfish trawl) and/or specific programs within the trawl fishery (*e.g.,* Pacific whiting fishery or MS Co-op Program). BACs may vary in their geographic boundaries and duration. Their geographic boundaries, applicable gear type(s) and/or specific trawl fishery program, and effective dates will be announced in the **Federal Register**. BACs may have a specific termination date as described in the **Federal Register** or may be in effect until modified. BACs that are in effect until modified by Council recommendation and subsequent NMFS action are set out in tables 1a (North) and 1a (South) of this subpart.

* * * * *

■ 19. Amend § 660.130 by:

■ a. Revising paragraphs (a), (c) introductory text, and (c)(4) introductory text;

■ c. Removing paragraph (e)(2);

■ d. Redesignating paragraphs (e)(3) through (8) as (e)(2) through (7); and

■ e. Revising newly redesignated paragraph (e)(3) introductory text.

The revisions read as follows:

§ 660.130 Trawl fishery—management measures.

(a) *General.* This section applies to the limited entry trawl fishery. Most species taken in the limited entry trawl fishery will be managed with quotas (see § 660.140), allocations or set-asides (see § 660.150 or § 660.160), or cumulative trip limits (see trip limits in tables 1b (North) and 1b (South) of this subpart), size limits (see § 660.60(h)(5)), seasons (see Pacific whiting at § 660.131(b)), gear restrictions (see paragraphs (b) and (c) of this section) and closed areas (see paragraphs (c) and (e) of this section and §§ 660.70 through 660.79). The limited

entry trawl fishery has gear requirements and harvest limits that differ by the type of groundfish trawl gear on board and the area fished. Groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (e)(1) of this section and § 660.70). The trip limits in tables 1b (North) and 1b (South) of this subpart apply to vessels participating in the limited entry trawl fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally managed groundfish.

* * * * *

(c) *Restrictions by limited entry trawl gear type.* Management measures may vary depending on the type of trawl gear (*i.e.,* large footrope, small footrope, selective flatfish, or midwater trawl gear) used and/or on board a vessel during a fishing trip, cumulative limit period, and the area fished. Trawl nets may be used on and off the seabed. For some species or species groups, tables 1b (North) and 1b (South) of this subpart provide trip limits that are specific to different types of trawl gear: Large footrope, small footrope (including selective flatfish), selective flatfish, midwater, and multiple types. If tables 1a (North), 1b (North), 1a (South), and 1b (South) of this subpart provide gear specific limits or closed areas for a particular species or species group, prohibitions at §§ 660.12 and 660.112(a)(5) apply. Additional conservation areas applicable to vessels registered to limited entry permits with trawl endorsements are listed at paragraph (e) of this section.

* * * * *

(4) *More than one type of trawl gear on board.* The trip limits in table 1b (North) or 1b (South) of this subpart must not be exceeded. A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may have more than one type of limited entry trawl gear on board (midwater, large or small footrope, including selective flatfish trawl), either simultaneously or successively, during a cumulative limit period except between 42° N lat. and 40°10′ N lat. as described in this section. If a vessel fishes both north and south of 40°10′ N lat. with any type of small or large footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive cumulative limit associated with the gear on board would apply for that trip and all catch would be counted toward that cumulative limit (see crossover provisions at § 660.60(h)(7)). When operating in an applicable GCA, all trawl gear must be stowed, consistent with prohibitions at § 660.112(a)(5)(i), unless authorized in this section.

* * * * *

(e) * * *

(3) *Trawl RCA.* This GCA is off the coast of Washington, between the US/Canada border and 46°16′ N lat. Boundaries for the trawl RCA applicable to groundfish trawl vessels throughout the year are provided in the header to table 1a (North) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c). Prohibitions at § 660.112(a)(5) do not apply under the following conditions and when the vessel has a valid declaration for the allowed fishing:

* * * * *

■ 20. Amend § 660.131 by revising paragraphs (b)(3) introductory text and (g)(2) to read as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(3) *Pacific whiting trip limits.* For Shorebased IFQ Program vessels targeting Pacific whiting outside the primary season, the ''per trip'' limit for whiting is announced in table 1b of this subpart. The per-trip limit is a routine management measure under § 660.60(c). This trip limit includes any whiting caught shoreward of 100 fm (183 m) in the Eureka management area. The per-trip limit for other groundfish species are announced in tables 1b (North) and 1b (South) of this subpart and apply as follows:

* * * * *

(g) * * *

(2) The amount of whole whiting on board does not exceed the trip limit (if any) allowed under § 660.60(c) or table 1b (North) or 1b (South) in subpart D.

* * * * *

■ 21. Amend § 660.140 by revising table 1 to paragraph (d)(1)(ii)(D) and paragraph (g)(1) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) * * *

TABLE 1 TO PARAGRAPH (d)(1)(ii)(D)—SHOREBASED TRAWL ALLOCATIONS FOR 2025 AND 2026

IFQ species	Area	2025 Shorebased trawl allocation (mt)	2026 Shorebased trawl allocation (mt)
YELLOWEYE ROCKFISH	Coastwide	3.3	3.3
Arrowtooth flounder	Coastwide	8,543	6,765
Bocaccio	South of 40°10′ N lat	653	648
Canary rockfish	Coastwide	348	348
Chilipepper rockfish	South of 40°10′ N lat	2,091	1,961
Cowcod	South of 40°10′ N lat	24	24
Darkblotched rockfish	Coastwide	593	572
Dover sole	Coastwide	43,538	38,819
English sole	Coastwide	8,236	8,174
Lingcod	North of 40°10′ N lat	1,493	1,449
Lingcod	South of 40°10′ N lat	295	305
Longspine thornyhead	North of 34°27′ N lat	1,901	1,812
Pacific cod	Coastwide	1,044	1,044
Pacific ocean perch	North of 40°10′ N lat	2,723	2,621
Pacific whiting[a]	Coastwide	TBD	TBD
Petrale sole	Coastwide	2,001	1,885
Sablefish	North of 36° N lat	13,091	12,406
Sablefish	South of 36° N lat	3,289	3,122
Shortspine thornyhead	Coastwide	406	464
Splitnose rockfish	South of 40°10′ N lat	1,419	1,382
Starry flounder	Coastwide	188	188

TABLE 1 TO PARAGRAPH (d)(1)(ii)(D)—SHOREBASED TRAWL ALLOCATIONS FOR 2025 AND 2026—Continued

IFQ species	Area	2025 Shorebased trawl allocation (mt)	2026 Shorebased trawl allocation (mt)
Widow rockfish	Coastwide	10,419	9,574
Yellowtail rockfish	North of 40°10′ N lat	4,230	4,038
Other Flatfish complex	Coastwide	6,923	6,175
Shelf Rockfish complex	North of 40°10′ N lat	726	718
Shelf Rockfish complex	South of 40°10′ N lat	175	175
Slope Rockfish complex	North of 40°10′ N lat	858	836
Slope Rockfish complex	South of 40°10′ N lat	425	423

[a] Managed through an international process. These allocations will be updated when announced.

* * * * *

(g) * * *

(1) *General.* Shorebased IFQ Program vessels may discard IFQ species/species groups, provided such discards are accounted for and deducted from QP in the vessel account. The discard mortality for those species with discard mortality rates must be accounted for and applied to QP in the vessel account. With the exception of vessels on a declared Pacific whiting IFQ trip and engaged in maximized retention, and vessels fishing under a valid EM Authorization in accordance with § 660.604, prohibited and protected species (except short-tailed albatross as directed by § 660.21(c)(1)(v)) must be discarded at sea. Pacific halibut must be discarded as soon as practicable and the discard mortality must be accounted for and deducted from IBQ pounds in the vessel account. Non-IFQ species and non-groundfish species may be discarded at sea, unless otherwise required by EM Program requirements at § 660.604. The sorting of catch, the weighing and discarding of any IBQ and IFQ species, and the retention of IFQ species must be monitored by the observer or EM system.

* * * * *

Table 1 (North) to Part 660, Subpart D—[Removed]

■ 22. Remove table 1 (North) to part 660, subpart D.

Table 1 (South) to Part 660, Subpart D—[Removed]

■ 23. Remove table 1 (South) to part 660, subpart D.

■ 24. Add tables 1a (North), 1b (North), 1a (South), and 1b (South) to part 660, subpart D to read as follows:

TABLE 1a (NORTH) TO PART 660, SUBPART D—LIMITED ENTRY TRAWL ROCKFISH CONSERVATION AREAS FOR NORTH OF 40°10′ N LAT

Latitude	Boundary
North of 46°16′ N lat	100 fm line–150 fm line.
46°16′ N lat.–40°10′ N lat	BACs may be implemented and will be announced in the **Federal Register**.

Note 1 to table 1a (North): The Trawl RCA is an area closed to fishing with groundfish trawl gear, as defined at § 660.11. Trawl RCA boundaries apply in the EEZ only; see appropriate state regulations for state closures. Trawl RCA boundaries or Block Area Closures (BACs) may be revised or implemented via inseason action; therefore, users should refer back to this table throughout the year. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear Non-Trawl RCA, as described in tables 2a (North) and 2a (South) to part 660, subpart E.

TABLE 1b (NORTH) TO PART 660, SUBPART D—LANDING ALLOWANCES FOR NON-IFQ SPECIES AND PACIFIC WHITING NORTH OF 40°10′ N LAT.

Species	Trip limit
Big skate	Unlimited.
Cabezon (California)	50 lb/month.
Longnose skate	Unlimited.
Nearshore rockfish complex, Washington black rockfish and Oregon black/blue/deacon rockfish.	300 lb/month.
Oregon cabezon/kelp greenling complex	50 lb/month.
Other fish	Unlimited.
Pacific Spiny Dogfish	60,000 lb/month.
Pacific whiting—Midwater Trawl	Before the primary whiting season: CLOSED. During the primary whiting season: mid-water trawl permitted in the RCA. See § 660.131 for season and trip limit details. After the primary whiting season: CLOSED.
Pacific whiting—Large & Small Footrope Gear	Before the primary whiting season: 20,000 lb/trip. During the primary whiting season: 10,000 lb/trip. After the primary whiting season: 10,000 lb/trip.

TABLE 1b (NORTH) TO PART 660, SUBPART D—LANDING ALLOWANCES FOR NON-IFQ SPECIES AND PACIFIC WHITING NORTH OF 40°10′ N LAT.—Continued

Species	Trip limit
Pacific whiting—Eureka Management Area	No more than 10,000 lb of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during the fishing trip, fished in the fishery management area shoreward of 100 fm contour (see § 660.131(d)).

Note 1 to table 1b (North): This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit. Trip limits apply in the EEZ only; see appropriate state regulations for state trip limits. Trip limits are effective year-round unless otherwise specified for different cumulative periods (defined at § 660.11 under ''Trip limits''). Trip limits are effective from the U.S.-Canada border to 40°10′ N lat. unless otherwise specified via latitudinal or state subdivisions in this table. Stock complexes are defined at § 660.11 under ''Groundfish''. Trip limits may be revised via inseason action; therefore, users should refer back to this table throughout the year. To convert pounds to kilograms, divide the weight in pounds by 2.20462. The resulting quotient is the weight in kilograms. See provisions at § 660.130 for gear restrictions and requirements by area. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used.

TABLE 1a (SOUTH) TO PART 660, SUBPART D—LIMITED ENTRY TRAWL ROCKFISH CONSERVATION AREAS FOR SOUTH OF 40°10′ N LAT.

Latitude	Boundary
South of 40°10′ N lat.:	BACs may be implemented and will be announced in the **Federal Register**.

Note 1 to table 1a (South): The Trawl RCA is an area closed to fishing with groundfish trawl gear, as defined at § 660.11. Trawl RCA boundaries apply in the EEZ only; see appropriate state regulations for state closures. Trawl RCA boundaries or Block Area Closures (BACs) may be revised or implemented via inseason action; therefore, users should refer back to this table throughout the year. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear Non-Trawl RCA, as described in tables 2a (North) and 2a (South) to part 660, subpart E.

TABLE 1b (SOUTH) TO PART 660, SUBPART D—LANDING ALLOWANCES FOR NON-IFQ SPECIES AND PACIFIC WHITING SOUTH OF 40°10′ N LAT.

Species	Trip limit
Big skate	Unlimited.
Blackgill rockfish	Unlimited.
Cabezon	50 lb/month.
California scorpionfish	Unlimited.
Longnose skate	Unlimited.
Longspine thornyhead (south of 34°27′ N lat.)	24,000 lb/2 months.
Nearshore rockfish complex, Washington black rockfish and Oregon black/blue/deacon rockfish.	300 lb/month.
Other fish	Unlimited.
Pacific Spiny Dogfish	60,000 lb/month.
Pacific whiting—Midwater Trawl	During the primary whiting season: allowed seaward of the Trawl RCA; prohibited within and shoreward of the Trawl RCA.
Pacific whiting—Large & Small Footrope Gear	Before the primary whiting season: 20,000 lb/trip. During the primary whiting season: 10,000 lb/trip. After the primary whiting season: 10,000 lb/trip.

Note 1 to table 1b (South): This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit. Trip limits apply in the EEZ only; see appropriate state regulations for state trip limits. Trip limits are effective year-round unless otherwise specified for different cumulative periods (defined at § 660.11 under ''Trip limits''). Trip limits are effective from 40°10′ N lat. to the U.S.-Mexico border unless otherwise specified via latitudinal or state subdivisions in this table. Stock complexes are defined at § 660.11 under ''Groundfish''. Trip limits may be revised via inseason action; therefore, users should refer back to this table throughout the year. To convert pounds to kilograms, divide the weight in pounds by 2.20462. The resulting quotient is the weight in kilograms. See provisions at § 660.130 for gear restrictions and requirements by area. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used.

■ 25. Amend § 660.230 by:
■ a. Revising paragraphs (a) and (b)(6)(i)(B);
■ b. Removing paragraph (d)(15); and
■ c. Redesignating paragraphs (d)(16) and (17) as paragraphs (d)(15) and (16).

The revisions read as follows:

§ 660.230 Fixed gear fishery—management measures.

(a) *General.* Most species taken in limited entry fixed gear (longline and pot/trap) fisheries will be managed with cumulative trip limits (see trip limits in tables 2b (North) and 2b (South) of this subpart), size limits (see § 660.60(h)(5)), seasons (see trip limits in tables 2b (North) and 2b (South) of this subpart and sablefish primary season details in § 660.231), gear restrictions (see paragraph (b) of this section), and closed areas (see paragraph (d) of this section and §§ 660.70 through 660.79). Cowcod, yelloweye, and California quillback rockfish retention is prohibited in all fisheries, and groundfish vessels operating south of Point Conception must adhere to GEA restrictions (see paragraph (d)(16) of this section and § 660.70). Regulations governing tier limits for the limited entry fixed gear sablefish primary season north of 36° N lat. are found in § 660.231. Vessels not participating in the sablefish primary season are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish

landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies, see paragraph (e) of this section. The trip limits in tables 2b (North) and 2b (South) of this subpart apply to vessels participating in the limited entry groundfish fixed gear fishery and may not be exceeded.

(b) * * *

(6) * * *

(i) * * *

(B) No more than four vertical mainlines attached to or fished from the vessel (*e.g.,* rod and reel) may be used in the water at one time.

* * * * *

■ 26. Amend § 660.231 by revising paragraphs (b)(3)(i) and (iv) to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(3) * * *

(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (*i.e.,* stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to three permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than three primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232. In 2025, the following annual limits are in effect: Tier 1 at 246,824 lb (111,957 kg), Tier 2 at 112,193 lb (50,890 kg), and Tier 3 at 64,110 lb (29,080 kg). In 2026 and beyond, the following annual limits are in effect: Tier 1 at 234,312 lb (106,282 kg), Tier 2 at 106,506 lb (48,310 kg), and Tier 3 at 60,860 lb (27,606 kg).

* * * * *

(iv) Incidental Pacific halibut retention north of Pt. Chehalis, WA (46°53.30′ N lat.). Pacific halibut may be retained north of Pt Chehalis by vessels participating in the sablefish primary fishery with the requisite Pacific halibut commercial fishery permit. Pacific halibut incidentally caught in the primary sablefish fishery when using bottom longline gear may be retained from April 1 through the Pacific halibut commercial fishing closure date set by the International Pacific Halibut Commission. Vessels permitted as described in this section may possess and land up to 150 lb (68 kg) dressed weight of Pacific halibut for every 1,000 lb (454 kg) dressed weight of sablefish landed, plus two additional Pacific halibut. Pacific halibut retained as described in this section may not be possessed or landed south of Pt. Chehalis.

* * * * *

■ 27. Amend § 660.232 by revising paragraph (a)(3) to read as follows:

§ 660.232 Limited entry daily trip limit (DTL) fishery for sablefish.

(a) * * *

(3) Vessels registered for use with a limited entry fixed gear permit that does not have a sablefish endorsement may fish in the limited entry DTL fishery, consistent with regulations at § 660.230, for as long as that fishery is open during the fishing year, subject to routine management measures imposed under § 660.60(c), Subpart C. DTL limits for the limited entry fishery north and south of 36° N lat. are provided in tables 2b (North) and 2b (South) of this subpart.

* * * * *

Table 2 (North) to Part 660, Subpart E—[Removed]

■ 28. Remove table 2 (North) to part 660, subpart E.

Table 2 (South) to Part 660, Subpart E—[Removed]

■ 29. Remove table 2 (South) to part 660, subpart E.

■ 30. Add tables 2a (North), 2b (North), 2a (South), and 2b (South) to part 660, subpart E to read as follows:

TABLE 2a (NORTH) TO PART 660, SUBPART E—NON-TRAWL ROCKFISH CONSERVATION AREA BOUNDARIES

Latitude	Boundary
North of 46°16′ N lat.:	Shoreward EEZ–100 fm line.
46°16′ N lat.–42°00′ N lat	30 fm line–75 fm line.
42°00′ N lat.–40°10′ N lat	Shoreward EEZ–75 fm line.

Note 1 to table 2a (North): The Non-Trawl RCA is an area closed to fishing with particular non-trawl gear types, as defined at § 660.11. Non-Trawl RCA boundaries apply in the EEZ only; see appropriate state regulations for state closures. Non-Trawl RCA boundaries may be revised via inseason action; therefore, users should refer back to this table throughout the year.

TABLE 2b (NORTH) TO PART 660, SUBPART E—TRIP LIMITS FOR LIMITED ENTRY FIXED GEAR NORTH OF 40°10′ N LAT.

Species	Trip limit
Big skate	Unlimited.
Black rockfish (42°00′ N lat.–40°10′ N lat.)	CLOSED.
Cabezon (42°00′ N lat.–40°10′ N lat.)	CLOSED.
Cabezon/kelp greenling complex (Oregon)	Unlimited.
Canary rockfish	3,000 lb/2 months.
Flatfish (includes dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder).	20,000 lb/2 months.
Lingcod (north of 42°00′ N lat.)	11,000 lb/2 months.
Lingcod (42°00′ N lat.–40°10′ N lat.)	2,000 lb/2 months seaward of the Non-Trawl RCA; CLOSED inside the Non-Trawl RCA.
Longnose skate	Unlimited.
Longspine thornyheads	10,000 lb/2 months.

TABLE 2b (NORTH) TO PART 660, SUBPART E—TRIP LIMITS FOR LIMITED ENTRY FIXED GEAR NORTH OF 40°10′ N LAT.—Continued

Species	Trip limit
Nearshore rockfish complex, Oregon black/blue/deacon rockfish, & Washington black rockfish (north of 42°00′ N lat.).	5,000 lb/2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish. See § 660.230(e) for additional trip limits for Washington black rockfish.
Nearshore rockfish complex (42°00′ N lat.–40°10′ N lat.)	CLOSED.
Other fish	Unlimited.
Other flatfish complex (north of 42°00′ N lat.)	20,000 lb/2 months.
Other flatfish complex (42°00′ N lat.–40°10′ N lat.)	20,000 lb/2 months seaward of the Non-Trawl RCA; CLOSED inside the Non-Trawl RCA.
Pacific cod	1,000 lb/2 months.
Pacific ocean perch	3,600 lb/2 months.
Pacific Spiny Dogfish	Periods 1–2: 200,000 lb/2 months. Period 3: 150,000 lb/2 months. Periods 4–6: 100,000 lb/2 months.
Pacific whiting	10,000 lb per trip.
Quillback rockfish (42°00′ N lat.–40°10′ N lat.)	CLOSED.
Sablefish	4,500 lb/week not to exceed 9,000 lb/2 months.
Shelf rockfish complex	1,600 lb/2 months.
Shortspine thornyhead	3,000 lb/2 months.
Slope rockfish complex & darkblotched rockfish	8,000 lb/2 months.
Widow rockfish	4,000 lb/2 months.
Yelloweye rockfish	CLOSED.
Yellowtail rockfish	6,000 lb/2 months.

Note 1 to table 2b (North): Trip limits apply in the EEZ only; see appropriate state regulations for state trip limits. Trip limits are effective year-round unless otherwise specified for different cumulative periods (defined at § 660.11 under ''Trip limits''). Trip limits are effective from the U.S.-Canada border to 40°10′ N lat. unless otherwise specified via latitudinal or state subdivisions in this table. Stock complexes are defined at § 660.11 under ''Groundfish''. Trip limits may be revised via inseason action; therefore, users should refer back to this table throughout the year. To convert pounds to kilograms, divide the weight in pounds by 2.20462. The resulting quotient is the weight in kilograms.

TABLE 2a (SOUTH) TO PART 660, SUBPART E—NON-TRAWL ROCKFISH CONSERVATION AREA BOUNDARIES

Latitude	Boundary
40°10′ N lat.–37°07′ N lat	Shoreward EEZ–75 fm line.
37°07′ N lat.–34°27′ N lat	50 fm line–75 fm line.
South of 34°27′ N lat	100 fm line–150 fm line (also applies around islands and banks).

Note 1 to table 2a (South): The Non-Trawl RCA is an area closed to fishing with particular non-trawl gear types, as defined at § 660.11. Non-Trawl RCA boundaries apply in the EEZ only; see appropriate state regulations for state closures. Non-Trawl RCA boundaries may be revised via inseason action; therefore, users should refer back to this table throughout the year.

TABLE 2b (SOUTH) TO PART 660, SUBPART E—B TRIP LIMITS FOR LIMITED ENTRY FIXED GEAR SOUTH OF 40°10′ N. LAT.

Species	Trip limit
Big skate	Unlimited.
Bocaccio	8,000 lb/2 months.
Bronzespotted rockfish	CLOSED.
Cabezon (40°10′ N lat.–37°07′ N lat.)	CLOSED.
Cabezon (south of 37°07′ N lat.)	Unlimited.
California scorpionfish	3,500 lb/2 months.
Canary rockfish	3,500 lb/2 months.
Chilipepper rockfish (40°10′ N lat.–34° 27′ N lat.)	10,000 lb/2 months.
Chilipepper rockfish (south of 34° 27′ N lat.)	8,000 lb/2 months.
Cowcod	CLOSED.
Flatfish (includes dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder).	20,000 lb/2 months.
Lingcod (40°10′ N lat.–37° 07′ N lat.)	1,600 lb/2 months seaward of the Non-Trawl RCA; 0 lb/2 months inside of the Non-Trawl RCA.
Lingcod (south of 37° 07′ N lat.)	1,600 lb/2 months.
Longnose skate	Unlimited.
Longspine thornyhead (south of 34° 27′ N lat.)	10,000 lb/2 months.
Nearshore rockfish complexes.	
Shallow nearshore rockfish complex (40°10′ N lat.–37°07′ N lat.).	CLOSED.
Shallow nearshore rockfish complex (south of 37°07′ N lat.)	2,000 lb/2 months.
Deeper nearshore rockfish complex (40°10′ N lat.–37°07′ N lat.).	CLOSED.
Deeper nearshore rockfish complex (south of 37°07′ N lat.)	2,000 lb/2 months, of which no more than 75 lb may be copper rockfish.
Other fish	Unlimited.

TABLE 2b (SOUTH) TO PART 660, SUBPART E—B TRIP LIMITS FOR LIMITED ENTRY FIXED GEAR SOUTH OF 40°10′ N. LAT.—Continued

Species	Trip limit
Other flatfish complex (40°10′ N lat.–37° 07′ N lat.)	20,000 lb/2 months seaward of the Non-Trawl RCA; CLOSED inside of the Non-Trawl RCA.
Other flatfish complex (south of 37° 07′ N lat.)	20,000 lb/2 months.
Pacific cod	1,000 lb/2 months.
Pacific spiny dogfish	Periods 1–2: 200,000 lb/2 months Period 3: 150,000 lb/2 months Periods 4–6: 100,000 lb/2 months.
Pacific whiting	10,000 lb per trip.
Quillback rockfish	CLOSED.
Sablefish (40°10′ N lat.–36° N lat.)	4,500 lb/week not to exceed 9,000 lb/2 months.
Sablefish (south of 36° N lat.)	2,500 lb/2 months.
Shelf rockfish complex (40°10′ N lat.–37° 07′ N lat.); excludes bronzespotted rockfish.	6,000 lb per 2 months, of which no more than 500 lb may be vermilion/sunset rockfish.
Shelf rockfish complex (37° 07′ N lat.–34° 27′ N lat.); excludes bronzespotted rockfish.	8,000 lb per 2 months, of which no more than 500 lb may be vermilion/sunset rockfish.
Shelf rockfish complex (south of 34° 27′ N lat.); excludes bronzespotted rockfish.	5,000 lb per 2 months, of which no more than 3,000 lb may be vermilion/sunset rockfish.
Shortspine thornyhead (40° 10′ N. lat.–34° 27′ N. lat.)	3,000 lb/2 months.
Slope rockfish complex & darkblotched rockfish	40,000 lb/2 months, of which no more than 6,000 lb may be blackgill rockfish.
Splitnose rockfish	40,000 lb/2 months.
Widow rockfish (40°10′ N lat.–34° 27′ N lat.)	10,000 lb/2 months.
Widow rockfish (south of 34° 27′ N lat.)	8,000 lb/2 months.
Yelloweye rockfish	CLOSED.

Note 1 to table 2b (South): Trip limits apply in the EEZ only; see appropriate state regulations for state trip limits. Trip limits are effective year-round unless otherwise specified for different cumulative periods (defined at §660.11 under ''Trip limits''). Trip limits are effective from 40°10′ N lat. to the U.S.-Mexico border unless otherwise specified via latitudinal or state subdivisions in this table. Stock complexes are defined at §660.11 under ''Groundfish''. Trip limits may be revised via inseason action; therefore, users should refer back to this table throughout the year. To convert pounds to kilograms, divide the weight in pounds by 2.20462. The resulting quotient is the weight in kilograms.

■ 31. Amend §660.312 by adding paragraph (a)(6) to read as follows:

§660.312 Open access fishery—prohibitions.

* * * * *

(a) * * *

(6) Take and retain, possess, or land groundfish in the directed open access fishery without having a valid directed open access permit for the vessel.

* * * * *

■ 32. Amend §660.330 by:

■ a. Revising paragraphs (a), (b)(3) introductory text, and (b)(3)(i)(B) and (C);

■ b. Removing paragraph (d)(17); and

■ c. Redesignating paragraphs (d)(18) and (19) as paragraphs (d)(17) and (18).

The revisions read as follows:

§660.330 Open access fishery—management measures.

(a) *General.* Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see trip limits in tables 3b (North) and 3b (South) of this subpart), size limits (see §660.60(h)(5)), seasons (see seasons in tables 3a (North) and 3a (South) of this subpart), gear restrictions (see paragraph (b) of this section), and closed areas (see paragraph (d) of this section and §§660.70 through 660.79). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed, any trip limit, frequency limit, and/or size limit for the open access fishery. Retention of cowcod, yelloweye rockfish, and quillback rockfish off California is prohibited in all fisheries, and groundfish vessels operating south of Point Conception must adhere to GEA restrictions (see paragraph (d)(18) of this section and §660.70). For information on the open access daily/weekly trip limit fishery for sablefish, see §660.332 and the trip limits in tables 3b (North) and 3b (South) of this subpart. Open access vessels are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies (see paragraph (e) of this section).

(b) * * *

(3) *Gear for use inside the Non-Trawl RCA.* Inside the Non-Trawl RCA, only legal non-bottom contact hook-and-line gear configurations may be used for target fishing for groundfish by vessels that participate in the directed open access sector as defined at §660.11. Vessels must be registered to a valid directed open access permit as defined at §660.25(i). On a fishing trip where any fishing will occur inside the Non-Trawl RCA, only one type of legal non-bottom contact gear may be carried on board, and no other fishing gear of any type may be carried on board or stowed during that trip. The vessel may fish inside and outside the Non-Trawl RCA on the same fishing trip, provided a valid declaration report as required at §660.13(d) has been filed with NMFS OLE. Legal non-bottom contact hook-and-line gear means stationary vertical jig gear not anchored to the bottom, and groundfish troll gear, subject to the specifications in paragraphs (b)(3)(i) and (ii) of this section.

(i) * * *

(B) No more than four vertical mainlines attached to or fished from the vessel (*e.g.,* rod & reel) may be used in the water at one time.

(C) No more than 100 hooks may be in the water at one time, with no more than 25 extra hooks on board the vessel.

* * * * *

■ 33. Amend §660.332 by revising paragraph (b)(1) to read as follows:

§660.332 Open access daily trip limit (DTL) fishery for sablefish.

* * * * *

(b) * * *

(1) Daily and/or weekly trip limits for the open access fishery north and south of 36° N lat. are provided in tables 3b (North) and 3b (South) of this subpart.

* * * * *

■ 34. Amend §660.333 by revising paragraph (a), redesignating paragraph

(e) as paragraph (g), adding new paragraph (e), and adding paragraphs (f), (h), and (i).

The revision and additions read as follows:

§ 660.333 Open access non-groundfish trawl fishery—management measures.

(a) *General.* This section describes management measures for vessels that take groundfish incidentally with non-groundfish trawl gear, including vessels engaged in fishing for pink shrimp, ridgeback prawns, California halibut, or sea cucumbers.

* * * * *

(e) *Non-Trawl Rockfish Conservation Area restrictions for the ridgeback prawn, California halibut, and sea cucumber fisheries.* (1) 40° 10′ N lat.–38.00° N lat.: 100 fm to 150 fm during Periods 1 and 6; 100 fm to 150 fm during Periods 2, 3, 4, and 5.

(2) 38.00° N lat.–34° 27 N lat.: 100 fm to 150 fm

(3) South of 34° 27 N lat.: 100 fm to 150 fm

(f) *Trip Limits for the ridgeback prawn, California halibut, and sea cucumber fisheries. Groundfish.* 300 lb (136 kg) per trip. Species-specific limits described in table 3b South also apply and are counted toward the 300 lb (136 kg) groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of Pacific spiny dogfish landed may exceed the amount of target species landed. Pacific spiny dogfish are limited by the 300 lb (136 kg)/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish ''per trip'' limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50′ N lat. are allowed to:

(1) Land up to 100 lb (45 kg) per day of groundfish without the ratio requirement, provided that at least one California halibut is landed; and

(2) Land up to 3,000 lb (1,361 kg) per month of flatfish, no more than 300 lb (136 kg) of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in table 3b South).

* * * * *

(h) *Management measures for the pink shrimp fishery north of 40° 10′ N lat.* Effective April 1–October 31: Groundfish: 500 lb (227 kg)/day, multiplied by the number of days of the trip, not to exceed 1,500 lb (680 kg)/trip. The following sublimits also apply and are counted toward the overall 500 lb (227 kg)/day and 1,500 lb (680 kg)/trip groundfish limits: lingcod 300 lb (136 kg)/month (minimum 24-inch (0.61 cm) size limit); sablefish 2,000 lb (907 kg)/month; canary, thornyheads, and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb (227 kg)/day and 1,500 lb (680 kg)/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.

(i) *Management measures for the pink shrimp fishery south of 40° 10′ N lat.* Effective April 1–October 31: Groundfish: 500 lb (227 kg)/day, multiplied by the number of days of the trip, not to exceed 1,500 lb (680 kg)/trip. The following sublimits also apply and are counted toward the overall 500 lb (227 kg)/day and 1,500 lb (680 kg)/trip groundfish limits: lingcod 300 lb (136 kg)/month (minimum 24-inch (0.61 cm) size limit); sablefish 2,000 lb (907 kg)/month; canary rockfish, thornyheads, and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb (227 kg)/day and 1,500 lb (680 kg)/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.

■ 35. Add § 660.334 to subpart F to read as follows:

§ 660.334 Open access non-groundfish salmon troll fishery—management measures.

(a) *General.* This section includes management measures applicable to vessels that incidentally take and retain groundfish while participating in the West Coast salmon fishery under the regulations at part 660, subpart H (herein referred to as ''salmon troll fishery''). All salmon troll vessels that take and retain groundfish species are subject to the open access trip limits, seasons, size limits, and Non-Trawl RCA restrictions listed in tables 3a (North), 3b (North), 3a (South), and 3b (South) to this subpart, unless otherwise stated in this section.

(b) *Trip limits.* (1) In the area north of 40° 10′ N lat., salmon trollers may retain and land up to 500 lb (227 kg) of yellowtail rockfish per month as long as salmon is on board, both within and outside of the Non-Trawl RCA. Salmon trollers may retain and land up to 1 lingcod per 2 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the Non-Trawl RCA. The lingcod limit only applies during times when lingcod retention is allowed and is not ''CLOSED''. These limits are within the limits described in table 3b (North), and not in addition to those limits.

(2) In the area south of 40° 10′ N lat., salmon trollers may retain and land up to 1 lb (0.45 kg) of yellowtail rockfish for every 2 lb (0.90 kg) of Chinook salmon landed, with a cumulative limit of 200 lb (91 kg)/month, both within and outside of the Non-Trawl RCA. This limit is within the trip limits for shelf rockfish, and not in addition to those limits. All groundfish species are subject to the open access limits, seasons, size limits, and RCA restrictions listed in tables 3a (South) and 3b (South) to this subpart, unless otherwise stated here.

Table 3 (North) to Part 660, Subpart F—[Removed]

■ 36. Remove table 3 (North) to part 660, subpart F.

Table 3 (South) to Part 660, Subpart F—[Removed]

■ 37. Remove table 3 (South) to part 660, subpart F.

■ 38. Add tables 3a (North), 3b (North), 3a (South), and 3b (South) to part 660, subpart F to read as follows:

TABLE 3a (NORTH) TO PART 660, SUBPART F—NON-TRAWL ROCKFISH CONSERVATION AREA BOUNDARIES

Latitude	Boundary
North of 46°16′ N lat.:	Shoreward EEZ–100 fm line.
46°16′ N lat.–42°00′ N lat.	30 fm line–75 fm line.

TABLE 3a (NORTH) TO PART 660, SUBPART F—NON-TRAWL ROCKFISH CONSERVATION AREA BOUNDARIES—Continued

Latitude	Boundary
42°00′ N lat.–40°10′ N lat.	Shoreward EEZ–75 fm line.

Note 1 to table 3a (North): The Non-Trawl RCA is an area closed to fishing with particular non-trawl gear types, as defined at § 660.11. Non-Trawl RCA boundaries apply in the EEZ only; see appropriate state regulations for state closures. Non-Trawl RCA boundaries may be revised via inseason action; therefore, users should refer back to this table throughout the year.

TABLE 3b (NORTH) TO PART 660, SUBPART F—TRIP LIMITS FOR OPEN ACCESS NORTH OF 40°10′ N. lat.

Species	Trip limit
Big skate	Unlimited.
Black rockfish (42°00′ N. lat.–40°10′ N. lat.)	CLOSED.
Cabezon (42°00′ N. lat.–40°10′ N. lat.)	CLOSED.
Cabezon/kelp greenling complex (Oregon)	Unlimited.
Canary rockfish	1,000 lb/2 months.
Flatfish (includes dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder).	10,000 lb/2 months.
Lingcod (north of 42°00′ N. lat.)	9,000 lb/2 months.
Lingcod (42°00′ N. lat.–40°10′ N. lat.)	2,000 lb/2 months seaward of the Non-Trawl RCA; CLOSED inside the Non-Trawl RCA.
Longnose skate	Unlimited.
Longspine thornyheads	100 lb/2 months.
Nearshore rockfish complex, Oregon black/blue/deacon rockfish, & Washington black rockfish (north of 42°00′ N. lat.).	5,000 lb/2 months no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish. See § 660.330(e) for additional trip limits for Washington black rockfish.
Nearshore rockfish complex (42°00′ N. lat.–40°10′ N. lat.)	CLOSED.
Other fish	Unlimited.
Other flatfish complex (north of 42°00′ N. lat.)	10,000 lb/2 months.
Other flatfish complex (42°00′ N. lat.–40°10′ N. lat.)	10,000 lb/2 months seaward of the Non-Trawl RCA; 0 lb/2 months inside the Non-Trawl RCA.
Pacific cod	1,000 lb/2 months.
Pacific ocean perch	200 lb/2 months.
Pacific Spiny Dogfish	Periods 1–2: 200,000 lb/2 months. Period 3: 150,000 lb/2 months. Periods 4–6: 100,000 lb/2 months.
Pacific whiting	600 lb/2 months.
Quillback rockfish (42°00′ N lat.–40°10′ N lat.)	CLOSED.
Sablefish	3,250 lb/week not to exceed 6,500 lb/2 months.
Shelf rockfish complex (north of 42°00′ N. lat.)	1,600 lb/2 months.
Shelf rockfish complex (42°00′ N lat.–40°10′ N lat.)	1,200 lb per 2 months.
Shortspine thornyhead	100 lb/2 months.
Slope rockfish complex & darkblotched rockfish	4,000 lb/2 months.
Widow rockfish	2,000 lb/2 months.
Yelloweye rockfish	CLOSED.
Yellowtail rockfish	3,000 lb/2 months.
Salmon Troll	See § 660.334(b)(1).
Pink Shrimp non-groundfish trawl	See § 660.333(g) and (h).

Note 1 to table 3b (North): Trip limits apply in the EEZ only; see appropriate state regulations for state trip limits. Trip limits are effective year-round unless otherwise specified for different cumulative periods (defined at § 660.11 under ''Trip limits''). Trip limits are effective from the U.S.-Canada border to 40°10′ N lat. unless otherwise specified via latitudinal or state subdivisions in this table. Stock complexes are defined at § 660.11 under ''Groundfish''. Trip limits may be revised via inseason action; therefore, users should refer back to this table throughout the year. To convert pounds to kilograms, divide the weight in pounds by 2.20462. The resulting quotient is the weight in kilograms.

TABLE 3a (SOUTH) TO PART 660, SUBPART F—NON-TRAWL ROCKFISH CONSERVATION AREA BOUNDARIES

Latitude	Boundary
40°10′ N lat.–37° 07′ N lat.	Shoreward EEZ–75 fm line.
37° 07′ N lat.–34° 27′ N lat.	50 fm line–75 fm line.
South of 34° 27′ N lat.	100 fm line–150 fm line (also applies around islands and banks).

Note 1 to table 3a (South): The Non-Trawl RCA is an area closed to fishing with particular non-trawl gear types, as defined at § 660.11. Non-Trawl RCA boundaries apply in the EEZ only; see appropriate state regulations for state closures. Non-Trawl RCA boundaries may be revised via inseason action; therefore, users should refer back to this table throughout the year.

TABLE 3b (SOUTH) TO PART 660, SUBPART F—TRIP LIMITS FOR OPEN ACCESS SOUTH OF 40°10′ N. lat.

Species	Trip limit
Big skate	Unlimited.
Bocaccio	6,000 lb/2 months.
Bronzespotted rockfish	CLOSED.

TABLE 3b (SOUTH) TO PART 660, SUBPART F—TRIP LIMITS FOR OPEN ACCESS SOUTH OF 40°10′ N. lat.—Continued

Species	Trip limit
Cabezon (40°10′ N lat.–37°07′ N lat.)	CLOSED.
Cabezon (south of 37°07′ N lat.)	Unlimited.
California scorpionfish	3,500 lb/2 months.
Canary rockfish	1,500 lb/2 months.
Chilipepper rockfish (40°10′ N lat.–34° 27′ N lat.)	6,000 lb/2 months.
Chilipepper rockfish (south of 34° 27′ N lat.)	4,000 lb/2 months.
Cowcod	CLOSED.
Flatfish (includes Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder).	10,000 lb/2 months.
Lingcod (40°10′ N lat.—37° 07′ N lat.)	1,400 lb/2 months seaward of the Non-Trawl RCA; CLOSED inside of the Non-Trawl RCA.
Lingcod (south of 37° 07′ N lat.)	1,400 lb/2 months.
Longnose skate	Unlimited.
Longspine thornyhead (40° 10′ to 34° 27′ N lat.)	100 lb/2 months.
Nearshore rockfish complexes:	
Shallow nearshore rockfish (40°10′ N lat.–37°07′ N lat.)	CLOSED.
Shallow nearshore rockfish (south of 37°07′ N lat.)	2,000 lb/2 months.
Deeper nearshore rockfish (40°10′ N lat.–37°07′ N lat.)	CLOSED.
Deeper nearshore rockfish (south of 37°07′ N lat.)	2,000 lb/2 months, of which no more than 75 lb may be copper rockfish.
Other fish (defined at § 660.11)	Unlimited.
Other flatfish complex (defined at § 660.11)	40°10′ N lat.–37° 07′ N lat.: 10,000 lb/2 months seaward of the Non-Trawl RCA; CLOSED inside of the Non-Trawl RCA South of 37° 07′ N lat.: 10,000 lb/2 months.
Pacific cod	1,000 lb/2 months.
Pacific Spiny Dogfish	Periods 1–2: 200,000 lb/2 months. Period 3: 150,000 lb/2 months. Periods 4–6: 100,000 lb/2 months.
Pacific whiting	600 lb/2 months.
Quillback rockfish	CLOSED.
Sablefish (40°10′ N lat.–36° N lat.)	3,250 lb/week not to exceed 6,500 lb/2 months.
Sablefish (south of 36° N lat.)	2,000 lb/week not to exceed 6,000 lb/2 months.
Shelf rockfish complex (40°10′ N lat.–37° 07′ N lat.); excludes bronzespotted rockfish.	3,000 lb per 2 months, of which no more than 300 lb may be vermilion/sunset rockfish.
Shelf rockfish complex (37° 07′ N lat.–34° 27′ N lat.); excludes bronzespotted rockfish.	4,000 lb per 2 months, of which no more than 300 lb may be vermilion/sunset rockfish.
Shelf rockfish complex (south of 34° 27′ N lat.); excludes bronzespotted rockfish.	3,000 lb per 2 months, of which no more than 900 lb may be vermilion/sunset rockfish.
Shortspine thornyhead (40° 10′ N. lat.–34° 27′ N. lat.)	100 lb/2 months.
Shortspine thornyhead and longspine thornyhead (south of 34° 27′ N. lat.).	100 lb/day, no more than 1,000 lb/2 months for all periods.
Slope rockfish complex & darkblotched rockfish	10,000 lb/2 months, of which no more than 2,500 lb may be blackgill rockfish.
Splitnose rockfish	400 lb/2 months.
Widow rockfish (40°10′ N lat.–34° 27′ N lat.)	6,000 lb/2 months.
Widow rockfish (south of 34° 27′ N lat.)	4,000 lb/2 months.
Yelloweye rockfish	CLOSED.
Salmon Troll	See § 660.334(b)(2).
Ridgeback Prawn, California halibut, and sea cucumber	See § 660.333(e) and (f).
Pink Shrimp	See § 660.333(g) and (i).

Note 1 to table 3b (South): Trip limits apply in the EEZ only; see appropriate state regulations for state trip limits. Trip limits are effective year-round unless otherwise specified for different cumulative periods (defined at § 660.11 under ''Trip limits''). Trip limits are effective from 40°10′ N lat. to the U.S.-Mexico border unless otherwise specified via latitudinal or state subdivisions in this table. Stock complexes are defined at § 660.11 under ''Groundfish''. Trip limits may be revised via inseason action; therefore, users should refer back to this table throughout the year. To convert pounds to kilograms, divide the weight in pounds by 2.20462. The resulting quotient is the weight in kilograms.

■ 39. Amend § 660.351 by revising the definition of ''Boat limit'' and adding in alphabetical order a definition for ''Descending device'' to read as follows:

§ 660.351 Recreational fishery—definitions.

* * * * *

Boat limit means the number of fish available for a vessel or boat.

Descending device means an instrument capable of releasing a fish at the depth from which the fish was caught.

* * * * *

■ 40. Amend § 660.352 by adding paragraph (c) to read as follows:

§ 660.352 Recreational fishery—prohibitions.

* * * * *

(c) Fail to have at least one functional descending device on board ready for immediate use during a groundfish recreational fishing trip.

■ 41. Amend § 660.360 by:

■ a. Adding paragraph (b)(1) and a reserved paragraph (b)(2);

■ b. Revising paragraph (c)(1) introductory text, table 1 to paragraph (c)(1)(i)(D), paragraphs (c)(1)(ii) through (iv) and (c)(2)(iii)(A) through (C);

■ c. Redesignating paragraphs (c)(2)(iii)(D) and (E) as paragraphs (c)(2)(iii)(E) and (F);

■ d. Adding new paragraph (c)(2)(iii)(D);

■ e. Revising paragraph (c)(3)(i)(A) introductory text;

■ f. Removing paragraph (c)(3)(ii)(C);

■ g. Redesignating paragraph (c)(3)(ii)(D) as paragraph (c)(3)(ii)(C) and revising it;

■ h. Revising paragraph (c)(3)(iii)(D);

■ i. Removing paragraph (c)(3)(v)(C); and

■ j. Redesignating paragraph (c)(3)(v)(D) as paragraph (c)(3)(v)(C) and revising it.

The revisions and additions read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(b) * * *

(1) All vessels participating in the groundfish recreational fishery seaward of California, Oregon, or Washington must carry on board one functional descending device as defined at § 660.351. The descending device must be available for immediate use and be available to present to an enforcement officer upon request.

(2) [Reserved]

(c) * * *

(1) *Washington.* For each person engaged in recreational fishing off the coast of Washington, the groundfish bag limit is nine groundfish per day, including rockfish, cabezon, and lingcod. Within the groundfish bag limit, there are sub-limits for rockfish, lingcod, and cabezon outlined in paragraph (c)(1)(i)(D) of this section. In addition to the groundfish bag limit of nine, there will be a flatfish limit of five fish, not to be counted towards the groundfish bag limit but in addition to it. The recreational groundfish fishery will open the second Saturday in March through the third Saturday in October for all species. In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. The following seasons, closed areas, sub-limits, and size limits apply:

(i) * * *

(D) * * *

Table 1 to Paragraph (C)(1)(i)(D) -- Washington Recreational Fishing Season Structure

Marine Area	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
3 & 4 (N. Coast)	Closed			Open [a]		See WA state regulations for allowable depths [a b c]		Open			Closed	
2 (S. Coast)	Closed			Open [d e]							Closed	
1 (Col. River)	Closed			Open [f g]							Closed	

[a] Retention of copper, quillback, and vermilion rockfishes prohibited May 1 through July 31.

[b] Retention of lingcod, Pacific cod, sablefish, bocaccio, silvergray rockfish, canary rockfish, widow rockfish, and yellowtail rockfish allowed >20 fm (37 m) on days when Pacific halibut is open June 1 through July 31.

[c] Retention of yellowtail and widow rockfishes is allowed >20 fm (37 m) in July.

[d] From May 1 through May 31, lingcod retention prohibited >30 fm (55 m), except on days that the primary Pacific halibut season is open.

[e] When lingcod is open, retention is prohibited seaward of a line drawn from Queets River (47° 31.70' N. lat. 124° 45.00' W. long.) to Leadbetter Point (46° 38.17' N. lat. 124° 30.00' W. long.), except on days open to the primary Pacific halibut fishery and June 1 - 15 and September 1 - 30.

[f] Retention of sablefish, Pacific cod, flatfish (other than halibut), yellowtail, widow, canary, redstripe, greenstriped, silvergray, chilipepper, bocaccio, and blue/deacon rockfishes allowed during the all-depth Pacific halibut fishery. Lingcod retention is only allowed with halibut on board north of the WA-OR border.

[g] Retention of lingcod is prohibited seaward of a line drawn from Leadbetter Point (46° 38.17' N. lat., 124° 21.00' W. long.) to 46° 33.00' N. lat., 124° 21.00' W. long. year-round, except lingcod retention is allowed from June 1 - June 15 and Sept 1 - Sept 30.

(ii) *Rockfish.* In areas of the EEZ seaward of Washington (Washington Marine Areas 1–4) that are open to recreational groundfish fishing, there is a seven rockfish per day bag limit, including a sub-bag limit of five canary rockfish. Taking and retaining yelloweye rockfish is prohibited in all Marine Areas.

(iii) *Cabezon.* In areas of the EEZ seaward of Washington (Washington Marine Areas 1–4) that are open to recreational groundfish fishing, there is a one cabezon per day bag limit.

(iv) *Lingcod.* In areas of the EEZ seaward of Washington (Washington Marine Areas 1–4) that are open to recreational groundfish fishing and when the recreational season for lingcod is open, there is a bag limit of two lingcod per day. The recreational fishing seasons for lingcod is open from the second Saturday in March through the third Saturday in October.

(2) * * *

(iii) * * *

(A) *Marine fish.* The bag limit is 10 marine fish per day, which includes rockfish, kelp greenling, cabezon, and other groundfish species; except the daily bag limit in the long-leader gear fishery is 12 fish per day with a sub-bag limit of 5 fish per day for canary

rockfish. The bag limit of marine fish excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, flatfish, lingcod, striped bass, hybrid bass, offshore pelagic species, and baitfish (*e.g.,* herring, smelt, anchovies, and sardines). The minimum size for cabezon retained in the Oregon recreational fishery is 16 in (41 cm) total length.

(B) *Lingcod.* There is a three fish limit per day. The minimum size for lingcod retained in the Oregon recreational fishery is 22 in (56 cm) total length. For vessels using long-leader gear (as defined in § 660.351) and fishing inside the Recreational RCA, possession of lingcod is prohibited.

(C) *Flatfish.* There is a 25 fish limit per day for all flatfish, excluding Pacific halibut, but including all soles, flounders, and Pacific sanddabs.

(D) *Sablefish.* There is a 10 fish limit per day.

* * * * *

(3) * * *

(i) * * *

(A) *Recreational rockfish conservation areas.* The Recreational RCAs are areas that are closed to recreational fishing for certain groundfish. Fishing for the California rockfish, cabezon, greenling complex (RCG Complex), as defined in paragraph (c)(3)(ii) of this section, and lingcod with recreational gear, is prohibited within the Recreational RCA. It is unlawful to take and retain, possess, or land the RCG Complex and lingcod taken with recreational gear within the Recreational RCA, unless otherwise authorized in this section. A vessel fishing in the Recreational RCA may not be in possession of any species prohibited by the restrictions that apply within the Recreational RCA. For example, if a vessel fishes in the recreational salmon fishery within the Recreational RCA, the vessel cannot be in possession of the RCG Complex and lingcod while in the Recreational RCA. The vessel may, however, on the same trip fish for and retain rockfish shoreward of the Recreational RCA on the return trip to port. If the season is closed for a species or species group, fishing for that species or species group is prohibited both within the Recreational RCA and outside of the Recreational RCA, unless otherwise authorized in this section. In times and areas where a Recreational RCA is closed shoreward of a Recreational RCA line (*i.e.,* when an ''off-shore only'' fishery is active in that management area) vessels may stop, anchor in, or transit through waters shoreward of the Recreational RCA line so long as they do not have any hook-and-line fishing gear in the water. Coordinates approximating boundary lines at the 30 fm (55 m) through 100 fm (183 m) depth contours can be found at §§ 660.71 through 660.73. The recreational fishing season structure and RCA depth boundaries seaward of California by management area and month are as follows:

* * * * *

(ii) * * *

(C) *Dressing/fileting.* Each RCG Complex filet must have the entire skin attached.

(iii) * * *

(D) *Dressing/fileting.* Lingcod filets may be no smaller than 14 in (36 cm) in length. Each lingcod filet must have the entire skin attached.

* * * * *

(v) * * *

(C) *Dressing/fileting.* Each California scorpionfish filet must have the entire skin attached.

* * * * *

■ 42. Amend § 660.604 by revising paragraph (p)(4)(i) introductory text to read as follows:

§ 660.604 Vessel and first receiver responsibilities.

* * * * *

(p) * * *

(4) * * *

(i) The vessel must retain IFQ species (as defined at § 660.140(c)), except for Arrowtooth flounder, English sole, Dover sole, deep sea sole, Pacific sanddab, Pacific whiting, lingcod, sablefish, starry flounder, and rex sole; must retain salmon and eulachon; and must retain the following non-IFQ species: Greenland turbot, slender sole, hybrid sole, c-o sole, bigmouth sole, fantail sole, hornyhead turbot, spotted turbot, northern rockfish, black rockfish, blue rockfish, shortbelly rockfish, olive rockfish, Puget Sound rockfish, semaphore rockfish, walleye pollock, slender codling, and Pacific tom cod, with exceptions listed in paragraphs (p)(4)(i)(A) and (B) of this section.

* * * * *

[FR Doc. 2024–28035 Filed 12–13–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 241
Monday, December 16, 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 71

[Docket No. FAA–2024–2672; Airspace Docket No. 24–ASW–13]

RIN 2120–AA66

Amendment of VOR Federal Airways V–161, V–163, and V–568; and Establishment of United States RNAV Route T–545 in the Vicinity of Three Rivers, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Very High Frequency Omnidirectional Range (VOR) Federal Airways V–161, V–163, and V–568; and to establish United States Area Navigation (RNAV) Route T–545. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Three Rivers, TX (THX), VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). The Three Rivers VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before January 30, 2025.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–2672 and Airspace Docket No. 24–ASW–13 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

FAA Order JO 7400.11J, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

VOR Federal Airways are published in paragraph 6010(a) and United States Area Navigation Routes (T-routes) are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024, and effective September 15, 2024. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

Background

The FAA is planning to decommission the VOR portion of the Three Rivers, TX, VORTAC in August 2025. The Three Rivers VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** on July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Three Rivers VORTAC is planned for decommissioning, the co-located Tactical Air Navigation (TACAN) portion of the NAVAID is being retained. The TACAN would continue to provide navigational service for military operations and Distance Measuring Equipment (DME) service supporting current and future NextGen PBN flight procedure requirements.

The VOR Federal Airways affected by the Three Rivers VOR decommissioning are V–161, V–163, and V–568. With the planned decommissioning of the Three Rivers VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of V–161 and V–568. As such, proposed modifications to V–161 and V–568 would result in the airways being shortened. Proposed modifications to V–163 would retain the airway with a minor alignment change by replacing the Three Rivers VORTAC and YENNS Fix route points with a new single intersection Fix using radials from the Corpus Christi, TX, VORTAC and the San Antonio, TX, VORTAC.

To mitigate the loss of the V–161 and V–568 airway segments, instrument flight rules (IFR) pilots could use V–68 and the proposed amended V–163 airway to navigate through and around the affected area. IFR pilots with RNAV-equipped aircraft could navigate using RNAV Route T–499, the proposed new RNAV Route T–545, or point-to-point using the existing Fixes that would remain in place to support continued operations though the affected area. Additionally, IFR pilots could request and receive air traffic control (ATC) radar vectors to fly through or around the affected area. Visual flight rules pilots who elect to navigate via airways could also take advantage of the proposed amended V–163, the ATC services listed previously, as well as the listed RNAV routes and point-to-point navigation, if properly equipped.

The proposed establishment of United States RNAV Route T–545 would mitigate portions of the proposed modifications to V–161 and V–568 and overlay V–163 to provide positive course guidance for RNAV-equipped aircraft between the Brownsville, TX, area and the San Antonio, TX, area. The proposed T–545 would also ensure RNAV-equipped aircraft safely circumnavigate the Kingsville 4, TX, and the Randolph 1B, TX, Military Operations Areas (MOA).

The Proposal

The FAA is proposing to amend 14 CFR part 71 by amending VOR Federal Airways V–161, V–163, and V–568; and establishing United States RNAV Route T–545. This action is required due to the planned decommissioning of the VOR portion of the Three Rivers, TX, VORTAC NAVAID. The proposed Air Traffic Service (ATS) route actions are described below.

V–161: V–161 currently extends between the Three Rivers, TX, VORTAC and the Center Point, TX, VORTAC; between the Millsap, TX, VORTAC and the Tulsa, OK, VORTAC; and between the Butler, MO, VORTAC and the Gopher, MN, VORTAC. The FAA proposes to remove the airway segment between the Three Rivers VORTAC and the Center Point VORTAC. As amended, the airway would be changed to extend between the Millsap VORTAC and the Tulsa VORTAC, and between the Butler VORTAC and the Gopher VORTAC.

V–163: V–163 currently extends between the Matamoros, Mexico, VOR/Distance Measuring Equipment (VOR/DME) and the Gooch Springs, TX, VORTAC. The airspace within Mexico is excluded. The FAA proposes to amend the airway by removing the Three Rivers, TX, VORTAC and the intersection of the Three Rivers VORTAC 345° and San Antonio, TX, VORTAC 168° radials (YENNS Fix) route points and replacing them with a new route point at the intersection of the Corpus Christi, TX, VORTAC 314° True (T)/305° Magnetic (M) and San Antonio VORTAC 168°(T)/160°(M) radials (SLENA Fix). Additionally, the airway width reduction between the Brownsville, TX, VORTAC and the Corpus Christi VORTAC would be removed as it is no longer needed. As amended, the airway would continue to extend between the Matamoros, Mexico, VOR/DME and the Gooch Springs VORTAC. The airspace within Mexico would continue to be excluded.

V–568: V–568 currently extends between the Corpus Christi, TX, VORTAC and the Stonewall, TX, VORTAC; and between the Millsap, TX, VORTAC and the Wichita Falls, TX, VORTAC. The FAA proposes to remove the airway segment between the Corpus Christi VORTAC and the San Antonio, TX, VORTAC. As amended, the airway would be changed to extend between the San Antonio VORTAC and the Stonewall VORTAC, and between the Millsap VORTAC and the Wichita Falls VORTAC.

T–545: T–545 is a new United States RNAV route proposed to be established extending between the Brownsville, TX, VORTAC and the Gooch Springs, TX, VORTAC. The new route would provide an RNAV alternative to the proposed V–163 airway segment amendment between the Corpus Christi, TX, VORTAC and the San Antonio, TX, VORTAC. Additionally, the route would also provide positive RNAV navigational guidance for aircraft to remain clear of the Kingsville 4, TX, and the Randolph 1B, TX, MOAs.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11J, Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–161 [Amended]

From Millsap, TX; Bowie, TX; Ardmore, OK; Okmulgee, OK; to Tulsa, OK. From Butler, MO; Napoleon, MO; Lamoni, IA; Des Moines, IA; Mason City, IA; Rochester, MN; Farmington, MN; to Gopher, MN.

* * * * *

V–163 [Amended]

From Matamoros, Mexico; Brownsville, TX; Corpus Christi, TX; INT Corpus Christi 314°(T)/305°(M) and San Antonio, TX, 168°(T)/160°(M) radials; San Antonio; to Gooch Springs, TX. The airspace within Mexico is excluded.

* * * * *

V–568 [Amended]

From San Antonio, TX; to Stonewall, TX. From Millsap, TX; to Wichita Falls, TX.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–545 BROWNSVILLE, TX (BRO) TO GOOCH SPRINGS, TX (AGJ) [NEW]

Brownsville, TX (BRO)	VORTAC	(Lat. 25°55′26.66″ N, long. 097°22′30.97″ W)
Corpus Christi, TX (CRP)	VORTAC	(Lat. 27°54′13.56″ N, long. 097°26′41.57″ W)
SLENA, TX	FIX	(Lat. 28°32′38.31″ N, long. 098°11′47.89″ W)
San Antonio, TX (SAT)	VORTAC	(Lat. 29°38′38.51″ N, long. 098°27′40.74″ W)
Gooch Springs, TX (AGJ)	VORTAC	(Lat. 31°11′07.82″ N, long. 098°08′30.69″ W)

* * * * *

Issued in Washington, DC, on December 11, 2024.

Richard Lee Parks,

Manager (A), Rules and Regulations Group.

[FR Doc. 2024–29514 Filed 12–13–24; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 24–1198; MB Docket No. 24–667; RM–11992; FR ID 266488]

Radio Broadcasting Services; Ethete, Wyoming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by The Business Council of the Northern Arapaho, the non-gaming Tribal governmental agency of the Northern Arapaho Tribe, proposing to amend the FM Table of Allotments, by allotting Channel 260C0 at Ethete, Wyoming, as a Tribal allotment and the community's first local service. A staff engineering analysis indicates that Channel 260C0 can be allotted to Ethete, Wyoming, consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 42 km (26 miles) north of the community. The reference coordinates are 43–22–25 NL and 108–36–28 WL.

DATES: Comments must be filed on or before January 17, 2025, and reply comments on or before February 3, 2025.

ADDRESSES: Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and its counsel as follows: The Business Council of the Northern Arapaho, c/o Anne Goodwin Crump, Fletcher, Heald & Hildreth, P.L.C., 1300 N 17th Street—Eleventh Floor, Arlington, Virginia 22209.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Federal Communications Commission's (Commission) Notice of Proposed Rule Making, MB Docket No. 24–667, adopted December 3, 2024, and released December 3, 2024. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs.* The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *https://www.fcc.gov/edocs.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will publish the required summary of this notice of proposed rulemaking on *https://www.fcc.gov/proposed-rulemakings,* pursuant to The Providing Accountability Through Transparency Act, *see* 5 U.S.C. 553(b)(4).

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Proposed Rules

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

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. In § 73.202, amend table 1 to paragraph (b) under Wyoming by adding in alphabetical an entry for ''Ethete'' to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

[U.S. States]

	Channel No.
* * * * *	
Wyoming	
* * * * *	
Ethete	260C0
* * * * *	

[FR Doc. 2024–29434 Filed 12–13–24; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 89, No. 241
Monday, December 16, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

30-Day Notice of Proposed Information Collection

AGENCY: U.S. Agency for International Development.

ACTION: Notice of public information collection.

SUMMARY: The U.S. Agency for International Development (USAID) seeks Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, USAID requests public comment on this collection from all interested individuals and organizations.

DATES: Submit comments on or before January 15, 2025.

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: Wayne Cohee, at (202) 230–4575 or via email at *policymailbox@usaid.gov.*

SUPPLEMENTARY INFORMATION: USAID previously published a Notice of Public Information Collection in the **Federal Register** on September 23, 2024 at 87 FR 77471 allowing for a 60-day public comment period. That Notice published the intent of USAID to seek a revision to OMB approval number 0412–0510 to allow information collections that would be required by the future addition of three new Standard Provisions in USAID's Automated Directives System (ADS) Chapter 303, USAID Grants and Cooperative Agreements to Non-Governmental Organizations. The three new Standard Provisions would be entitled: 1. Activity Monitoring, Evaluation, and Learning Plans (AMELPs); 2. Planning, Collection, and Submission of Digital Information to USAID With Data Management Plan (DMP); and 3. Planning, Collection, and Submission of Digital Information to USAID Without Data Management Plan (DMP).

In response to a comment received on the 60-day notice, in which the respondent asked if USAID intends to publish the full text of the three new Standard Provisions, USAID will include the draft text of the three new Standard Provisions as an attachment to this notice in the docket on *https://www.regulations.gov/.*

The purpose of this notice is to allow an additional 30 days for public comment. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of functions of the agency, including the practical utility of the information; (b) the accuracy of USAID's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents.

All comments must be in writing and submitted through the method(s) specified in the **ADDRESSES** section above. All submissions must include the information collection title.

Please include your name, title, organization, postal address telephone number, and email address in the text of the message. Please note that comments submitted in response to this Notice are public record. We recommend that you do not submit detailed personal information, Confidential Business Information, or any information that is otherwise protected from disclosure by statute.

USAID will only address comments that explain why the proposed collection would be inappropriate, ineffective, or unacceptable without a change. Comments that are insubstantial or outside the scope of the notice of request for public comment may not be considered.

OMB No: 0412–0510.

Form: No Form associated with this collection.

Title of Information Collection: United States Agency for International Development (USAID) Automated Directives System (ADS) Chapter 303 Standard Provisions Information Collection.

Type of Review: Revision of a currently approved collection (OMB No. 0412–0510).

Purpose: USAID is authorized to make grants to and enter cooperative agreements with Non-Governmental Organizations in or outside of the United States in furtherance of the purposes and within limitations of the Foreign Assistance Act (FAA). The information collection requirements placed on the public are published in Standard Provisions that are included, as required or as applicable, in Notices of Funding Opportunities to potential applicants and resulting awards to recipients. The pre-award requirements are based on a need for prudent management in the determination that an applicant either has or can obtain the ability to competently manage development assistance programs using public funds. The requirements for information collection during the post-award period are based on the need to prudently administer public funds.

Respondents: USAID grant and cooperative agreement applicants and recipients.

For the Three New Standard Provisions (total):

Estimated Number of Annual Responses: 2,525.

Estimated Number of Annual Burden Hours: 123,725.

Estimated Total Public Burden (in cost): $7,299,775.

These estimated totals were calculated using the below burden estimates per response for each of the named Standard Provisions, which are published internally in the Agency's ADS Chapter 303 and included by Agreement Officers, as required or as applicable, in Notices of Funding Opportunities and resulting awards:

Activity Monitoring, Evaluation, and Learning Plan (TBD 2025)—65 hours.

Submission of Digital Information with a Data Management Plan (TBD 2025)—53 hours.

Submission of Digital Information without a Data Management Plan (TBD 2025)—9 hours.

Jami J. Rodgers,

Senior Procurement Executive, USAID.

[FR Doc. 2024–29512 Filed 12–13–24; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and reinstatement under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 15, 2025 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: Rural Energy for America Program.

OMB Control Number: 0570–0067.

Summary of Collection: The Rural Business-Cooperative Service (RBCS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), administers the Rural Energy for America program (REAP). The REAP program helps agricultural producers and rural small business reduce energy cost and consumption, develop new income streams, and help meet the nation's critical energy needs. The REAP program is authorized under 7 U.S.C. 8107 and is implemented by 7 CFR part 4280 subpart B (grants) and 7 CFR part 5001 (guaranteed loans). The Inflation Reduction Act (IRA) of 2022 provides additional authorities for REAP Public Law 117–169 section 22002. Subtitle C, section 2202 of the IRA authorized the REAP Technical Assistance Grant (TAG) program.

Need and Use of the Information: Agricultural producers and rural small businesses that wish to apply for a RES/EEI, EA, or TAG grant will have to submit applications with specified forms or project proposal with specified information, certifications, and agreements to the Agency. This information will be used to determine applicant eligibility, project eligibility and technical merit, ensure that grantees operate on a sound basis and use funds for authorized purposes.

Description of Respondents: Business or other for-profit; Individuals; State, local government, or Tribal.

Number of Respondents: 4,615.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly; Annually.

Total Burden Hours: 258,643.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–29516 Filed 12–13–24; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 15, 2025 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: On Farm Monitoring of Antimicrobial Use and Resistance in U.S. Broiler Production.

OMB Control Number: 0579–0481.

Summary of Collection: 7 U.S.C. 391, the Animal Industry Act of 1884, directs USDA to collect and disseminate animal health data and information. 7 U.S.C. 8308 of the Animal Health Protection Act, ''Detection, Control, and Eradication of Diseases and Pests,'' May 13, 2002, further directs USDA to examine and report on animal disease control methods. APHIS's mission is to protect and improve American agriculture's productivity and competitiveness. Realizing this mission relies, in large part, on collecting, analyzing, and disseminating livestock and poultry health information.

APHIS is making this submission to continue the National Animal Health Monitoring System's (NAHMS') On-farm Monitoring of Antimicrobial Use and Resistance in U.S. Broiler Production study. This study is an information collection conducted by APHIS through a cooperative agreement with the University of Minnesota. This longitudinal study monitors U.S. broiler chicken operations for antimicrobial use (AMU), antimicrobial resistance (AMR), animal health and production practices, and the relationship between them and changes over time.

Need and Use of the Information: This study provides U.S. poultry producers and animal health professionals information about the relationship between AMU, AMR, animal health and production, and changes in each over time. This information is essential for effectively

responding to the global health threat posed to animals and humans of increasing antimicrobial resistance. APHIS uses the forms NAHMS 470 and NAHMS 471 to collect the information for the study. Without this survey, APHIS will have limited information by which to make decisions related to AMU and AMR as they relate to the U.S. poultry industry.

Description of Respondents: Businesses or other for-profits.

Number of Respondents: 30.

Frequency of Responses: Reporting; On occasion; Quarterly.

Total Burden Hours: 869.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–29509 Filed 12–13–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 15, 2025 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Highly Pathogenic Avian Influenza (HPAI); Testing, Surveillance, and Reporting of HPAI in Livestock; Dairy Herd Certification.

OMB Control Number: 0579–0494.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The Secretary may also prohibit or restrict import or export of any animal or related material if required to prevent the spread of any livestock or poultry pest or disease. Part of the mission of APHIS' Veterinary Services (VS) business unit is preventing foreign animal disease outbreaks in the United States, and monitoring, controlling, and eliminating a disease outbreak should one occur.

High Path Aviation Influenza (HPAI) is a contagious viral disease of domestic poultry and wild birds, and is deadly to domestic poultry, wiping out entire flocks within a matter of days. It has now been detected in dairy cattle. In April 2024, APHIS published a Federal Order to assist with limiting the spread of H5N1 in dairy cattle.

Need and Use of the Information: The Federal Order requires testing lactating dairy cattle prior to interstate movement and mandatory reporting from laboratories of positive Influenza A cases in livestock. It also requires infected dairy cattle premises to not move lactating dairy cattle interstate for 30 days and to provide epidemiological information, including animal movement tracing, via a questionnaire. Other data collection requirements include inspections and sampling, implementation of biosecurity plans, State response and containment plans, and support agreements. APHIS is working with State and industry partners to encourage farmers and veterinarians to report cattle illnesses quickly so that APHIS can monitor new cases and minimize the impact to farmers, consumers, and other animals.

Description of Respondents: Businesses or other for-profits, State animal health officials.

Number of Respondents: 6,052.

Frequency of Responses: Reporting; On occasion; Quarterly.

Total Burden Hours: 503,000.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–29554 Filed 12–13–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Military Panel Topical 4 Operation

On August 31, 2023, the Department of Commerce received clearance from the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 to conduct the Census Household Panel recruitment and first topical operation (OMB No. 0607–1027, Exp. 8/31/26). On July 15, 2024, the Department of Commerce received subsequent clearance from the OMB to conduct the second and third topical operations. The Military Panel is designed to ensure availability of frequent data collection for nationwide estimates on a variety of topics for active-duty service members and spouses of active-duty service members.

Content for Topical 4 will consist of topics including food security readiness, voting, and harassment and discrimination. Topical 4 data will be collected in January 2025. The Department of Commerce will submit the following information collection request to the OMB for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 3, 2023, during a 30-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Commerce.

Title: Military Panel.

OMB Control Number: 0607–1027.

Form Number(s): Not yet determined.

Type of Request: Request for a Revision of a Currently Approved Collection.

Number of Respondents: 1,141 panel members.

Average Hours per Response: 2 hours per year (20 minutes for bi-monthly collection).

Burden Hours: 1,596.

Needs and Uses: The Census Military Panel is a national survey panel by the U.S. Census Bureau (Census) and the U.S. Department of Defense (DOD) consisting of active-duty service members and spouses of active-duty service members that have agreed to be contacted and invited to participate. The ultimate goal for the Military Panel project is to recruit at least 2,000 panel members (1,000 service members and 1,000 spouses) randomly selected directly from military administrative data.

Invitations to complete the bi-monthly surveys will be sent via email and SMS messages and questionnaires will be mainly internet self-response. The Panel will maintain representativeness by allowing respondents who do not use the internet to respond via computer-assisted telephone interviewing (CATI). All panelists will receive an incentive for each complete questionnaire. Periodic replenishment samples will maintain representativeness and panelists will be replaced after a period of three years.

Affected Public: Individuals or Households.

Frequency: Bi-monthly.

Respondent's Obligation: Voluntary.

Legal Authority: 10 U.S.C. 1782; Title 13 U.S.C. 8(b).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection or the OMB Control Number 0607–1027.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–29570 Filed 12–13–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Military Panel Topical 4 Operation

On August 31, 2023, the Department of Commerce received clearance from the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 to conduct the Census Household Panel recruitment and first topical operation (OMB No. 0607–1027, Exp. 8/31/26). On July 15, 2024, the Department of Commerce received subsequent clearance from the OMB to conduct the second and third topical operations. The Military Panel is designed to ensure availability of frequent data collection for nationwide estimates on a variety of topics for active-duty service members and spouses of active-duty service members.

Content for Topical 4 will consist of topics including food security readiness, voting, and harassment and discrimination. Topical 4 data will be collected in January 2025. The Department of Commerce will submit the following information collection request to the OMB for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 3, 2023, during a 30-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Commerce.

Title: Military Panel.

OMB Control Number: 0607–1027.

Form Number(s): Not yet determined.

Type of Request: Request for a Revision of a Currently Approved Collection.

Number of Respondents: 1,141 panel members.

Average Hours per Response: 2 hours per year (20 minutes for bi-monthly collection).

Burden Hours: 1,596.

Needs and Uses: The Census Military Panel is a national survey panel by the U.S. Census Bureau (Census) and the U.S. Department of Defense (DOD) consisting of active-duty service members and spouses of active-duty service members that have agreed to be contacted and invited to participate. The ultimate goal for the Military Panel project is to recruit at least 2,000 panel members (1,000 service members and 1,000 spouses) randomly selected directly from military administrative data.

Invitations to complete the bi-monthly surveys will be sent via email and SMS messages and questionnaires will be mainly internet self-response. The Panel will maintain representativeness by allowing respondents who do not use the internet to respond via computer-assisted telephone interviewing (CATI). All panelists will receive an incentive for each complete questionnaire. Periodic replenishment samples will maintain representativeness and panelists will be replaced after a period of three years.

Affected Public: Individuals or Households.

Frequency: Bi-monthly.

Respondent's Obligation: Voluntary.

Legal Authority: 10 U.S.C. 1782; Title 13 U.S.C. 8(b).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection or the OMB Control Number 0607–1027.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–29572 Filed 12–13–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–46–2024]

Foreign-Trade Zone (FTZ) 84; Authorization of Production Activity; Voestalpine High Performance Metals LLC d/b/a Voestalpine Specialty Metals; (Specialty Metal Products); Houston, Texas

On August 12, 2024, voestalpine High Performance Metals LLC submitted a notification of proposed production activity to the FTZ Board for its facilities within FTZ 84, in Houston, Texas.

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 (89 FR 67061, August 19, 2024). On December 10, 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: December 10, 2024.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2024–29461 Filed 12–13–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–216–2024]

Foreign-Trade Zone 143; Application for Subzone; Robert Bosch Semiconductor LLC; Roseville, California

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Sacramento-Yolo Port District, grantee of FTZ 143, requesting subzone status for the facility of Robert Bosch Semiconductor LLC, located in Roseville, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on December 10, 2024.

The proposed subzone (16.22 acres) is located at 7501 Foothills Blvd., Roseville, California. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B–54–2024). The proposed subzone would be subject to the existing activation limit of FTZ 143.

In accordance with the FTZ Board's regulations, Qahira El-Amin of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is January 27, 2025. Rebuttal comments in response to material submitted during the foregoing period may be submitted through February 10, 2025.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Qahira El-Amin at *Qahira.El-Amin@trade.gov.*

Dated: December 10, 2024.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2024–29528 Filed 12–13–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–878]

Glycine From Japan: 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 certain producers/exporters subject to this administrative review made sales of glycine from Japan at less than normal value during the period of review (POR) June 1, 2022, through May 31, 2023.

DATES: Applicable December 16, 2024.

FOR FURTHER INFORMATION CONTACT: John Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2024, Commerce published the *Preliminary Results* and invited comments from interested parties.[1] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[2] On November 6, 2024, Commerce extended the deadline for the final results of review until January 6, 2025.[3] A summary of the events that occurred since Commerce published the *Preliminary Results,* may be found in the Issues and Decision Memorandum.[4]

Scope of the Order [5]

The merchandise covered by this *Order* is glycine. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. The list of the issues raised by parties is attached an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties, we made no changes to the margin calculations for YGK/Nagase.

Final Results of the Administrative Review

We determine that the following estimated weighted-average dumping margins exist for the period June 1, 2022, through May 31, 2023:

[1] *See Glycine from Japan: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2022–2023,* 89 FR 55228 (July 3, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[3] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated November 6, 2024.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Glycine from Japan; 2022–2023,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See Glycine from India and Japan: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders,* 84 FR 29170 (June 21, 2019) (*Order*).

Producer/exporter	Weighted-average dumping margin (percent)
Yuki Gosei Kogyo Co., Ltd./ Nagase & Co., Ltd.[6]	0.99

Disclosure

We intend to disclose the calculations performed for these final results to parties within five days after public announcement or, if there is no public announcement, within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Assessment Rate

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[7] For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.5 percent), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis,* Commerce will issue instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the amount of dumping calculated for all U.S. sales to that importer or customer and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* and the respondent has reported reliable entered values, we will apply the assessment rate to the entered value of the importer's/customer's entries during the POR.

Commerce intends to issue appropriate assessment instructions directly 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 of this notice for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of these final results, as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for respondents noted above will be equal to the weighted-average dumping margins established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 53.66 percent, the all-others rate established in the less-than-fair-value investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties did occur and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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 sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 19 CFR 351.221(b)(5).

Dated: December 9, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–29529 Filed 12–13–24; 8:45 am]

BILLING CODE 3510–DS–P

[6] Based on the record information, Commerce preliminarily determined that Nagase and YGK are affiliated within the meaning of section 771(33)(E) of Tariff Act of 1930, as amended (the Act), and should be treated as a single entity pursuant to 19 CFR 351.401(f). *See Preliminary Results.* No party commented on our preliminary determination with respect to this issue, and we have received no new information regarding this issue. Therefore, we determine that Nagase and YGK are affiliated within the meaning of section 771(33)(E) of the Act.

[7] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[8] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States-Colombia Trade Promotion Agreement

On behalf of the Committee for the Implementation of Textile Agreements (CITA), the Department of Commerce will submit the following information

collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on October 3, 2024, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: International Trade Administration, Commerce.

Title: Interim Procedures for Considering Requests under the Commercial Availability.

Provision of the United States–Colombia Trade Promotion Agreement.

Form Number(s): None.

OMB Control Number: 0625–0272.

Type of Request: Regular submission, extension of a current information collection.

Burden Hours: 89.

Number of Respondents: 16 (10 for Requests; 3 for Responses; 3 for Rebuttals).

Average Hours per Response: 8 hours per Request; 2 hours per Response; and 1 hour per Rebuttal.

Needs and Uses: Title II, Section 203(o) of the United States-Colombia Trade Promotion Agreement Implementation Act (the ''Act'') [Public Law 112–42] implements the commercial availability provision provided for in Article 3.3 of the United States-Colombia Trade Promotion Agreement (the ''Agreement''). The Agreement entered into force on May 15, 2012. Subject to the rules of origin in Annex 4.1 of the Agreement, and pursuant to the textile provisions of the Agreement, a fabric, yarn, or fiber produced in Colombia or the United States and traded between the two countries is entitled to duty-free tariff treatment. Annex 3–B of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Colombia or the United States. The fabrics listed are commercially unavailable fabrics, yarns, and fibers, which are also entitled to duty-free treatment despite not being produced in Colombia or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.3, Paragraphs 5–7 of the Agreement. Under this provision, interested entities from Colombia or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3–B of the Agreement.

Chapter 3, Article 3.3, paragraph 7 of the Agreement requires that the President ''promptly'' publish procedures for parties to exercise the right to make these requests. Section 203(o)(4) of the Act authorizes the President to establish procedures to modify the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in either the United States or Colombia as set out in Annex 3–B of the Agreement. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (''CITA''), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (''OTEXA'') (See Proclamation No. 8818, 77 FR 29519, May 18, 2012).

The intent of the Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Colombian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Colombia, subject to Section 203(o) of the Act.

Affected Public: Business or other for-profit organizations.

Frequency: As needed.

Respondent's Obligation: Voluntary.

Legal Authority: Title II, Section 203(o) of the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0625–0272.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–29573 Filed 12–13–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE461]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the Nauru Basin of Greater Micronesia in the Northwest Pacific Ocean

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Scripps Institution of Oceanography (SIO) to incidentally harass marine mammals during survey activities associated with a marine geophysical survey in the Nauru Basin of greater Micronesia in the northwest (NW) Pacific Ocean.

DATES: This authorization is effective from December 11, 2024 through December 10, 2025.

ADDRESSES: Electronic copies of the application and supporting documents,

as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specific geographic region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On June 6, 2024, NMFS received a request from the SIO for an IHA to take marine mammals incidental to a marine geophysical survey in the Nauru Basin of greater Micronesia in the NW Pacific Ocean. The application was deemed adequate and complete on July 30, 2024. SIO's request is for take of 27 species of marine mammals, by Level B harassment only. Neither SIO nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. There are no changes from the proposed IHA to the final IHA.

Description of Activity

Researchers from the Woods Hole Oceanographic Institution (WHOI) and University of Houston, with funding from the National Science Foundation (NSF), and implementation by SIO, plan to conduct a low-energy marine seismic survey using airguns as the acoustic source from the research vessel (R/V) *Sikuliaq* (*Sikuliaq*), which is owned by NSF and operated by the University of Alaska Fairbanks (UAF). The planned survey will occur in the Nauru Basin of greater Micronesia in the NW Pacific Ocean from approximately December 2024 to January 2025. The planned survey will occur in International Waters and within the Exclusive Economic Zone (EEZ) of the Republic of Marshall Islands, in water depths ranging from approximately 4,000–6,000 meters (m). To complete this 2-dimensional (2–D) multi-channel seismic (MCS) reflection survey, the *Sikuliaq* will tow a 4-airgun array with a total discharge volume of ~420 cubic inches (in^3) at a depth of 3 m, operated by marine technicians from SIO. The airgun array receiver will consist of a 1,200 m long solid-state hydrophone streamer. The airguns will fire at a shot interval of 30 m. Approximately 3,158 kilometers (km) of seismic acquisition is planned. Airgun arrays will introduce underwater sounds that may result in take, by Level B harassment, of marine mammals.

A detailed description of the planned geophysical survey was provided in the **Federal Register** notice of the proposed IHA (89 FR 81429, October 8, 2024). Since that time, no changes have been made to the planned survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to SIO was published in the **Federal Register** on October 8, 2024 (89 FR 81429). That notice described, in detail, SIO's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. The proposed notice was available for a 30-day public comment period. NMFS received no public comments.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*). NMFS refers the reader to the aforementioned source for general information regarding the species listed in table 1.

The populations of marine mammals found in the survey area do not occur within the U.S. EEZ and therefore, are not assessed in NMFS' Stock Assessment Reports (SAR). For most species, there are no stocks defined for management purposes in the survey area, and NMFS is evaluating impacts at the species level and ranges for most species evaluated here are considered to be the North Pacific. As such, information on potential biological removal level (PBR; defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population) and annual levels of serious injury and mortality from anthropogenic sources are not available for these marine mammal populations. Abundance estimates for marine mammals in the survey location were calculated using density data for marine mammals from a U.S. Navy Technical Report for the region (DoN, 2018). The area covered in this report include the Mariana Islands Training and Testing (MITT) Study Area, within approximately 6–23° N, 122–150° E, and the transit corridor which spans from the MITT Study Area to the International Date Line. These abundance estimates are considered the best scientific information available on the abundance of marine mammal populations in the area.

Table 1 lists all species that occur in the survey area that may be taken as a result of the planned survey and summarizes information related to the population, including regulatory status

under the MMPA and Endangered Species Act (ESA).

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock/distinct population segment (DPS)	ESA/ MMPA status; strategic (Y/N) [1]	Abundance [2]
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)				
Family Balaenopteridae (rorquals):				
Blue Whale	*Balaenoptera musculus*	NA	E, D, Y	150
Bryde's Whale	*Balaenoptera edeni*	NA	-, -, N	1,596
Fin Whale	*Balaenoptera physalus*	NA	E, D, Y	46
Humpback Whale	*Megaptera novaeangliae*	Western North Pacific DPS	E, D, Y	2,673
		Oceania DPS	-, -, N	
Minke Whale	*Balaenoptera acutorostrata*	NA	-, -, N	450
Sei Whale	*Balaenoptera borealis*	NA	E, D, Y	821
Omura's Whale	*Balaenoptera omurai*	NA	-, -, N	160
Odontoceti (toothed whales, dolphins, and porpoises)				
Family Physeteridae:				
Sperm Whale	*Physeter macrocephalus*	NA	E, D, Y	5,146
Family Kogiidae:				
Dwarf Sperm Whale	*Kogia sima*	NA	-, -, N	27,395
Pygmy Sperm Whale	*Kogia breviceps*	NA	-, -, N	11,168
Family Ziphiidae (beaked whales):				
Blainville's Beaked Whale	*Mesoplodon densirostris*	NA	-, -, N	3,376
Cuvier's Beaked Whale	*Ziphius cavirostris*	NA	-, -, N	2,642
Longman's Beaked Whale	*Indopacetus pacificus*	NA	-, -, N	11,253
Ginko-Toothed Beaked Whale	*Mesoplodon ginkgodens*	NA	-, -, N	7,567
Deraniyagala's Beaked Whale	*Mesoplodon hotaula*	NA	-, -, N	NA
Family Delphinidae:				
False Killer Whale	*Pseudorca crassidens*	NA	-, -, N	4,218
Killer Whale	*Orcinus orca*	NA	-, -, N	253
Melon-Headed Whale	*Peponocephala electra*	NA	-, -, N	16,551
Pygmy Killer Whale	*Feresa attenuata*	NA	-, -, N	527
Short-Finned Pilot Whale	*Globicephala macrorhynchus*	NA	-, -, N	6,583
Bottlenose Dolphin	*Tursiops truncatus*	NA	-, -, N	1,076
Fraser's Dolphin	*Lagenodelphis hosei*	NA	-, -, N	76,476
Pantropical Spotted Dolphin	*Stenella attenuata*	NA	-, -, N	85,755
Risso's Dolphin	*Grampus griseus*	NA	-, -, N	17,184
Rough-Toothed Dolphin	*Steno bredanensis*	NA	-, -, N	1,815
Spinner Dolphin	*Stenella longirostris*	NA	-, -, N	5,232
Striped Dolphin	*Stenella coeruleoalba*	NA	-, -, N	24,528

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] Abundance estimates for marine mammals in the survey location were calculated using density data for marine mammals from the U.S. Navy Marine Species Density Database Phase III for the Mariana Islands Training and Testing Study Area report (DoN 2018).

As indicated above, all 27 species in table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the planned survey areas are included in table 3 of the IHA application.

A detailed description of the of the species likely to be affected by the geophysical survey, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (89 FR 81429, October 8, 2024). Since that time, we are not aware of any changes in the status of these species; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.,* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). On October 24, 2024, NMFS published (89 FR 84872) the final Updated Technical Guidance, which includes updated thresholds and

weighting functions to inform auditory injury estimates, and has replaced the 2018 Technical Guidance used previously (NMFS 2018). The updated hearing groups are presented below (table 2). The references, analysis, and methodology used in the development of the hearing groups are described in NMFS' 2024 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2024]

Hearing group ^	Generalized hearing range *
UNDERWATER:.	
Low-frequency (LF) cetaceans (baleen whales) +	7 Hz to 36 * kHz.
High-frequency (HF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
Very High-frequency (VHF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	200 Hz to 165 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	40 Hz to 90 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 68 kHz.

^ Southall *et al.,* 2019 indicates that as more data become available there may be separate hearing group designations for Very Low-Frequency cetaceans (blue, fin, right, and bowhead whales) and Mid-Frequency cetaceans (sperm, killer, and beaked whales). However, at this point, all baleen whales are part of the LF cetacean hearing group, and sperm, killer, and beaked whales are part of the HF cetacean hearing group. Additionally, recent data indicates that as more data become available for Monachinae seals, separate hearing group designations may be appropriate for the two phocid subfamilies (Ruscher *et al.,* 2021; Sills *et al.,* 2021).

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges may not be as broad. Generalized hearing range chosen based on ~65 dB threshold from composite audiogram, previous analysis in NMFS 2018, and/or data from Southall *et al.,* 2007; Southall *et al.,* 2019. Additionally, animals are able to detect very loud sounds above and below that ''generalized'' hearing range.

+ NMFS is aware that the National Marine Mammal Foundation successfully collected preliminary hearing data on two minke whales during their third field season (2023) in Norway. These data have implications for not only the generalized hearing range for low-frequency cetaceans but also on their weighting function. However, at this time, no official results have been published. Furthermore, a fourth field season (2024) is proposed, where more data will likely be collected. Thus, it is premature for us to propose any changes to our current Updated Technical Guidance. However, mysticete hearing data is identified as a special circumstance that could merit re-evaluating the acoustic criteria in this document. Therefore, we anticipate that once the data from both field seasons are published, it will likely necessitate updating this document (*i.e.,* likely after the data gathered in the summer 2024 field season and associated analysis are published).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from SIO's survey activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (89 FR 81429, October 8, 2024) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from SIO on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (89 FR 81429, October 8, 2024).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform NMFS' consideration of ''small numbers,'' the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will be by Level B harassment only, in the form of behavioral reactions and/or temporary threshold shift (TTS) for individual marine mammals resulting from exposure to noise from the use of seismic airguns. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown) discussed in detail below in the Mitigation section, Level A harassment is neither anticipated nor authorized. As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below, we describe how the authorized take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will likely be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur auditory injury of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area,

predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 decibel (dB) (referenced to 1 micropascal (re 1 µPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 µPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

SIO's planned activity includes the use of impulsive seismic sources (*i.e.,* airguns), and therefore the 160 dB re 1 µPa is applicable.

Level A harassment—NMFS' Updated Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS, 2024 (2024 Updated Technical Guidance)) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). NMFS defines auditory injury as ''damage to the inner ear that can result in destruction of tissue . . . which may or may not result in permanent threshold shift (PTS)'' (NMFS, 2024). NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024). PTS does not generally affect more than a limited frequency range, and an animal that has incurred PTS has incurred some level of hearing loss at the relevant frequencies; typically, animals with PTS are not functionally deaf (Au and Hastings, 2008; Finneran, 2016).

These thresholds are provided in the tables below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2024 Updated Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

SIO's planned activity includes the use of impulsive seismic sources (*i.e.,* airguns).

TABLE 3—NMFS' 2024 THRESHOLDS IDENTIFYING THE ONSET OF AUDITORY INJURY (AUD INJ)

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,\ 0\text{-}pk,flat}$: 222 dB; $L_{E,\ p,\ LF,24h}$: 183 dB	*Cell 2:* $L_{E,\ P,\ LF,24h}$: 197 dB.
High-Frequency (HF) Cetaceans	*Cell 3:* $L_{p,\ 0\text{-}pk,flat}$: 230 dB; $L_{E,HF,24h}$: 193 dB	*Cell 4:* $L_{E,\ p,\ HF,24h}$: 201 dB.
Very High-Frequency (VHF) Cetaceans	*Cell 5:* $L_{pk,\ 0\text{-}pk,\ flat}$: 202 dB; $L_{E,\ p,\ VHF,24h}$: 159 dB	*Cell 6:* $L_{E,\ p,VHF,\ 24h}$: 181 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{p\ 0\text{-}pk,flat}$: 223 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,\ p,\ PW,24h}$: 195 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{p\ 0\text{-}pk,flat}$: 230 dB; $L_{E,\ p,\ OW,24h}$: 185 dB	*Cell 10:* $L_{E,\ p,\ OW,24h}$: 199 dB.

* Dual metric criteria for impulsive sounds: Use whichever criteria results in the larger isopleth for calculating AUD INJ onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level criteria associated with impulsive sounds, the PK SPL criteria are recommended for consideration for non-impulsive sources.

Note: Peak sound pressure level (Lp,0-pk) has a reference value of 1 µPa (underwater) and 20 µPa (in air), and weighted cumulative sound exposure level (LE,p) has a reference value of 1 µPa2s (underwater) and 20 µPa2s (in air). In this table, criteria are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017; ISO 2020). The subscript ''flat'' is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals underwater (*i.e.,* 7 Hz to 165 kHz) or in air (*i.e.,* 42 Hz to 52 kHz). The subscript associated with cumulative sound exposure level criteria indicates the designated marine mammal auditory weighting function (LF, HF, and VHF cetaceans, and PW, OW, PA, and OA pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level criteria could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these criteria will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

When the Technical Guidance was published (NMFS, 2016), in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a user spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimation of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3–D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate.

The planned survey will entail the use of a 4-airgun array with a total discharge volume of 420 in^3 at a tow depth of 3 m. SIO used modeling by the L–DEO, which determines the 160 dB_{rms} radius for the airgun source down to a maximum depth of 2,000 m. Received sound levels have been predicted by L–DEO's model (Diebold *et al.,* 2010) as a function of distance from the 4-airgun array. This modeling approach uses ray tracing for the direct wave traveling

from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from the 36-airgun array at a tow depth of 6 m have been reported in deep water (~1,600 m), intermediate water depth on the slope (~600–1,100 m), and shallow water (~50 m) in the Gulf of Mexico (Tolstoy *et al.,* 2009; Diebold *et al.,* 2010).

For deep and intermediate water cases, the field measurements cannot be used readily to derive the harassment isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–550 m, which may not intersect all the SPL isopleths at their widest point from the sea surface down to the assumed maximum relevant water depth (~2,000 m) for marine mammals. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data at the deep sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate water depths at short ranges, sound levels for direct arrivals recorded by the calibration hydrophone and L–DEO model results for the same array tow depth are in good alignment (see figures 12 and 14 in Diebold *et al.,* 2010). Consequently, isopleths falling within this domain can be predicted reliably by the L–DEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that seafloor-reflected and sub-seafloor-refracted arrivals dominate, whereas the direct arrivals become weak and/or incoherent (see figures 11, 12, and 16 in Diebold *et al.,* 2010). Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the model curve. However, the observed sound levels are found to fall almost entirely below the model curve. Thus, analysis of the Gulf of Mexico calibration measurements demonstrates that although simple, the L–DEO model is a robust tool for conservatively estimating isopleths.

The planned low-energy survey will acquire data with the 4-airgun array at a tow depth of 3 m. For deep water (>1,000 m), we use the deep-water radii obtained from L–DEO model results down to a maximum water depth of 2,000 m for the airgun array.

L–DEO's modeling methodology is described in greater detail in SIO's application. The estimated distances to the Level B harassment isopleth for the planned airgun configuration are shown in table 4.

TABLE 4—PREDICTED RADIAL DISTANCES FROM THE R/V SIKULIAQ SEISMIC SOURCE TO ISOPLETH CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Airgun configuration	Tow depth (m)	Water depth (m)	Predicted distances (in m) to the Level B harassment threshold
4 105-in^3 airguns	3	>1,000	1,408

TABLE 5—MODELED RADIAL DISTANCE TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

[NMFS 2024]

	Low frequency cetaceans	High frequency cetaceans	Very high frequency cetaceans
AUD INJ SEL_{cum}	50.6	0	0
AUD INJ Peak	8.44	NA/0	88

The largest distance (in bold) of the dual criteria (SEL cum or Peak) was used to estimate threshold distances and potential takes by Level A harassment.

NA not applicable or available and assumed to be 0.

Table 5 presents the modeled auditory injury isopleths for each cetacean hearing group based on L–DEO modeling incorporated in the companion user spreadsheet, for the low-energy surveys with the shortest shot interval (*i.e.,* greatest potential to cause auditory injury based on accumulated sound energy) (NMFS 2024).

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the Nucleus software program and the NMFS user spreadsheet, described below. The acoustic thresholds for impulsive sounds contained in the NMFS Technical Guidance were presented as dual metric acoustic thresholds using both cumulative SEL (SEL_{cum}) and peak sound pressure metrics (NMFS, 2024). As dual metrics, NMFS considers onset of auditory injury (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

The SEL_{cum} for the 4-airgun array is derived from calculating the modified farfield signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance (right) below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, it has been recognized that the source level from the theoretical farfield signature is never physically achieved at the source when the source is an array of multiple airguns separated in space (Tolstoy *et al.,* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each

individual airgun in the source array do not stack constructively as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.,* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the large array effect near the source and is calculated as a point source, the farfield signature is not an appropriate measure of the sound source level for large arrays. See SIO's application for further detail on acoustic modeling.

Auditory injury is unlikely to occur for high-frequency cetaceans, given the very small modeled zones of injury for those species (all estimated zones are less than 1 m for high-frequency cetaceans), in context of distributed source dynamics.

In consideration of the received sound levels in the near-field as described above, we expect the potential for Level A harassment of high-frequency cetaceans to be de minimis, even before the likely moderating effects of aversion and/or other compensatory behaviors (*e.g.,* Nachtigall *et al.,* 2018) are considered. We do not anticipate that Level A harassment is a likely outcome for any high-frequency cetacean and do not authorize any take by Level A harassment for these species.

The Level A and Level B harassment estimates are based on a consideration of the number of marine mammals that could be within the area around the operating airgun array where received levels of sound ≥160 dB re 1 µPa rms are predicted to occur. The estimated numbers are based on the densities (numbers per unit area) of marine mammals expected to occur in the area in the absence of seismic surveys. To the extent that marine mammals tend to move away from seismic sources before the sound level reaches the criterion level and tend not to approach an operating airgun array, these estimates likely overestimate the numbers actually exposed to the specified level of sound.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

For the planned survey area, SIO used density data from the U.S. Navy's Marine Species Density Database Phase III for the Mariana Islands Training and Testing (MITT) Study Area (DoN, 2018). The U.S. Navy modeled densities for two areas within the MITT: the Mariana Islands Training and Testing Representative Study Area, ~580 km to the west of the planned survey area, and the Transit Corridor Representative Study Area surrounding Wake Island, ~120 km to the east of the planned survey area (DoN, 2018). The planned survey area lies between the two MITT modeled areas and does not overlap either area. As the planned tracklines are located closer to Wake Island than the Mariana Islands, the MITT seasonal density estimates for the Transit Corridor Representative Study Area were used here. As the survey is planned for December 2024 to January 2025, the densities for winter (December through February) were used to calculate takes for marine mammals. No densities were available for Deraniyagala's beaked whale. However, the density for ginkgo-toothed beaked whale was applied to Deraniyagala's beaked whale and ginkgo-toothed beaked whale as a combined group, as these two species are difficult to distinguish.

Take Estimation

Here, we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and authorized. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A or Level B harassment, radial distances from the airgun array to the predicted isopleth corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances were then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the harassment thresholds. The distance for the 160-dB Level B harassment threshold and auditory injury (Level A harassment) thresholds (based on L–DEO model results) was used to draw a buffer around the area expected to be ensonified (*i.e.,* the survey area). The ensonified areas were then increased by 25 percent to account for potential delays, which is equivalent to adding 25 percent to the planned line km to be surveyed. The density for each species was then multiplied by the daily ensonified areas (increased as described above) and then multiplied by the number of survey days (14) to estimate potential takes (see appendix B of SIO's application for more information).

SIO assumed that their estimates of marine mammal exposures above harassment thresholds equate to take and requested authorization of those takes. Those estimates in turn form the basis for our take authorization numbers. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown) discussed in detail below in the Mitigation section, Level A harassment is neither anticipated nor authorized. Therefore we have added SIO's estimated exposures above Level A harassment thresholds to their estimated exposures above the Level B harassment threshold to produce a total number of incidents of take by Level B harassment that are authorized. Estimated exposures and authorized take numbers are shown in table 6.

TABLE 6—AUTHORIZED TAKE

Common name	Estimated take		Authorized take [1]	Abundance	Percent of abundance
	Level B	Level A	Level B		
Blue Whale	1	0	1	150	0.67
Bryde's Whale	3	0	3	1,596	0.19
Fin Whale	1	0	1	46	2.17
Humpback Whale [2]	10	0	10	2,673	0.37
Minke Whale	2	0	2	450	0.44
Sei Whale	1	0	[3] 2	821	0.24
Omura's Whale	0	0	[3] 1	160	0.63
Sperm Whale	25	0	25	5,146	0.49
Dwarf Sperm Whale	45	3	48	27,395	0.18
Pygmy Sperm Whale	18	1	19	11,168	0.17

TABLE 6—AUTHORIZED TAKE—Continued

Common name	Estimated take		Authorized take [1]	Abundance	Percent of abundance
	Level B	Level A	Level B		
Blainville's Beaked Whale	8	0	8	3,376	0.24
Cuvier's Beaked Whale	41	0	41	2,642	1.56
Longman's Beaked Whale	3	0	3	11,253	0.03
Ginko-Toothed Beaked Whale	21	0	21	7,567	0.28
Deraniyagala's Beaked Whale.					
False Killer Whale	6	0	[3] 10	4,218	0.24
Killer Whale	1	0	[3] 5	253	1.98
Melon-Headed Whale	30	0	[3] 95	16,551	0.57
Pygmy Killer Whale	1	0	[3] 6	527	1.14
Short-Finned Pilot Whale	23	0	23	6,583	0.35
Bottlenose Dolphin	9	0	9	1,076	0.84
Fraser's Dolphin	28	0	28	76,476	0.04
Pantropical Spotted Dolphin	125	0	125	85,755	0.15
Risso's Dolphin	5	0	27	17,184	0.16
Rough-Toothed Dolphin	20	0	20	1,815	1.10
Spinner Dolphin	21	0	[3] 98	5,232	1.87
Striped Dolphin	65	0	65	24,528	0.27

[1] Authorized take is Level A plus Level B calculated takes.
[2] All takes are assumed to be from the Western North Pacific DPS.
[3] Takes have been increased to mean group size for the Mariana Islands based on Fulling *et al.,* (2011) where available or for Hawaii (*e.g.,* Risso's dolphin and killer whale) as reported by Bradford *et al.,* (2017), or Jefferson *et al.,* (2015).

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual protected species observers (PSO)) to scan the ocean surface for the presence of marine mammals. The area to be scanned visually includes primarily the shutdown zone (SZ), within which observation of certain marine mammals requires shutdown of the acoustic source, a buffer zone, and to the extent possible depending on conditions, the surrounding waters. The buffer zone means an area beyond the SZ to be monitored for the presence of marine mammals that may enter the SZ. During pre-start clearance monitoring (*i.e.,* before ramp-up begins), the buffer zone also acts as an extension of the SZ in that observations of marine mammals within the buffer zone will also prevent airgun operations from beginning (*i.e.,* ramp-up). The buffer zone encompasses the area at and below the sea surface from the edge of the 0–100 m SZ, out to a radius of 200 m from the edges of the airgun array (100–200 m). This 200-m zone (SZ plus buffer) represents the pre-start clearance zone. Visual monitoring of the SZ and adjacent waters (buffer plus surrounding waters) is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring closer to the vessel. Visual monitoring of the buffer zone is intended to (1) provide additional protection to marine mammals that may be in the vicinity of the vessel during pre-start clearance, and (2) during airgun use, aid in establishing and maintaining the SZ by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the SZ.

During survey operations (*e.g.,* any day on which use of the airgun array is planned to occur and whenever the airgun array is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring of the pre-start clearance zone must begin no less than 30 minutes prior to ramp-up and monitoring must continue until 1 hour after use of the airgun array ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor the SZ and buffer zone. These zones shall

be based upon the radial distance from the edges of the airgun array (rather than being based on the center of the array or around the vessel itself). During use of the airgun array (*i.e.,* anytime airguns are active, including ramp-up), detections of marine mammals within the buffer zone (but outside the SZ) shall be communicated to the operator to prepare for the potential shutdown of the airgun array. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the airgun array is not operating for comparison of sighting rates and behavior with and without use of the airgun array and between acquisition periods, to the maximum extent practicable.

Visual PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Observational duties may not exceed 12 hours per 24-hour period for any individual PSO.

Establishment of Shutdown and Pre-Start Clearance Zones

A SZ is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes (*e.g.,* auditory injury, disruption of critical behaviors). The PSOs will establish a minimum SZ with a 100-m radius. The 100-m SZ will be based on radial distance from the edge of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the airgun array will be shut down.

The pre-start clearance zone is defined as the area that must be clear of marine mammals prior to beginning ramp-up of the airgun array and includes the SZ plus the buffer zone. Detections of marine mammals within the pre-start clearance zone will prevent airgun operations from beginning (*i.e.,* ramp-up).

The 100-m SZ is intended to be precautionary in the sense that it will be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of SEL_{cum} and peak SPL), while also providing a consistent, reasonably observable zone within which PSOs will typically be able to conduct effective observational effort. Additionally, a 100-m SZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we expect that 100 m is likely regularly attainable for PSOs using the naked eye during typical conditions. The pre-start clearance zone simply represents the addition of a buffer to the SZ, doubling the SZ size during pre-clearance.

An extended SZ of 500 m must be implemented for all beaked whales, a large whale with a calf, and groups of six or more large whales. No buffer of this extended SZ is required, as NMFS concludes that this extended SZ is sufficiently protective to mitigate harassment to these groups.

Pre-Start Clearance and Ramp-Up

Ramp-up (sometimes referred to as ''soft start'') means the gradual and systematic increase of emitted sound levels from an airgun array. The intent of pre-start clearance observation (30 minutes) is to ensure no marine mammals are observed within the pre-start clearance zone (or extended SZ, for beaked whales, a large whale with a calf, and groups of six or more large whales) prior to the beginning of ramp-up. During the pre-start clearance period is the only time observations of marine mammals in the buffer zone would prevent operations (*i.e.,* the beginning of ramp-up). The intent of the ramp-up is to warn marine mammals of pending seismic survey operations and to allow sufficient time for those animals to leave the immediate vicinity prior to the sound source reaching full intensity. A ramp-up procedure, involving a stepwise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the airgun array. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the pre-start clearance zone (and extended SZ) for 30 minutes prior to the initiation of ramp-up (pre-start clearance);
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in;
- One of the PSOs conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;
- Ramp-up may not be initiated if any marine mammal is within the applicable shutdown or buffer zone. If a marine mammal is observed within the pre-start clearance zone (or extended SZ, for beaked whales, a large whale with a calf, and groups of six or more large whales) during the 30 minute pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes, and 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, and large delphinids, such as pilot whales);
- Ramp-up must begin by activating one GI airgun and shall continue in stages, doubling the number of active elements at the commencement of each stage, with each stage lasting no less than five minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed;
- PSOs must monitor the pre-start clearance zone and extended SZ during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the applicable zone. Once ramp-up has begun, detections of marine mammals within the buffer zone do not require shutdown, but such observation shall be communicated to the operator to prepare for the potential shutdown;
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Airgun array activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances;
- If the airgun array is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual observation and no visual detections of marine mammals have occurred within the pre-start clearance zone (or extended SZ, where applicable). For any longer shutdown, pre-start clearance observation and ramp-up are required; and
- Testing of the airgun array involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require

ramp-up but does require pre-start clearance of 30 minutes.

Shutdown

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array. Any PSO on duty will have the authority to call for shutdown of the airgun array if a marine mammal is detected within the applicable SZ. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the airgun array to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When the airgun array is active (*i.e.,* anytime one or more airguns is active, including during ramp-up) and (1) a marine mammal appears within or enters the applicable SZ, the airgun array will be shut down. When shutdown is called for by a PSO, the airgun array will be immediately deactivated and any dispute resolved only following deactivation.

Following a shutdown, airgun activity will not resume until the marine mammal has cleared the SZ. The animal will be considered to have cleared the SZ if it is visually observed to have departed the SZ (*i.e.,* animal is not required to fully exit the buffer zone where applicable), or it has not been seen within the SZ for 15 minutes for small odontocetes or 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, and large delphinids, such as pilot whales.

The shutdown requirement is waived for specific genera of small dolphins if an individual is detected within the SZ. The small dolphin group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement applies solely to the specific genera of small dolphins (*Lagenodelphis, Stenella, Steno,* and *Tursiops*).

We include this small dolphin exception because shutdown requirements for these species under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small dolphins are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for high-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small dolphins commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding with no apparent effect observed (*e.g.,* Barkaszi *et al.,* 2012; Barkaszi and Kelly, 2018). The potential for increased shutdowns resulting from such a measure would require the *Sikuliaq* to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other high-frequency hearing specialists (*e.g.,* large delphinids) are no more likely to incur auditory injury than are small dolphins, they are much less likely to approach vessels. Therefore, retaining a shutdown requirement for large delphinids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the *Sikuliaq.*

Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger SZ).

SIO must implement shutdown if a marine mammal species for which take was not authorized or a species for which authorization was granted but the authorized takes have been met approaches the Level A or Level B harassment zones. SIO must also implement shutdown if any large whale (defined as a sperm whale or any mysticete species) with a calf (defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult) and/or an aggregation of six or more large whales are observed at any distance.

Vessel Strike Avoidance Mitigation Measures

Vessel personnel should use an appropriate reference guide that includes identifying information on all marine mammals that may be encountered. Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (separation distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammals from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammals.

Vessel speeds must be reduced to 10 knots (kn) (18.5 kn per hour) or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel. All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales. All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).

When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the

relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Based on our evaluation of the applicant's planned measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Vessel-Based Visual Monitoring

As described above, PSO observations will take place during daytime airgun operations. During seismic survey operations, at least five visual PSOs will be based aboard the *Sikuliaq.* Two visual PSOs will be on duty at all times during daytime hours. The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals. SIO must use dedicated, trained, and NMFS-approved PSOs. At least one visual PSO aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience. The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval. Monitoring shall be conducted in accordance with the following requirements:

- PSOs shall be independent, dedicated, trained visual PSOs and must be employed by a third-party observer provider;
- PSOs shall have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards);
- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual);
- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course;
- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program;
- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics;
- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within 1 week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties;
- For data collection purposes, PSOs shall use standardized electronic data collection forms. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the airgun array and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the airgun array. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:
  - Vessel name, vessel size and type, maximum speed capability of vessel;
  - Dates (MM/DD/YYYY) of departures and returns to port with port name;

- PSO names and affiliations, PSO ID (initials or other identifier);
- Date (MM/DD/YYYY) and participants of PSO briefings;
- Visual monitoring equipment used (description);
- PSO location on vessel and height (meters) of observation location above water surface;
- Watch status (description);
- Dates (MM/DD/YYYY) and times (Greenwich Mean Time/UTC) of survey on/off effort and times (GMC/UTC) corresponding with PSO on/off effort;
- Vessel location (decimal degrees) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;
- Vessel location (decimal degrees) at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
- Vessel heading (compass heading) and speed (kn) at beginning and end of visual PSO duty shifts and upon any change;
- Water depth (meters) (if obtainable from data collection software);
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
- Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (description) (*e.g.,* vessel traffic, equipment malfunctions); and
- Vessel/Survey activity information (and changes thereof) (description), such as airgun power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, *etc.*); and

• Upon visual observation of any marine mammals, the following information must be recorded:

- Sighting ID (numeric);
- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- Location of PSO/observer (description);
- Vessel activity at the time of the sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);
- PSO who sighted the animal/ID;
- Time/date of sighting (GMT/UTC, MM/DD/YYYY);
- Initial detection method (description);
- Sighting cue (description);
- Vessel location at time of sighting (decimal degrees);
- Water depth (meters);
- Direction of vessel's travel (compass direction);
- Speed (kn) of the vessel from which the observation was made;
- Direction of animal's travel relative to the vessel (description, compass heading);
- Bearing to sighting (degrees);
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;
- Species reliability (an indicator of confidence in identification) (1 = unsure/possible, 2 = probable, 3 = definite/sure, 9 = unknown/not recorded);
- Estimated distance to the animal (meters) and method of estimating distance;
- Estimated number of animals (high/low/best) (numeric);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach (meters) and/or closest distance from any element of the airgun array;
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.
- Photos (Yes/No);
- Photo Frame Numbers (List of numbers); and
- Conditions at time of sighting (Visibility; Beaufort Sea State).

Reporting

SIO shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammal sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airgun arrays were operating. Tracklines should include points recording any change in airgun array status (*e.g.,* when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). Geographic Information System files shall be provided in Environmental Systems Research Institute shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize data collected as described above in Monitoring and Reporting. A final report must be submitted within 30 days following resolution of any comments on the draft report.

Reporting Injured or Dead Marine Mammals

Discovery of injured or dead marine mammals—In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the SIO shall report the incident to the Office of Protected Resources (OPR) and NMFS as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Vessel strike—In the event of a strike of a marine mammal by any vessel involved in the activities covered by the authorization, SIO shall report the incident to OPR and NMFS as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);

- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measure were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, BSS, cloud cover, visibility) immediately preceding the strike;
- Species identification (if known) or description of the animal(s) involved;
- Estimated size and length of the animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals present immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in table 1, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar, except where a species- or stock-specific discussion is warranted. NMFS does not anticipate that serious injury or mortality would occur as a result of SIO's planned survey, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section above, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential take would be in the form of Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), responses that are considered to be of low severity, and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007, 2021). These low-level impacts of behavioral harassment are not likely to impact the overall fitness of any individual or lead to population level effects of any species. As described above, Level A harassment is not expected to occur given the estimated small size of the Level A harassment zones.

In addition, the maximum expected Level B harassment zone around the survey vessel is 1,408 m. Therefore, the ensonified area surrounding the vessel is relatively small compared to the overall distribution of animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the short duration (14 survey days) and temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and marine mammal prey species are not expected to cause significant or long-term fitness consequences for individual marine mammals or their populations.

Additionally, the acoustic ''footprint'' of the planned survey will be very small relative to the ranges of all marine mammals that would potentially be affected. Sound levels will increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the planned survey area. The seismic array will be active 24 hours per day throughout the duration of the survey. However, the very brief overall duration of the planned survey (14 survey days) will further limit potential impacts that may occur as a result of the planned activity.

Of the marine mammal species that are likely to occur in the project area, the following species are listed as endangered under the ESA: humpback whales (Western North Pacific DPS), blue whales, fin whales, sei whales, and sperm whales. The take numbers authorized for these species (table 6) are minimal relative to their modeled population sizes; therefore, we do not expect population-level impacts to any of these species. Moreover, the actual range of the populations extends past the area covered by the model, so modeled population sizes are likely smaller than their actual population size. The other marine mammal species that may be taken by harassment during SIO's seismic survey are not listed as threatened or endangered under the ESA. There is no designated critical habitat for any ESA-listed marine mammals within the project area.

There are no rookeries, mating, or calving grounds known to be biologically important to marine mammals within the survey area, and there are no feeding areas known to be biologically important to marine mammals within the survey area.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- The planned activity is temporary and of relatively short duration (27 days total with 14 days of planned survey activity);
- The anticipated impacts of the planned activity on marine mammals would be temporary behavioral changes due to avoidance of the ensonified area, which is relatively small (see tables 4 and 5);
- The availability of alternative areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity is readily abundant;
- The potential adverse effects on fish or invertebrate species that serve as prey

species for marine mammals from the planned survey would be temporary and spatially limited and impacts to marine mammal foraging would be minimal; and

• The planned mitigation measures are expected to reduce the number and severity of takes, to the extent practicable, by visually detecting marine mammals within the established zones and implementing corresponding mitigation measures (*e.g.,* delay; shutdown).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The number of takes NMFS is authorizing is below one-third of the modeled abundance for all relevant populations (specifically, take of individuals is less than 3 percent of the modeled abundance of each affected population, see table 6). This is conservative because the modeled abundance represents a population of the species and we assume all takes are of different individual animals, which is likely not the case. Some individuals may be encountered multiple times in a day, but PSOs would count them as separate individuals if they cannot be identified.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources (OPR) ESA Interagency Cooperation Division has issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to NSF under section 101(a)(5)(D) of the MMPA by the NMFS OPR ESA Interagency Cooperation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of ESA-listed humpback whales (Western North Pacific DPS), blue whales, fin whales, sei whales, and sperm whales.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to L–DEO for the potential harassment of small numbers of 28 marine mammal species incidental to the marine geophysical survey in the Nauru Basin of greater Micronesia in the NW Pacific Ocean that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: December 11, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–29552 Filed 12–13–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE428]

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; 2025 Cost Recovery Fee Notice

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

ACTION: Notice; 2025 cost recovery fee percentages and average mothership cooperative program pricing.

SUMMARY: This action provides participants in the Pacific Coast Groundfish Trawl Rationalization Program with the 2025 cost recovery fee percentages and the average mothership (MS) price per pound to be used in the catcher/processor (C/P) Co-op program to calculate the fee amount for the upcoming calendar year. For the 2025 calendar year, NMFS announces the following fee percentages by sector specific program: 3.0 percent for the Shorebased Individual Fishing Quota (IFQ) Program; 0.1 percent for the C/P Co-op Program; and 3.0 percent for the MS Co-op Program. For 2025, the MS pricing to be used as a proxy by the C/P Co-op Program is $0.09/lb for Pacific whiting.

DATES: Applicable January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Christopher Biegel, (503) 231–6291, *christopher.biegel@noaa.gov.*

SUPPLEMENTARY INFORMATION: Section 304(d)(2)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) authorizes and requires NMFS to collect fees to recover the costs

directly related to the management, data collection and analysis, and enforcement connected to and in support of a limited access privilege program (LAPP) (16 U.S.C. 1854(d)(2)), also called ''cost recovery.'' Cost recovery fees recover the actual costs directly related to the management, data collection and analysis, and enforcement of the programs (MSA section 303A(e), 16 U.S.C. 1853a(e)). Section 304(d)(2)(B) of the MSA mandates that cost recovery fees not exceed 3 percent of the annual ex-vessel value of fish harvested by a program subject to a cost recovery fee, and that the fee be collected either at the time of landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

The Pacific Coast Groundfish Trawl Rationalization Program is a LAPP, implemented in 2011, and consists of three sector-specific programs: the Shorebased IFQ Program, the MS Co-op Program, and the C/P Co-op Program. In accordance with the MSA, and based on a recommended structure and methodology developed in coordination with the Pacific Fishery Management Council (Council), NMFS began collecting mandatory fees of up to 3 percent of the ex-vessel value of groundfish from each program (Shorebased IFQ Program, MS Co-op Program, and C/P Co-op Program) in 2014. NMFS collects the fees to recover the incremental costs of management, data collection and analysis, and enforcement of the Groundfish Trawl Rationalization Program. Additional background can be found in the cost recovery proposed rule (78 FR 7371, February 1, 2013) and final rule (78 FR 75268, December 11, 2013). The details of cost recovery for the Groundfish Trawl Rationalization Program are in regulation at 50 CFR 660.115 (Trawl fishery—cost recovery program), § 660.140 (Shorebased IFQ Program), § 660.150 (MS Co-op Program), and § 660.160 (C/P Co-op Program).

By December 31 of each year, NMFS announces the next year's fee percentages and the applicable MS pricing for the C/P Co-op Program. To calculate the fee percentages, NMFS used the formula specified in regulation at § 660.115(b)(1), where the fee percentage by sector equals the lower of 3 percent or direct program costs (DPC) for that sector divided by total ex-vessel value (V) for that sector multiplied by 100 (Fee percentage = the lower of 3 percent or (DPC/V) x 100).

'DPC,' as defined in the regulations at § 660.115(b)(1)(i), are the actual incremental costs for the previous fiscal year directly related to the management, data collection and analysis, and enforcement of each program (Shorebased IFQ Program, MS Co-op Program, and C/P Co-op Program). Actual incremental costs means those net costs that would not have been incurred but for the implementation of the Groundfish Trawl Rationalization Program, including both increased costs for new requirements of the program and reduced costs resulting from any program efficiencies or adjustments to costs from previous years.

''V'', as specified at § 660.115(b)(1)(ii), is the total ex-vessel value, as defined at § 660.111, for each sector from the previous calendar year. To determine the ex-vessel value for the Shorebased IFQ Program, NMFS used the ex-vessel value for calendar year 2023 as reported in the Pacific Fisheries Information Network (PacFIN) from Shorebased IFQ electronic fish tickets as this was the most recent complete set of data. To determine the ex-vessel value for the MS Co-op Program and the C/P Co-op Program, NMFS used the retained catch estimates (weight) for each sector as reported in the North Pacific Observer Program database multiplied by the average price of Pacific whiting as reported by participants in the MS Co-op program for 2023.

The fee calculations for the 2025 fee percentages are described below.

IFQ Program:

- 4.6 percent = $2,112,277.92/$46,413,264.00) × 100.

C/P Co-op Program:

- 0.1 percent = ($28,615.21/$21,004,264.86) × 100.

MS Co-op Program:

- 5.1 percent = ($322,466.75/$6,321,722.07) × 100.

However, the calculated fee percentage cannot exceed the statutory limit of 3.0 percent. Both the IFQ Program (4.6 percent) and Co-op Program (5.1 percent) fee calculations exceed this limit, therefore, the 2025 fee percentages for these programs are 3.0 percent. The final 2025 fee percentages are 3.0 percent for the IFQ Program, 0.1 percent for the C/P Co-op Program, and 3.0 percent for the MS Co-op Program.

MS Average Pricing

MS pricing is the average price per pound that the C/P Co-op Program will use to determine the fee amount due for that sector. The C/P sector value (V) is calculated by multiplying the retained catch estimates (weight) of Pacific whiting harvested by the vessel registered to a C/P-endorsed limited entry trawl permit by the MS pricing. NMFS has calculated the 2025 MS pricing to be used as a proxy by the CP Co-op Program as: $0.09/lb for Pacific whiting.

Cost recovery fees are submitted to NMFS by fish buyers via Pay.gov (*https://www.pay.gov/*). Fees are only accepted in Pay.gov by credit/debit card or bank transfers. Cash or checks cannot be accepted. Fish buyers registered with Pay.gov can login in the upper right-hand corner of the screen. Fish buyers not registered with Pay.gov can go to the cost recovery forms directly from the website below. The links to the Pay.gov forms for each program (IFQ, MS, or C/P) are listed below:

IFQ: *https://www.pay.gov/public/form/start/58062865;*

MS: *https://www.pay.gov/public/form/start/58378422;* and

C/P: *https://www.pay.gov/public/form/start/58102817.*

As stated in the preamble to the cost recovery proposed and final rules, in the spring of each year, NMFS will release an annual report documenting the details and data used for the fee percentage calculations. Annual reports are available at: *https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/west-coast-groundfish-trawl-catch-share-program#cost-recovery.*

Authority: 16 U.S.C. 1801 *et seq.;* 16 U.S.C.773 *et seq.;* and 16 U.S.C. 7001 *et seq.*

Dated: December 11, 2024.

Karen H. Abrams,

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

[FR Doc. 2024–29581 Filed 12–13–24; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:30 a.m. EST, Wednesday, December 18, 2024.

PLACE: CFTC Headquarters Conference Center, Three Lafayette Centre, 1155 21st Street NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') will hold this meeting to consider the following matters:

- Final Rule—Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements; and
- Final Rule—Regulations to Address Margin Adequacy and to Account for the Treatment of Separate Accounts by Futures Commission Merchants.

The agenda for this meeting will be available to the public and posted on the Commission's website at *https://www.cftc.gov.* Members of the public are free to attend the meeting in person, or have the option to listen by phone or view a live stream. Instructions for listening to the meeting by phone and connecting to the live video stream will be posted on the Commission's website.

In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

(*Authority:* 5 U.S.C. 552b.)

Dated: December 11, 2024.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2024–29636 Filed 12–12–24; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before January 15, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0086, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Jason Smith, Assistant Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5698; email: *jsmith@cftc.gov,* and refer to OMB Control No. 3038–0086.

SUPPLEMENTARY INFORMATION:

Title: Swap Data Access Provisions of Part 49 and Certain Other Matters (OMB Control No. 3038–0086). This is a request for extension of a currently approved information collection.

[1] 17 CFR 145.9.

Abstract: Section 728 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), specifically requires the CFTC to establish certain standards for the governance, registration, and statutory duties applicable to SDRs. The CFTC established these standards in part 49 of the CFTC's regulations.

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. On October 4, 2024, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 89 FR 80897 (''60-Day Notice''). No responsive comments have been received.

Burden Statement: The Commission is revising its estimate of the burden for this collection. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 4.

Estimated Average Burden Hours Per Respondent: 19,679.5.

Estimated Total Annual Burden Hours: 78,718.

Frequency of Collection: Annually; On occasion.

There are no start-up costs associated with this collection and an average of $2 million in ongoing operating costs per respondent.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: December 10, 2024.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024–29457 Filed 12–13–24; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2024–HQ–0006]

Submission for OMB Review; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 15, 2025.

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: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Air Force Family Integrated Results & Statistical Tracking (AFFIRST); OMB Control Number 0701–0070.

Type of Request: Extension.

Number of Respondents: 9,375.

Responses per Respondent: 4.

Annual Responses: 37,500.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 9,375.

Needs and Uses: Information collection in the Air Force Family Integrated Results & Statistical Tracking (AFFIRST) system is necessary to maintain a record of customer service data, determine the effectiveness of Military and Family Readiness Center (M&FRC) activities and services, and provide reports reflecting impact of services on mission and family readiness to leadership. The system is also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness, and conducting research. This information collection is authorized by 10 U.S.C. 9013, Secretary of the Air Force; Department of the Air Force Instruction 36–3009, Military and Family Readiness Centers; and E.O. 9397 (SSN), as amended.

The respondents for the collection are M&FRC customers, including military personnel and family members, DoD civilians, and individuals of the general public authorized to use Air Force M&FRCs. Customers verbally provide M&FRC staff the required information that is entered into AFFIRST. M&FRC staff can also obtain required customer information by searching the Defense Enrollment Eligibility Reporting Systems (DEERS) system for documentation of required information in the AFFIRST information collection system as required by DAFI 36–3009. The AFFIRST web-based, data gathering, service delivery management system was established to provide timely information about daily activities, outcome-based results, and resource utilization of Center services throughout the DAF. All Center staff members will utilize this system for data gathering, record keeping, and information management. Only M&FRC employees have user accounts and only they are authorized to enter customer demographic and service delivery data into the AFFIRST customer record. M&FRC customers do not have access to the system to enter their information directly.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

DOD Clearance Officer: Mr. Reginald Lucas.

Dated: December 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–29589 Filed 12–13–24; 8:45 am]

BILLING CODE 6001–F–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Draft Programmatic Environmental Assessment for the Energy Efficient Rigid Wall Module and the Expeditionary Platoon Life Support Module

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability and request for comments.

SUMMARY: The United States (U.S.) Army announces the availability of a draft programmatic environmental assessment (PEA) for the implementation of two Force Provider containerized basecamp systems: the Energy Efficient Rigid Wall Module (E2RWM) and the Expeditionary Platoon Life Support Module (EPLSM). The draft PEA analyzes the potential environmental impacts associated with the design, production, testing, training, fielding, demilitarization, and disposal of the E2RWM and EPLSM. This notice of availability (NOA) announces the start of the public review and comment period. After the U.S. Army addresses public comments submitted during the review period, a final PEA will be published. The PEA will inform the U.S. Army's decision regarding the deployment and use of the Force Provider systems.

DATES: Comments must be received 30 Days After Publication in the **Federal Register** of this NOA to be considered as part of the review process for this proposed action.

ADDRESSES: The draft PEA can be found on the Program Executive Office, Combat Support & Combat Service Support PdM FSS website at: *https://www.peocscss.army.mil/assets/Draft%20Programmatic%20Environmental%20Assessment%20for%20the%20Energy%20Efficient%20Rigid%20Wall%20Module%20and%20the%20Expeditionary%20Platoon%20Life%20Support%20Module.pdf*

FOR FURTHER INFORMATION CONTACT: Ryan Bulger, 15 General Greene Avenue, Natick, MA 01760–5052, at *ryan.j.bulger2.civ@army.mil* or by phone at: 508–206–2890.

SUPPLEMENTARY INFORMATION:

Proposed Action: The draft PEA analyzes the Proposed Action, which is to implement the Force Provider E2RWM and EPLSM systems where needed to support various Army missions. Force Provider systems provide a modular, containerized base camp for personnel in the field, that can be quickly assembled to support short- and long-term missions. Force Provider modules and support systems have been used to support Army operations in places like Afghanistan, Kyrgyzstan, Uzbekistan, Iraq, and Kuwait, and to support foreign militaries. Within the U.S., Force Provider modules have been used to support natural disaster response and personnel training exercises. The draft PEA also analyzed the No Action alternative.

The Army has prepared this analysis as a broad Program-wide evaluation of the E2RWM and EPLSM systems. As a programmatic analysis, it is intended to streamline coordination and environmental analysis required for site-specific actions in the future. When a decision is made to deploy at a particular location, the Army would conduct follow-on, site-specific environmental analysis as required.

Availability of the draft PEA: The draft PEA and associated information are available on the Program Executive Office, Combat Support & Combat Service Support PdM FSS website at: *https://www.peocscss.army.mil/assets/Draft%20Programmatic%20Environmental%20Assessment%20for%20the%20Energy%20Efficient%20Rigid%20Wall%20Module%20and%20the%20Expeditionary%20Platoon%20Life%20Support%20Module.pdf*

Information on Submitting Comments

The U.S. Army discourages anonymous comments and requests that your comment include your name and

address. You should be aware that your entire comment, including your name, address, and any other personally identifiable information that you include, may be made publicly available. All comments from identified individuals, businesses, and organizations will be available for public viewing on regulations.gov. Note that the Army will make available for public inspection all comments, in their entirety, submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses. For the Army to consider withholding your personally identifiable information from disclosure, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information. Even if the Army withholds your information in the context of this notice, your comment is subject to the Freedom of Information Act (FOIA). If your comment is requested under FOIA, the Army will withhold your information only if it determines that one of FOIA's exemptions to disclosure applies. Such a determination will be made in accordance with the Army's FOIA regulations and applicable law.

Comments can be submitted in any of the following ways:

- In written form by U.S. Postal Service or other delivery service: Send your comments and information to the following address: Natick Soldier System Center, Product Manager Force Sustainment System, 15 General Greene Avenue, Natick, MA 01760–5052, Attn: Ryan Bulger—Draft PEA Comments.
- Through email: Send your comments to Ryan Bulger at *ryan.j.bulger2.civ@army.mil.*

To ensure the Army has sufficient time to consider public input, written comments must be submitted on the website or mailed to the addresses listed no later than 30 Days After Publication in **Federal Register**.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2024–29576 Filed 12–13–24; 8:45 am]

BILLING CODE 3710–CC–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0084]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 15, 2025.

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: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and Omb Number: Overseas Citizen Population Survey; OMB Control Number 0704–0539.

Type of Request: Revision.

Number of Respondents: 18,000.

Responses per Respondent: 1.

Annual Responses: 18,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 4,500.

Needs and Uses: The information collection requirement is necessary for the Federal Voting Assistance Program (FVAP), an agency of the DoD, to fulfill the mandate of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA of 1986 [52 U.S.C. 10301]). UOCAVA requires a statistical analysis report to the President and Congress on the effectiveness of assistance under the Act, a statistical analysis of voter participation, and a description of State/Federal cooperation. The data obtained through this study will allow FVAP to refine its methodology for estimating the number of overseas U.S. civilians who are eligible to vote and who have registered and participated in the past, and using these estimates to address the question of whether the registration and voting propensity of the overseas civilian population differs from that of a comparable domestic or military population. Conducting this research will help FVAP meet its Federal and congressional mandates in terms of reporting annually on its activities and on overall voter registration and participation rates after each Presidential election. The data obtained through this study is also intended to provide insights into existing barriers to UOCAVA voting and recommendations for addressing these challenges.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

DOD Clearance Officer: Mr. Reginald Lucas.

Dated: December 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–29591 Filed 12–13–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of Department of Defense Federal Advisory Committees–Strategic and Critical Materials Board of Directors

AGENCY: Department of Defense (DoD).

ACTION: Establishment of Federal advisory committee.

SUMMARY: The DoD is publishing this notice to announce that it is establishing the Strategic and Critical Materials Board of Directors (S&CM BoD).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer at *james.d.freeman4.civ@mail.mil,* 703–697–1142.

SUPPLEMENTARY INFORMATION: This non-discretionary committee is being established pursuant to 50 United States Code (U.S.C.) 98h–1(a) and in accordance with Chapter 10 of Title 5, U.S.C. (commonly known as the Federal Advisory Committee Act (FACA)) and 41 Code of Federal Regulations (CFR) 102–3.50(a). The charter and contact information for the S&CM BoD's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/+FACAPublicAgencyNavigation.*

The S&CM BoD is a non-discretionary Federal Advisory Committee established to provide independent advice and recommendations to strengthen the

industrial base with respect to materials critical to national security and, in particular, address challenges and opportunities concerning the National Defense Stockpile (NDS) program.

The S&CM BoD shall be composed of at least 13 and no more than 20 members. Nine members are required pursuant to 50 U.S.C. 98h–1(b): the Assistant Secretary of Defense for Industrial Base Policy (ASD(IBP)), who shall serve as chairman of the S&CM BoD; one designee of each of the Secretary of Commerce, the Secretary of State, the Secretary of Energy, and the Secretary of the Interior; one designee of each of the Chairman and Ranking Member of the Readiness Subcommittee of the House Committee on Armed Services; one designee of each of the Chairman and Ranking Member of the Readiness Subcommittee of the Senate Committee on Armed Services.

In evaluating those candidates for the S&CM BoD not required by statute, the DoD considers the education, life experience, and professional credentials of individuals as they relate to the subject matters anticipated to be tasked to the S&CM BoD. Membership selection will capitalize on talented, innovative private and public sector leaders to provide a diverse and inclusive S&CM BoD membership that is fairly balanced and promotes variety in background, experience, and thought in support of the mission of the S&CM BoD focusing on those with expertise relating to military affairs, defense procurement, production of strategic and critical materials, finance, or any other disciplines deemed necessary to conduct the business of the S&CM BoD.

S&CM BoD members who are not full-time or permanent part-time Federal civilian officers or employees, or active-duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members and are entitled, pursuant to 10 U.S.C. 1114(a)(3), to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay under the General Schedule of subchapter 53 of title 5 U.S.C., for each day the member is engaged in the performance of duties vested in the S&CM BoD. S&CM BoD members who are full-time or permanent part-time Federal civilian officers or employees, or members of the uniformed Services, shall be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members.

Individual S&CM BoD members are appointed according to DoD policy and procedures and serve a term of service of one-to-four years with annual renewals. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the S&CM BoD, or serve on more than two DoD Federal advisory committees at one time.

All S&CM BoD members are appointed to provide advice to the DoD based on their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official S&CM BoD-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements to the S&CM BoD membership about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the S&CM BoD. All written statements shall be submitted to the S&CM BoD DFO, who will ensure that written statements are provided to the S&CM BoD membership for their consideration.

Dated: December 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–29577 Filed 12–13–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–83]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil,* or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.*

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–83, Policy Justification, and Sensitivity of Technology.

Dated: December 10, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

December 12, 2023

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-83, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Romania for defense articles and services estimated to cost $80 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001–FR–C

Transmittal No. 23–83

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Government of Romania

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$65 million
Other	$15 million
TOTAL	$80 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
Two hundred sixty-three (263) Javelin FGM–148F Missiles
Twenty-six (26) Javelin Light Weight Command Launch Units (LWCLU)

Non-MDE:
Also included are enhanced producibility basic skills trainers; missile simulation rounds; Security Assistance Management Directorate (SAMD) technical assistance; Tactical Air Ground Missiles (TAGM) Project Office technical assistance; other associated equipment and services; and other related elements of logistics and program support.

(iv) *Military Department:* Army (RO–B–UGN)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services*

Proposed to be Sold: See Attached Annex

(viii) *Date Report Delivered to Congress:* December 12, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Romania—Javelin Missiles

The Government of Romania has requested to buy two hundred sixty-three (263) Javelin FGM–148F Missiles; and twenty-six (26) Javelin Light Weight Command Launch Units (LWCLU). Also included are enhanced producibility basic skills trainers; missile simulation rounds; Security Assistance Management Directorate (SAMD) technical assistance; Tactical Air Ground Missiles (TAGM) Project Office technical assistance; other associated equipment and services; and other related elements of logistics and program support. The estimated total cost is $80 million.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a NATO Ally which is an important force for political and economic stability in Europe.

The proposed sale will improve Romania's capability to meet current and future threats by building its long-term defense capacity in line with its national defense requirements. Romania will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Raytheon/Lockheed Martin Javelin Joint Venture of Orlando, FL and Tucson, AZ. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contractor representatives to Romania.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–83

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Javelin Weapon System is a medium-range, man portable, shoulder-launched, fire and forget, anti-tank system for infantry, scouts, and combat engineers. It may also be mounted on a variety of platforms including vehicles, aircraft, and watercraft. The system weighs 49.5 pounds and has a maximum range in excess of 2,500 meters. The system is highly lethal against tanks and other systems with conventional and reactive armors. The system possesses a secondary capability against bunkers.

2. Javelin's key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately relocate or take cover. Additional special features are the top attack and/or direct fire modes; an advanced tandem warhead and imaging infrared seeker; target lock-on before launch; and soft launch from enclosures or covered fighting positions. The Javelin missile also has a minimum smoke motor thus decreasing its detection on the battlefield.

3. The Javelin Weapon System is comprised of two major tactical components, which are a reusable Light Weight Command Launch Unit (LWCLU) and a round contained in a disposable launch tube assembly. The LWCLU has been identified as Major Defense Equipment (MDE). The LWCLU incorporates an integrated day-night sight that provides a target engagement capability in adverse weather and countermeasure environments. The LWCLU may also be used in a stand-alone mode for battlefield surveillance and target detection. The LWCLU's thermal sight is a 3rd generation Forward Looking Infrared (FLIR) sensor. To facilitate initial loading and subsequent updating of software, all on-board missile software is uploaded via the LWCLU after mating and prior to launch.

4. The missile software which resides in the LWCLU is considered SENSITIVE. The sensitivity is primarily in the software programs which instruct the system how to operate in the presence of countermeasures. The overall hardware is also considered sensitive in that the infrared wavelengths could be useful in attempted countermeasure development.

5. The missile is autonomously guided to the target using an imaging infrared seeker and adaptive correlation tracking algorithms. This allows the gunner to take cover or reload and engage another target after firing a missile. The missile has an advanced tandem warhead and can be used in either the top attack or direct fire modes (for target undercover). An onboard flight computer guides the missile to the selected target.

6. If a technologically advanced adversary obtains knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that Romania can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary to further the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed on this transmittal are authorized for release and export to the Government of Romania.

[FR Doc. 2024–29497 Filed 12–13–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–HA–0055]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 15, 2025.

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: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Safety Culture, Operational

Reliability, Resilience/Burnout, and Engagement (SCORE™) Survey; OMB Control Number 0720–SCOR.

Type of Request: New.

Number of Respondents: 6,873.

Responses per Respondent: 1.

Annual Responses: 6,873.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 1,718.

Needs and Uses: The 2001 National Defense Authorization Act (NDAA) addresses patient safety in military and veteran's healthcare and requires an examination of systemic factors which lead to medical error. The SCORE™ [Safety Culture, Operational Reliability, Resilience/Burnout, and Engagement] Survey, a validated commercial assessment tool for patient safety that engages all levels of staff from executive leaders to frontline teams, is a response to this legislation. The SCORE™ is conducted across Defense Health Network National Capital Region (DHN NCR) military medical treatment facilities to provide data necessary for driving cultural change.

Affected Public: Federal government; individuals or households.

Frequency: As required.

Respondent's Obligation: Voluntary.

DOD Clearance Officer: Mr. Reginald Lucas.

Dated: December 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–29592 Filed 12–13–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–0V]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil,* or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.*

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–0V.

Dated: December 10, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

December 14, 2023

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 23-0V. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 19-08 of January 29, 2019.

Sincerely,

James A. Hursch
Director

Enclosure:
1. Transmittal

BILLING CODE 6001–FR–C

Transmittal No. 23–0V

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Purchaser:* Government of Japan

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 19–08

Date: January 29, 2019

Implementing Agency: Navy

(iii) *Description:* On January 29, 2019, Congress was notified by Congressional certification transmittal number 19–08, of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of two (2) AEGIS Weapon Systems (AWS), two (2) Multi-Mission Signal Processors (MMSP) and two (2) Command and Control Processor (C2P) Refreshes. Also included is radio navigation equipment, naval ordnance, two (2) Identification Friend or Foe (IFF) Systems, Global Command and Control System-Maritime (GCCS–M) hardware, and two (2) Inertial Navigation Systems (INS), U.S. Government and contractor representatives' technical, engineering and logistics support services, installation support material, training, construction services for six (6) vertical launch system launcher module enclosures, communications equipment and associated spares, classified and unclassified publications and software, and other related elements of logistical and program support. The total estimated program cost was $2.150 billion. Major Defense Equipment (MDE) constituted $.375 billion of this total.

On September 12, 2019, Congress was notified by Congressional certification transmittal number 0Q–19 of an increase in capability from the Navigation Sensor System Interface (non-MDE) originally notified, to the Global Positioning System (GPS)-based Positioning, Navigation, and Timing Service (GPNTS) capability, which is MDE. The total value of the GPNTS was $3,417,596, but the total estimated MDE and total program cost remained the same at $.375 billion and $2.150 billion, respectively.

This transmittal notifies the addition of the following MDE items: two (2) AEGIS Weapon Systems; two (2) AN/SPQ–9B Radar Systems; two (2) AN/SLQ–32(V)6 Electronic Warfare Systems; two (2) AN/USQ–140 Multifunctional Information Distribution System (MIDS) on Ship (MOS), Modernization (MOS MOD); two (2) AN/USQ–190 Multifunctional Information Distribution System Joint Tactical Radio Systems (V5); three (3)

Cooperative Engagement Capability (CEC), AN/USG–10s; and one (1) AN/UYQ–120(V) Command and Control Processor (C2P) Technology Refresh System. Also included are AN/SQQ–89 Underwater Sound Equipment Systems; Multi-Function Towed Array Systems; RT–1829 Ultra-High Frequency, Satellite Communications (UHF SATCOM) Terminals; OE–570D Antennas; MK20 Mod 1 Electro-optic/Infrared Sensor Systems; MK160 Mod 23 Gun Weapon Systems; MK–36 Mod 6 Super Rapid Offboard Countermeasures and Decoy Launching System (SRBOC); U.S. Government and contractor representatives technical, engineering, and logistics support services; installation support material; training, tool development, communications equipment, and associated spares; classified and unclassified publications and software; and other related elements of logistics and program support. The estimated total value of the new items is $0.570 billion. The net MDE value will increase by $0.239 billion and the non-MDE value by $0.331 billion. The revised estimated total case value will increase to $2.72 billion. MDE will constitute $0.614 billion of this total.

(iv) *Significance:* The inclusion of this MDE represents an increase in capability over what was previously notified. The proposed articles and services will assist Japan in developing and maintaining a strong and effective self-defense capability.

(v) *Justification:* This proposed sale will support the foreign policy goals and national

security objectives of the United States by improving the security of a major ally that is a force for political stability and economic progress in the Asia-Pacific region.

(vi) *Sensitivity of Technology:*

The AN/SPQ–9B is a horizon search radar system that detects and tracks low radar cross section targets in high clutter and distributes radar track data to the AEGIS Combat system. The hardware is unclassified with the exception of the Radar Processor unit, which is classified SECRET upon connection to the combat system.

The AN/SLQ–32(V)6 Electronic Warfare System (EWS) provide enhanced electronic support (ES) detection and accuracy capabilities to improve anti-ship missile defense, counter targeting, counter surveillance, and battle space awareness, and also distributes electronic warfare (EW) sensor tracks and EW composite tracks to the AEGIS Combat System.

The AN/USQ–140 Multifunctional Information Distribution System-Low Volume Terminal (MIDS–LVT) is a secure, jam-resistant communication and positioning system. MIDS provides interoperability with NATO and coalition users, significantly increasing force command and control effectiveness. The Tactical Digital Information Link-J (TADIL–J) series message standard is employed by the system as defined in NATO Standardization Agreement (STANAG) 5516 and U.S. Military Standard (MIL–STD) 6016. The embedded hardware features provide communications security.

The AN/USQ–190 Multifunctional Information Distribution System Joint Tactical Radio System (MIDS JTRS) builds on the MIDS–LVT's capabilities with the addition of Concurrent Multi-Netting (CMN) and Concurrent Contention Receive (CCR) functions. CMN and CCR dramatically expand the number of platforms and network-enabled systems that can be reliably included in a Link 16 network.

The Cooperative Engagement Capability (CEC) AN/USG–10 is a system that fuses tracking data from shipboard and off-ship sensors and distributes radar measurement data to other platforms with CEC capability. The hardware is unclassified with the exception of the Signal Data Processor, which is classified SECRET and contains a communications security (COMSEC) card.

The AN/UYQ–120(V) Command and Control Processor (C2P) Technology Refresh System is a Tactical Data Link (TDL) message distribution system that provides real-time control and management of Tactical Digital Data Links (TADILs) in support of all major surface ship and shore command, control, and communications (C3) systems. The C2P is a follow-on Technical Refresh (TR) upgrade for the legacy AN/UYQ–86(V) variants 1 through 7 of the Common Data Link Management System (CDLMS). The AN/UYQ–120(V) C2P System has three possible variants depending on the host site in which it is installed and only uses trusted software.

The AN/SQQ–89 is a state-of-the-art anti-submarine warfare and combat system. It consists of a complex set of equipment and information processing subsystems that provide the capability to provide an acoustic undersea tactical picture for U.S. surface combatants (cruisers, destroyers, frigates) as well as Japan's ATAGO and MAYA class destroyers. The SQQ–89A(V15) combines processing of active and passive sonar sensor data from a hull/bow array, towed TB–37 array, and sonobuoys.

The RT–1829(P)/S is a shipboard Ultra High Frequency, Satellite Communications (UHF SATCOM) channel terminal that is Joint Interoperability Test Command (JITC)-assessed and NSA-certified to comply with legacy Demand Assigned Multiple Access (DAMA) MIL–STDs and interoperate with fielded UHF SATCOM terminals. The terminal allows for a single control and management interface to operate multiple voice and data communications simultaneously. The UHF SATCOM architecture will be configured with the OE–570D antenna system and will support Satellite TADIL–J (S TADIL–J) for extension of Link-16.

The Sensitivity of Technology Statement contained in the original notification applies to other items reported here.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress:* December 14, 2023

[FR Doc. 2024–29495 Filed 12–13–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0105]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 15, 2025.

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: Reginald Lucas, (571) 372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Service Academy Gender Relations Survey; OMB Control Number 0704–0623.

Type of Request: Revision.

Number of Respondents: 12,000.

Responses per Respondent: 1.

Annual Responses: 12,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 6,000.

Needs and Uses: The legal requirements for the Service Academy Gender Relations (SAGR) surveys can be found in the following:

- 10 United States Code (U.S.C.), Section 4361, as amended by John Warner National Defense Authorization Act for Fiscal Year 2007, Section 532
- 10 U.S.C., Section 481
- DoD Instruction (DoDI) 6495.02

These legal requirements mandate that the SAGR solicit information relating to sexual assault, sexual harassment, and gender discrimination in the Military Service Academies (MSAs), as well as the climate at the MSAs and social perspectives. MSAs include the U.S. Military Service Academy (USMA), the U.S. Naval Academy (USNA), and U.S. Air Force Academy (USAFA). The requirements state that the assessment cycle consists of surveys and focus groups during alternate years. They also give the Department authority to conduct such surveys under the guidance of the USD(P&R). The U.S. Coast Guard Academy (USCGA), the only Federal Military Academy within the Department of Homeland Security, is not required to participate in the assessments codified by U.S.C. 10. However, USCGA officials requested the Coast Guard be included, beginning in 2008, to evaluate and improve their programs addressing sexual assault and sexual harassment. Similarly, the U.S. Merchant Marine Academy (USMMA), under the Department of Transportation, requested their inclusion beginning in 2012. USCGA and USMMA will continue to participate in the assessments. Surveys of USCGA and USMMA are not covered under this DoD licensure and will not be mentioned further.

The Office of People Analytics (OPA) administers both web-based and paper-and-pen surveys to support the personnel information needs of the USD(P&R). The SAGR survey expands a series of surveys that began in 2004 with the DoD Inspector General's first survey, subsequently transferred to OPA. OPA conducted the SAGR survey at the MSAs in 2005, 2006, 2008, 2010, 2012, 2014, 2016, 2018, 2022, and 2024. The 2020 administration of the survey was postponed due to the COVID–19 pandemic. The first focus group assessment was conducted in 2007, with subsequent focus groups in 2009, 2011, 2013, 2015, 2017, 2019, 2021, and 2023. Information from the SAGR surveys will be used by DoD policy offices, the Military Departments, the MSAs, and Congress for program evaluation and, specifically, to assess and improve policies, programs, practices, and training related to gender relations at the MSAs. OPA will provide reports to DoD policy offices, each Military Department, the MSAs, the Joint Chiefs of Staff, and Congress.

The target population of the SAGR consists of all students at the MSAs: USMA, USNA, and USAFA, including the Preparatory Schools. Excluded are Service Academy Students who are (1) non-citizens and (2) are visiting from another MSA. Students under 18 years of age are also excluded. Working with the MSAs, we estimate the approximate numbers of cadets and midshipmen to be 14,200. The survey will be administered to all cadets/midshipmen (*i.e.,* a census). Based on the 2022 SAGR survey that had an 81% response rate, we estimate a 75% response rate. To achieve sufficient statistical analytical power, we will include a census of the population of interest in the study to achieve sufficient coverage.

Each Academy notifies students about the survey with an electronic message explaining the overall survey process and providing them instructions on how to select a session for administration of the survey. OPA staff is on location during the survey week to brief students and administer the survey in person using a paper survey. Sessions are typically scheduled from 0700 through 1500 and follow the Academy's class periods. Attendance is checked when a student arrives for their session (attendance is only for purposes of following up and not for identifying survey responses by individuals). Academy officials follow up with students who do not appear at their designation session and reschedule accordingly. OPA staff provides an overview briefing on the purpose for the survey. Students are advised they may leave at any time after the briefing if they choose not to complete the survey.

Data will be weighted, using an industry standard process, to reflect each Academy's population as of the time of the survey. Weighting produces survey estimates of population totals, proportions, and means (as well as other statistics) that are representative of their respective populations. OPA creates variance strata so precision measures can be associated with each estimate. We produce precision measures for reporting categories using 95% confidence intervals with the goal of achieving a precision of 5% or less (*e.g,* 80% (+/−5%)) of cadets/midshipmen are satisfied with their training).

Affected Public: Individuals or households.

Frequency: Biennial.

Respondent's Obligation: Voluntary.

DOD Clearance Officer: Mr. Reginald Lucas.

Dated: December 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2024–29590 Filed 12–13–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 24–15]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil,* or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.*

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 24–15, Policy Justification, and Sensitivity of Technology.

Dated: December 10, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

December 8, 2023

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

On December 8, 2023, the Secretary of State, pursuant to section 36(b) of the Arms Export Control Act, as amended, determined that an emergency exists which requires the immediate sale of the defense articles and defense services identified in the attached transmittal to the Government of Israel through the Foreign Military Sales process, including any further amendment specific to costs, quantity, or requirements occurring within the duration of circumstances giving rise to this emergency sale.

Please find attached (Tab 1) the Secretary of State Determination and Justification waiving the congressional review requirements under Section 36(b)(1) of the Arms Export Control Act (AECA), as amended. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Secretary of State Determination and Justification Letter
2. Transmittal
3. Policy Justification
4. Sensitivity of Technology

UNCLASSIFIED

DETERMINATION UNDER SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT

Pursuant to section 36(b)(1) of the Arms Export Control Act, 22 U.S.C. 2776, I hereby determine that an emergency exists that requires the immediate sale through the following foreign military sales case, including any further amendments specific to the cost, quantity, or requirements of these cases, in the national security interest of the United States:

For Israel:

- 120mm Tank Cartridges

This determination shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress with the applicable notifications.

12/8/23
Date

Antony J. Blinken
Secretary of State

UNCLASSIFIED

UNCLASSIFIED

(U) MEMORANDUM OF JUSTIFICATION
FOR EMERGENCY ARMS TRANSFERS TO ISRAEL UNDER SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT

(U) On October 7, Hamas launched the worst attack on Israel since the 1973 Yom Kippur War. Thousands of rockets were fired and continue to be fired indiscriminately, hitting locations and civilians as far as Tel Aviv and Jerusalem. Hamas gunmen crossed into Israel, entering towns and communities as far as 15 miles from Gaza, slaughtering men, women, and children. More than 230 hostages were captured and dragged back into Gaza, including U.S. citizens. As of today, Hamas' act of terrorism has claimed the lives of more than 1,200 in Israel, including at least 31 U.S. citizens, and wounded thousands more. The attack is the single deadliest day for the Jewish people since the Holocaust, and is reminiscent of the worst rampages of ISIS. The following day, the Government of Israel formally declared war on Hamas in accordance with its Basic Law.

(U) Israel has the right to defend itself, and the United States supports Israel taking necessary action to defend its country and protect its people from Hamas terrorists, consistent with international law and, specifically, the law of war. Following the attack, the President directed surging additional military assistance to the Israeli Defense Force, to include ammunition and interceptors to replenish the Iron Dome. The Department of State and the Department of Defense are coordinating with Israeli partners to meet their military requirements and ensure Israel has what it needs to defend itself, its people, and U.S. citizens living, working, and traveling in Israel.

(U) Israel faces further credible security threats on its northern border with Lebanon and Syria. Since October 7, sporadic violence has occurred across the Blue Line, which marks the *de facto* boundary between Israel and Lebanon, and Israel remains at immediate risk of other parties in Lebanon or Syria exploiting Hamas' appalling attack.

UNCLASSIFIED

(U) The United States' commitment to Israel's security is ironclad, which is reflected in decades of close political-military dialogues and high-level defense policy exchanges. The historic ten-year U.S.-Israel Memorandum of Understanding to provide Israel with $38 billion in security assistance is a bulwark against regional threats; however, Israel requires urgent support to respond to the immediate threat raised by Hamas' horrific attack, to replenish stocks of key defense articles that maintain its Qualitative Military Edge in the region, and to deter and guard against the threat of broad scale regional conflict.

(U) Given the scale and scope of Hamas' offensive, it is in the United States' national security interest to swiftly provide Israel with the defense systems it requires to defend itself and reinforce deterrence against other regional threats, which we have undertaken since October 7. Israel has communicated an urgent requirement for 120mm tank rounds. The urgency of this requirement has been validated by the Department of Defense in consultation with the Department of State. We anticipate Israel will continue its military operations in Gaza in the near-term. In order to effectively do so and ensure it is prepared for any other attacks, it has an immediate need for these defense articles. These 120mm rounds are readily available in DoD stock and can be quickly transferred to Israel. The immediacy of the challenge at hand requires overcoming the statutory 15-day Congressional Notification timeline to expedite transfers to Israel.

(U) For the reasons cited above, an emergency exists requiring immediate provision of these defense articles to Israel in the national security interest of the United States. This transfer, through a Foreign Military Sale, will provide Israel as soon as possible with defense articles that are necessary to allow it to defend itself in its war with Hamas. The Secretary of State, therefore, has certified an emergency exists under sections 36(b)(1) of the Arms Export Control Act, 22 U.S.C. 2776, thereby waiving the congressional review requirement of that provision.

BILLING CODE 6001–FR–C

Transmittal No. 24–15

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Israel

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 99.9 million
Other	$ 6.6 million
TOTAL	$106.5 million

Funding Source: Foreign Military Financing and National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Thirteen thousand nine hundred eighty-one (13,981) 120mm M830A1 High Explosive Anti-Tank Multi-Purpose with Tracer (MPAT) Tank Cartridges

Non-MDE:

Also included are publications and technical documentation; U.S. Government and contractor engineering, technical, and logistics support services; studies and surveys; and other related elements of logistics and program support.

(iv) *Military Department:* Army (IS–B–VBS)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* December 8, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel—M830A1 120mm Tank Cartridges

The Government of Israel has requested to buy thirteen thousand nine hundred eighty-one (13,981) 120mm M830A1 High Explosive Anti-Tank Multi-Purpose with Tracer (MPAT) tank cartridges. Also included are publications and technical documentation; U.S. Government and contractor engineering, technical, and logistics support services; studies and surveys; and other related elements of logistics and program support. The estimated total cost is $106.5 million.

The Secretary of State has determined and provided detailed justification that an emergency exists that requires the immediate sale to the Government of Israel of the above defense articles (and defense services) in the national security interests of the United States, thereby waiving the Congressional review requirements under Section 36(b) of the Arms Export Control Act, as amended.

The United States is committed to the security of Israel, and it is vital to U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

Israel will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense. Israel will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

This will be a sale from U.S. Army inventory. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 24–15

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The 120mm M830A1 High Explosive Anti-Tank Multi-Purpose with Tracer (MPAT) tank cartridge is a line-of-sight, full-bore, multipurpose munition for the Abrams tank. It requires the gunner to manually select the fuze mode to either point detonate against buildings, bunkers, and light armor vehicles or similar target sets, or proximity for anti-helicopter self-defense capabilities.

2. The highest level of classification of defense articles, components, and services included in this potential sale is Controlled Unclassified Information.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Israel will provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Israel.

[FR Doc. 2024–29493 Filed 12–13–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–86]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil,* or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.*

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–86, Policy Justification, and Sensitivity of Technology.

Dated: December 10, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

December 13, 2023

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-86, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Poland for defense articles and services estimated to cost $255 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001–FR–C

Transmittal No. 23–86

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Poland

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ 0
Other	$255 million
TOTAL	$255 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-MDE:

Communications equipment, including AN/PRC–117G, AN/PRC–152A, AN/PRC–158, AN/PRC–160, AN/PRC–163, and AN/PRC–167 radios; Global Positioning System (GPS) receivers enabled by Selective Availability Anti-Spoofing Module (SAASM) or M-Code; support equipment; spare parts; technical manuals and publications; new equipment training; U.S. Government and contractor technical engineering, logistics, and personnel services; and other related elements of logistics and program support.

(iv) *Military Department:* Army (PL–B–UEP)

(v) *Prior Related Cases, if any:* PL–B–UAZ, PL–B–UBM, PL–B–UBN, PL–B–UBZ, PL–B–UCA, PL–B–UCF, PL–B–UCI, PL–B–UCN, PL–B–UCR, PL–B–UCT, PL–B–UCV, PL–B–UDA, PL–B–UDC, PL–B–UDG, PL–B–UDH, PL–B–UDI, PL–B–UDK, PL–B–UDM, PL–B–UDO

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or*

Defense Services Proposed to be Sold: See Attached Annex

(viii) *Date Report Delivered to Congress:* December 13, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Poland—Communications Equipment

The Government of Poland has requested to buy communications equipment, including AN/PRC–117G, AN/PRC–152A, AN/PRC–158, AN/PRC–160, AN/PRC–163, and AN/PRC–167 radios; Global Positioning System (GPS) receivers enabled by Selective Availability Anti-Spoofing Module (SAASM) or M-Code; support equipment; spare parts; technical manuals and publications; new equipment training; U.S. Government and contractor technical engineering, logistics, and personnel services; and other related elements of logistics and program support. The estimated total program cost is $255 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a North Atlantic Treaty Organization (NATO) Ally that is a force for political stability and economic progress in Europe.

The proposed sale will improve Poland's communications capability and contribute to its military goal of updating capability while further enhancing interoperability with the United States and other allies. Poland will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will L3Harris Technologies, Inc., Melbourne, FL. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require temporary duty travel of up to five (5) U.S. Government and/or contractor representatives to travel to Poland for a short period to conduct training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–86

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AN/PRC–117G delivers breakthrough wideband data speed and legacy narrowband performance. Equipped with MUOS-ready hardware, this manpack is 30% smaller and 35% lighter than any other currently available. The AN/PRC–117G is also the industry's first and only tactical radio with NINE Suite B encryption, allowing for secure interoperability with the United States, NATO, and regional tactical partners.

2. The Falcon III AN/PRC–152A delivers simultaneous voice and high-speed data, seamlessly connecting dismount and upper-echelon networks. Even in challenging environments, the AN/PRC–152A provides voice, data, imagery, and video, giving warfighters critical mission intelligence for enhanced decision-making.

3. The Falcon IV AN/PRC–158 delivers dual-channel connectivity across the full 30–2500 MHz frequency range. Compact and lightweight, the MCMP provides forward-deployed warfighters with an unrivaled level of tactical communications flexibility. Equipped with a Software Communications Architecture (SCA) and a broad portfolio of narrowband and wideband waveforms, the AN/PRC–158 ensures advanced interoperability and fast in-field updates for new capabilities. The manpack's two channels and superior routing and crossbanding technologies support communications redundancy and sharing critical voice and data intelligence, surveillance, and reconnaissance (ISR) with a variety of nets and sub nets.

4. The Falcon III AN/PRC–160(V) is the smallest, lightest, and fastest Type 1-certified high frequency (HF) manpack available today. Engineered for advanced security and performance, the Wideband HF/VHF Tactical Radio System features industry-leading encryption and breakthrough data performance and interoperability.

5. The AN/PRC–163 Multi-channel Handheld Radio is a versatile, secure solution that leverages crossbanding to provide simultaneous data & voice across SATCOM, Line-of-Sight, and Mobile Ad-hoc Networking (MANET) modes. As mission needs evolve, this software-defined handheld supports fast, in-field updates to new capabilities. An external mission module hardware interface allows warfighters to quickly add options including ISR video and SATCOM.

6. The AN/PRC–167 harnesses the power of multiple tactical devices converged into a single manpack. The radio provides superior communications range extension, delivering real-time situational awareness updates up and down levels of command. Engineered to meet multi-domain challenges of any combination of ground, vehicular, and airborne missions, the manpack simultaneously and independently runs the full frequency range of a broad portfolio of waveforms on each of two channels. As mission needs evolve, this software-defined manpack supports fast, in-field capability updates.

7. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

8. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

9. A determination has been made that Poland can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

10. All defense articles and services listed in this transmittal have been authorized for release and export to Poland.

[FR Doc. 2024–29498 Filed 12–13–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–0W]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil,* or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.*

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–0W.

Dated: December 10, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P

DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

December 14, 2023

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 23-0W. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 17-57 of October 30, 2017.

Sincerely,

James A. Hursch
Director

Enclosure:
1. Transmittal

BILLING CODE 6001–FR–C

Transmittal No. 23–0W

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Purchaser:* Government of Canada

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 17–57

Date: October 30, 2017

Implementing Agency: Air Force

(iii) *Description:* On October 30, 2017, Congress was notified by Congressional certification transmittal number 17–57 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of up to thirty-two (32) AIM–120D Advanced Medium-Range Air-to-Air Missiles (AMRAAMs), up to eighteen (18) AMRAAM Captive Air Training Missiles (CATMs); up to four (4) AMRAAM Non-Development Item—Airborne Instrumentation Unit (NDI–AIU); up to two (2) AMRAAM Instrumented Test Vehicles (ITV); up to seven (7) spare AMRAAM guidance units; up to four (4) spare AMRAAM control sections for use on their F/A–18 aircraft. Included in the sale were containers; storage and preservation; transportation; aircrew and maintenance training; training aids and equipment, spares and repair parts; warranties; weapon system support and test equipment; publications and technical documentation; software development, integration, and support; system integration and testing; U.S. Government and contractor engineering, technical, and logistics support; and other related elements of logistics and program support. The total estimated program cost was $140 million. Major Defense Equipment (MDE) constituted $130 million of this total.

On February 21, 2019, Congress was notified by Congressional certification

transmittal number 19–0E of the inclusion of up to eighty-eight (88) AIM–120D AMRAAMs beyond the number enumerated in the original notification (for a total of one hundred twenty (120) AIM–120D AMRAAMs),— as well as the increase of up to sixteen (16) spare AMRAAM guidance units (for a total of twenty-three (23) spare AMRAAM guidance units), and eight (8) spare AMRAAM control sections (for a total of twelve (12) spare AMRAAM control sections). The MDE value increased by $150 million to $280 million. The total case value increased to $308 million.

This transmittal notifies the inclusion of the following additional MDE items: up to four hundred twelve (412) AIM–120D AMRAAMs; up to forty-eight (48) AMRAAM Air-to-Air Vehicles Instrumented (AAVI); and up to ten (10) spare AMRAAM guidance units for use on F/A–18 and F–35 aircraft. Also included are KGV–135A embedded COMSEC devices; classified software and technical publications; AMRAAM control and telemetry sections; containers; field spares; support equipment; spare parts; technical publications; country-specific technical orders; repair and return services; site surveys; weapons system support; and training. The estimated total value of the new items and services is $1.902 billion. The estimated MDE value will increase by $1.66 billion to a revised $1.94 billion. The estimated non-MDE value will increase by $0.242 billion to a revised $0.270 billion. The estimated total case value will increase to $2.21 billion.

(iv) *Significance:* The inclusion of this MDE represents an increase in capability and capacity over what was previously notified. The proposed sale will increase Canada's stock of AIM–120D AMRAAM for use with its F/A–18 and F–35 fleets.

(v) *Justification:* This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the military capability of Canada, a North Atlantic Treaty Organization Ally that is an important force for ensuring political stability and economic progress, and is a contributor to military, peacekeeping and humanitarian operations around the world.

(vi) *Sensitivity of Technology:*

The AIM–120D AAVI is a live launch test vehicle used primarily for flight test integration with a rocket motor and instrumentation unit in place of a warhead. The AAVI verifies and assesses the ability to safely launch an AMRAAM and validate the missile's performance.

The Sensitivity of Technology Statement contained in the original notification applies to additional items reported here.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress:* December 14, 2023

[FR Doc. 2024–29496 Filed 12–13–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2024–HQ–0011]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 15, 2025.

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: Reginald Lucas, (571) 372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Facilities Available for the Construction or Repair of Ships; Standard Form 17; OMB Control Number 0703–0006.

Type of Request: Extension.

Number of Respondents: 200.

Responses per Respondent: 1.

Annual Responses: 200.

Average Burden per Response: 4 hours.

Annual Burden Hours: 800.

Needs and Uses: The information collection is part of a joint effort between the Naval Sea Systems Command (NAVSEA) and the U.S. Maritime Administration (MARAD), to maintain a working data set on active U.S. shipyards. The information collected is critical in providing both organizations with a comprehensive list of U.S. commercial shipyards and their capabilities and capacities.

Affected Public: Businesses or other for profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

DOD Clearance Officer: Mr. Reginald Lucas.

Dated: December 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2024–29586 Filed 12–13–24; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0143]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Grants Under the Historically Black Colleges and Universities (HBCU) and Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act 2019 Programs (1894–0001)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 15, 2025.

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 Wendy Lawrence, (202) 453–7821.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Grants under the Historically Black Colleges and Universities (HBCU) and Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act 2019 Programs (1894–0001).

OMB Control Number: 1840–0113.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 131.

Total Estimated Number of Annual Burden Hours: 3,668.

Abstract: The Historically Black Colleges and Universities (HBCU) Program and Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act 2019 Program are authorized by title III, part B and part F, respectively. The purpose of these programs is to provide historically Black institutions with resources to establish or strengthen their physical plants, financial management, academic resources, and endowments. The U.S. Department of Education is requesting an extension of this currently approved application in order to collect data needed to make new and non-competing continuation awards.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: December 11, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–29548 Filed 12–13–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Special Education Parent Information Centers—Parent Training and Information Centers

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

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2025 for Special Education Parent Information Centers—Parent Training and Information Centers (PTIs).

DATES:

Applications Available: December 16, 2024.

Application Deadline: March 3, 2025.

Deadline for Intergovernmental Review: April 30, 2025.

Pre-Application Webinar Information: The Office of Special Education Programs and Rehabilitative Services will record a pre-application webinar for this competition, available at *www.ed.gov/about/ed-offices/osers/osep/new-osep-grant-competitions,* within five days after publication of this notice. In addition, applicants may view information on this competition at *www.ed.gov/about/ed-offices/osers/osep/new-osep-grant-competitions.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to the *Application Submission Instructions* section.

FOR FURTHER INFORMATION CONTACT: Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 987–0117. Email: *Carmen.Sanchez@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

Funding Opportunity Description

Purpose of Program: The purpose of the Special Education Parent Information Centers program is to ensure that parents of children with disabilities receive high-quality, relevant, and useful training and information to help improve outcomes for their children.

Assistance Listing Number (ALN): 84.328M.

OMB Control Number: 1820–0028.

Eligible Applicants: Parent organizations.

Note: Section 671(a)(2) of the Individuals with Disabilities Education Act (IDEA) defines a ''parent organization'' as a private nonprofit organization [1] (other than an institution of higher education (IHE)) that—

(a) Has a board of directors—

(1) The majority of whom are parents of children with disabilities ages birth through 26;

(2) That includes—

(i) Individuals working in the fields of special education, related services, and early intervention; and

(ii) Individuals with disabilities; and

(3) The parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and

(b) Has as its mission serving families of children with disabilities who are ages birth through 26 and have the full range of disabilities described in section 602(3) of IDEA.

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $33,152,000 for awards for the Special Education Parent Information Centers program for FY 2025, of which we intend to use an estimated $25,800,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Information on funding amounts for individual States is in the ''Maximum

[1] If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

Award'' column of the table in this section.

The Department considered population distribution, poverty rates, and low-density enrollment when determining the award amounts for grants under this competition. For the States listed in the funding table, one award may be made for up to the amounts listed in the table to a qualified applicant for a PTI to serve the entire State.

Maximum Award: See table. We will not make an award exceeding the corresponding amount shown in the table for each State or region within a State for a single budget period of 12 months.

Applications for one five-year award will be accepted to serve the area in the Pacific comprised of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States consisting of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Estimated Number of Awards: 64. Based on the quality of applications received, the Department intends to fund one PTI in each of the States and regions listed below.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

State/region	Maximum annual award
Alabama	$374,214
Alaska	250,000
Arizona	484,600
Arkansas	250,000
California:	
CA Region 1	605,344
CA Region 2	751,877
CA Region 3	350,371
CA Region 4	463,005
CA Region 5	335,221
Colorado	367,386
Connecticut	250,000
Delaware	250,000
District of Columbia	250,000
Florida:	
FL Region 1	351,158
FL Region 2	325,620
FL Region 3	608,398
Georgia	775,872
Hawaii	250,000
Idaho	250,000
Illinois	819,598
Indiana	493,168
Iowa	250,000
Kansas	250,000
Kentucky	330,002
Louisiana	340,291
Maine	250,000
Maryland	385,237
Massachusetts	418,977
Michigan	677,073
Minnesota	386,724
Mississippi	250,000
Missouri	428,497
Montana	250,000
Nebraska	250,000
Nevada	250,000
New Hampshire	250,000
New Jersey	563,367
New Mexico	250,000
New York:	
NY Region 1	698,920
NY Region 2	544,158
North Carolina	733,745
North Dakota	250,000
Ohio	798,050
Oklahoma	307,681
Oregon	259,817
Pacific	250,000
Pennsylvania	824,315
Puerto Rico	250,000
Rhode Island	250,000
South Carolina	357,394
South Dakota	250,000
Tennessee	489,171
Texas:	
TX Region 1	543,245
TX Region 2	310,371
TX Region 3	704,460
TX Region 4	695,054
U.S. Virgin Islands	175,000
Utah	269,725
Vermont	250,000
Virginia	571,252
Washington	484,832
West Virginia	250,000
Wisconsin	396,810
Wyoming	250,000

Applications for five-year awards will also be accepted to serve regions in the following States:

California—

Region 1—Los Angeles county;
Region 2—Imperial, Orange, Riverside, San Bernardino, and San Diego counties;
Region 3—Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, San Luis Obispo, Santa Barbara, Tulare, and Ventura counties;
Region 4—Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma counties; and
Region 5—Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba counties.

Florida—

Region 1—Alachua, Baker, Bay, Bradford, Brevard, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Marion, Nassau, Okaloosa, Putnam, Santa Rosa, Seminole, St. Johns, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington counties;
Region 2—Charlotte, Citrus, Collier, DeSoto, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Lee, Manatee, Pasco, Pinellas, Sarasota, and Sumter counties; and
Region 3—Broward, Indian River, Lake, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Polk, and St. Lucie counties.

New York—

Region 1—Bronx, Kings, Nassau, New York, Queens, Richmond, and Suffolk counties; and
Region 2—The rest of the State of New York.

Texas—

Region 1—Atascosa, Bandera, Bastrop, Bexar, Blanco, Burnet, Caldwell, Cameron, Comal, Dimmit, Fayette, Frio, Gillespie, Gonzales, Guadalupe, Hays, Hidalgo, Jim Hogg, Kendall, Kerr, Kinney, La Salle, Lee, Llano, Maverick, Medina, Real, Starr, Travis, Uvalde, Webb, Willacy, Williamson, Wilson, Zapata, and Zavala counties;
Region 2—Andrews, Archer, Armstrong, Bailey, Baylor, Bell, Borden, Bosque, Brewster, Briscoe, Brown, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Comanche, Concho, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Donley, Eastland, Ector, Edwards, El Paso, Falls, Fisher, Floyd, Foard, Freestone, Gaines, Garza, Glasscock, Gray, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Howard, Hudspeth, Hutchinson, Irion, Jack, Jeff Davis, Jones, Kent, Kimble, King, Knox, Loving, Lamb, Lampasas, Limestone, Lipscomb, Lubbock, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Navarro, Nolan, Ochiltree, Oldham, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Upton, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Winkler, Yoakum, and Young counties;
Region 3—Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Cooke, Dallas, Delta, Denton, Ellis, Erath, Fannin, Franklin, Grayson, Gregg,

Harrison, Henderson, Hood, Hopkins, Hunt, Johnson, Kaufman, Lamar, Marion, Morris, Nacogdoches, Palo Pinto, Panola, Parker, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Somervell, Tarrant, Titus, Upshur, Van Zandt, Wise, and Wood counties; and

Region 4—Aransas, Austin, Bee, Brazoria, Brazos, Brooks, Burleson, Calhoun, Chambers, Colorado, DeWitt, Duval, Fort Bend, Galveston, Goliad, Grimes, Hardin, Harris, Houston, Jackson, Jasper, Jefferson, Jim Wells, Karnes, Kenedy, Kleberg, Lavaca, Leon, Liberty, Live Oak, Madison, Matagorda, McMullen, Milam, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Robertson, San Jacinto, San Patricio, Trinity, Tyler, Victoria, Walker, Waller, Washington, and Wharton counties.

Background:

Family engagement is vital to student success and children's development. To support families of children with disabilities, and youth with disabilities, as they navigate complex systems to obtain educational and developmental opportunities children and youth with disabilities need to thrive, the Department funds PTIs. This competition will fund 64 PTIs designed to meet the information, training, and support needs of parents of children with disabilities and youth with disabilities.

PTIs help families of children with disabilities have meaningful opportunities to participate in the education of their children. This is done through individualized assistance, training, and resources that help parents work with schools, providers, and educational systems to meet the unique needs of their children. PTIs also help youth develop their ability to advocate for their needs through individual assistance, training, and resources.

PTIs provide support to increase parents' knowledge of evidence-based practices, expand their capacity to help their children improve their educational and developmental outcomes, and develop their ability to be involved in school reform initiatives. PTIs help youth understand their rights and responsibilities and learn self-advocacy skills to lead as productive and independent lives as possible.

Absolute Priority: For FY 2025 this priority is an absolute priority. The absolute priority is from the allowable activities in, or otherwise authorized under, the statute.[2] We consider only applications that meet this priority.

An applicant may apply only once under the priority, except an applicant may apply for multiple regional centers within a single State and must submit a separate application for each region. For example, an applicant submitting for multiple regions within Texas must submit separate applications for each region.

Priority:

Programmatic Requirements

At a minimum, the PTIs must increase—(a) parents'[3] capacity to help their children[4] improve their early learning, school-aged, and postsecondary outcomes; (b) parents' knowledge of educational and early learning best practices; and (c) youth's[5] capacity to be effective self-advocates.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the following requirements:

Application Requirements

(a) In the narrative section of the application under ''Significance''—

(1) Present information on the needs of all parents and youth in the State or region, including but not limited to those who are underserved, low-income, or with limited English proficiency, parents with disabilities, incarcerated youth, and youth in foster care; and

(2) Demonstrate how the proposed project will address the needs of all parents and youth in the State or region by providing high-quality services that—

(i) Increase parents' capacity to support their children's development, learning, and transitions;

(ii) Increase youth's capacity to be effective self-advocates; and

(iii) Are informed by knowledge of—

(A) Best practices in providing training and information to parents and youth, and outreach and family-centered services;

(B) Relevant and current education practices and policy initiatives; and

(C) How to identify and work with appropriate State and local partners that serve children, families,[6] and youth.

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

(1) Use a project logic model (as defined in 34 CFR 77.1) to guide the development of project plans and activities within its State or region;

(2) Develop and implement an outreach plan to inform all parents and youth of how they can benefit from the PTI's services including, but not limited to, those who are underserved, low-income, or with limited English proficiency, parents with disabilities, incarcerated youth, and youth in foster care;

(3) Provide high-quality services that increase parents' knowledge of—

(i) The nature of their children's disabilities, strengths, and challenges;

(ii) The importance of having high expectations for their children and the early intervention and education practices that help children meet those expectations;

(iii) The local, State, and Federal resources available to assist them and strengthen their connection to their communities;

(iv) IDEA, Federal IDEA regulations, and State regulations, policies, and practices implementing IDEA, including their rights and responsibilities, procedural safeguards, and dispute resolution processes, how to participate on Individualized Family Service Plan and Individualized Education Program teams, and how services are provided;

(v) The Rehabilitation Act (including section 504), the Workforce Innovation and Opportunity Act (WIOA), the Americans with Disabilities Act (ADA), and other relevant educational and health care legislation, regulations, and policies that affect people with disabilities, including their rights and responsibilities, procedural safeguards, and dispute resolution processes;

(vi) Transition services, at all levels, and available supports for re-entry of incarcerated youth to school and the community;

(vii) How their children can have access to the general education curriculum, inclusive early learning programs, academic standards and assessments, extracurricular and enrichment opportunities, and other initiatives available to all children; and

(viii) School reform efforts to improve student achievement and increase graduation rates;

(4) Provide high-quality services that increase parents' capacity to effectively—

(i) Support their children and participate in their children's education;

[2] See sections 671 and 681(d) of IDEA; 20 U.S.C. 1471 and 1481.

[3] For the purpose of this priority, ''parents'' means the parents of children with disabilities.

[4] For the purpose of this priority, ''children with disabilities'' means infants, toddlers, children, and youth (ages birth through 26) with the full range of disabilities.

[5] For the purpose of this priority, ''youth'' means youth with disabilities.

[6] For the purpose of this priority, ''families'' means families of children with disabilities.

(ii) Communicate and work collaboratively in partnership with the professionals working with their children;

(iii) Resolve disputes; and

(iv) Participate in school reform activities to improve outcomes for all children;

(5) Provide high-quality services that increase youth's knowledge of—

(i) The nature of their disabilities, strengths, and challenges;

(ii) The importance of having high expectations for themselves and the practices that help them meet those expectations;

(iii) The resources available to support their success in education, employment, and their communities;

(iv) IDEA, the Rehabilitation Act (including Section 504), the WIOA, the ADA, and other legislation, regulations, and policies that affect people with disabilities;

(v) Their rights and responsibilities while receiving services under IDEA, the Rehabilitation Act, and the WIOA, and after transitioning to post-school life under Section 504 and the ADA;

(vi) How they can participate on teams that support them; and

(vii) How to engage in supported decision making necessary to transition to adult life;

(6) Provide high-quality services that increase youth's capacity to communicate and collaborate with providers and others, and make informed decisions and advocate for themselves;

(7) Use best practices and various methods to deliver services;

(8) Establish cooperative partnerships with Community Parent Resource Centers (ALN 84.328C) and other PTIs funded in the State or region;

(9) Establish cooperative partnerships with the Parent Information and Training Centers funded under the Rehabilitation Act (ALN 84.235F) in the Regional Parent Technical Assistance Center's (Regional PTAC's)(ALN 84.328R) region to which they belong, and the Center for Parent Information and Resources (CPIR)(ALN 84.328R); and

(10) Network with local, State, and national organizations and agencies that serve parents and families.

(c) In the narrative section of the application under ''Quality of the project evaluation or other evidence-building,'' include an evaluation plan for the project. The evaluation plan must describe measures for evaluating the quality and reach of project services; progress in implementing project services; the outcomes of the project's activities; and the extent to which the project meets the goals described in the logic model.

(d) Demonstrate, in the narrative section of the application under ''Quality of project personnel and adequacy of resources,'' how—

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

(2) The costs are reasonable in relation to the anticipated results and benefits;

(3) The project will encourage applications for employment from persons who are members of groups that have historically encountered barriers, or who have professional or personal experiences with barriers, based on one or more of the following: economic disadvantage; gender; race; ethnicity; color; national origin; disability; age; language; migration; living in a rural location; experiencing homelessness or housing insecurity; involvement with the justice system; pregnancy, parenting, or caregiver status; and sexual orientation; and

(4) The key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve intended outcomes.

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

(1) The management plan contains clearly defined responsibilities of staff, consultants, and contractors, and project timelines to ensure that the project's intended outcomes will be achieved on time and within budget;

(2) Key project personnel, consultants, and subcontractors are appropriately allocated to the project;

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

(4) The applicant will use its board of directors to provide appropriate oversight to the project;

(5) The project will benefit from a diversity of perspectives in its development and operation;

(6) Accurate and timely annual performance reports submitted to the Department will include at a minimum the number and demographics of parents and youth who received PTI services, the unique needs of those parents and youth, the levels of services provided, and information on the project's outputs and outcomes; and

(7) The project management and staff will use the technical assistance (TA) available from the Office of Special Education Programs (OSEP)-funded Technical Assistance and Dissemination network, their Regional PTAC and the CPIR, and collaborate with the Regional PTAC in facilitating at least one site visit and developing individualized TA plans as needed.

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

(1) Include, in appendix A, a logic model for the project;

(2) Include, in appendix A, any applicable personnel-loading charts and timelines to illustrate the management plan;

(3) Include, in the budget, travel funds to support the project director's annual attendance at one meeting sponsored by OSEP and one meeting sponsored by the Regional PTACs, at a minimum; and

(4) Provide an assurance that it will maintain a website that meets government or industry-recognized standards for accessibility and meets the needs of the parents and youth in the State or region.

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance.* (15 points).

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project will provide support, resources, or services; or otherwise address the needs of the target population, including addressing the needs of underserved populations most affected by the issue, challenge, or opportunity, to be addressed by the proposed project and close gaps in educational opportunity.

(ii) The likely utility of the resources (such as materials, processes, techniques, or data infrastructure) that will result from the proposed project, including the potential for effective use in a variety of conditions, populations, or settings.

(iii) The extent to which the proposed project is likely to build local, State, regional, or national capacity to provide, improve, sustain, or expand training or services that address the needs of underserved populations.

(b) *Quality of project services.* (35 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equitable and adequate access and participation for project participants who experience barriers based on one or more of the following:

economic disadvantage; gender; race; ethnicity; color; national origin; disability; age; language; migration; living in a rural location; experiencing homelessness or housing insecurity; involvement with the justice system; pregnancy, parenting, or caregiver status; and sexual orientation. This determination includes the steps developed and described in the form Equity For Students, Teachers, And Other Program Beneficiaries (OMB Control No. 1894–0005) (section 427 of the General Education Provisions Act (20 U.S.C. 1228a)).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the proposed project demonstrates a rationale that is aligned with the purposes of the grant program.

(ii) The likely benefit to the intended recipients, as indicated by the logic model or other conceptual framework, of the services to be provided.

(iii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, measurable, and ambitious yet achievable within the project period, and aligned with the purposes of the grant program.

(iv) The extent to which the services to be provided by the proposed project were determined with input from the community to be served to ensure that they are appropriate and responsive to the needs of the intended recipients or beneficiaries, including underserved populations, of those services.

(v) The extent to which the proposed project is informed by similar past projects implemented by the applicant with demonstrated results.

(vi) The extent to which the proposed project will include coordination with other Federal investments, as well as appropriate agencies and organizations providing similar services to the target population.

(vii) The extent to which the services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(c) *Quality of the project evaluation or other evidence-building.* (15 points)

(1) The Secretary considers the quality of the evaluation or other evidence-building of the proposed project.

(2) In determining the quality of the evaluation or other evidence-building, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation or other evidence-building are appropriate to the context within which the project operates and the target population of the proposed project.

(ii) The extent to which the methods of evaluation or other evidence-building will provide performance feedback and provide formative, diagnostic, or interim data that is a periodic assessment of progress toward achieving intended outcomes.

(iii) The extent to which the proposed project proposes specific, measurable targets, connected to strategies, activities, resources, outputs, and outcomes, and uses reliable administrative data to measure progress and inform continuous improvement.

(d) *Quality of the project personnel and adequacy of resources.* (20 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project and the adequacy of resources for the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant demonstrates that it has project personnel or a plan for hiring of personnel who are members of groups that have historically encountered barriers, or who have professional or personal experiences with barriers, based on one or more of the following: economic disadvantage; gender; race; ethnicity; color; national origin; disability; age; language; migration; living in a rural location; experiencing homelessness or housing insecurity; involvement with the justice system; pregnancy, parenting, or caregiver status; and sexual orientation.

(3) In determining the quality of personnel and the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the project director or principal investigator, when hired, has the qualifications required for the project, including formal training or work experience in fields related to the objectives of the project and experience in designing, managing, or implementing similar projects for the target population to be served by the project.

(ii) The extent to which the key personnel in the project, when hired, have the qualifications required for the proposed project, including formal training or work experience in fields related to the objectives of the project, and represent or have lived experiences of the target population.

(iii) The adequacy of support for the project, including facilities, equipment, supplies, and other resources, from the applicant or the lead applicant organization.

(iv) The extent to which the costs are reasonable in relation to the number of persons to be served, the depth and intensity of services, and the anticipated results and benefits.

(e) *Quality of the management plan.* (15 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The feasibility of the management plan to achieve project objectives and goals on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of mechanisms for ensuring high-quality and accessible products and services from the proposed project for the target population.

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

Performance Measures:

For the purposes of Department reporting under 34 CFR 75.110, the Department has established a set of performance measures that are designed to yield information on various aspects of the effectiveness and quality of the Special Education Parent Information Centers program. These measures are:

- Program Performance Measure 1: The percentage of materials used by projects that are deemed to be of high quality;
- Program Performance Measure 2: The percentage of products and services deemed to be of high relevance to educational and early intervention policy and practice; and
- Program Performance Measure 3: The percentage of all products and services deemed to be useful to improve educational or early intervention policy or practice. *Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1471 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR

parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Guidance for Federal Financial Assistance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: As of October 1, 2024, grant applicants must follow the provisions stated in the OMB Guidance for Federal Financial Assistance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these regulations please visit: *www.cfo.gov/resources-coffa/uniform-guidance/.*

Cost Sharing or Matching: This program does not require cost sharing or matching.

Indirect Cost Rate Information: This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www.ed.gov/about/ed-offices/ofo.*

Administrative Cost Limitation: This program does not include any program-specific limitation on administrative expenses.

Subgrantees: A grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs and private nonprofit organizations suitable to carry out the activities proposed in the application.

The grantee may award subgrants to entities it has identified in an approved application.

Other General Requirements:

1. Recipients of funding under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

2. Each applicant for, and recipient of, funding under this program must involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

Application and Submission Information:

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs (87 FR 75045, December 7, 2022).

2. *Intergovernmental Review:* This competition is subject to intergovernmental review under Executive Order 12372. Information about this process is in the application package.

3. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

4. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department.

5. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

6. *Risk Assessment and Specific Conditions:* Before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. The Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

7. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

If the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity

information to FAPIIS semiannually. Please review these requirements if this grant plus all the other Federal funds you receive exceed $10,000,000.

Award Administration Information:

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN), or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements should you receive funding under the competition. This does not apply if you have an exception.

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary. The Secretary may also require more frequent performance reports. For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) The Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Continuation Awards:* In making a continuation award, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024–29530 Filed 12–13–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0110]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Regional Educational Laboratory Midwest: Teacher Preparation Program Completion: What Factors Play a Role?

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 new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 15, 2025.

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 Christopher Boccanfuso, (202) 219–0373.

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: Regional Educational Laboratory Midwest: Teacher Preparation Program Completion: What Factors Play a Role?

OMB Control Number: 1850–NEW.

Type of Review: New ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 421.

Total Estimated Number of Annual Burden Hours: 220.

Abstract: The U.S. Department of Education seeks clearance for the recruitment and data collection protocols for the Regional Educational

Laboratory (REL) Midwest research study, Teacher Preparation Program Completion: What Factors Play a Role? The study, scheduled for the 2024/25 school year, will focus on understanding factors influencing the completion of traditional undergraduate teacher preparation programs. This is crucial as traditional teacher preparation programs are the main sources of new teachers, yet the number of bachelor's degrees in education has declined by 18 percent between 2010 and 2020.

This study aims to address two main research questions: (1) How do the demographic and academic characteristics of students in traditional undergraduate teacher preparation programs differ between completers and noncompleters? and (2) How do personal and contextual factors relate to students' completion of traditional teacher preparation programs?

The study will collect quantitative survey data and qualitative interview data from students who completed and did not complete traditional undergraduate teacher preparation programs, supplemented by administrative data from teacher preparation programs. This approach will allow the study to gather information on personal and contextual factors not captured in administrative data, such as the ability to complete unpaid student teaching, perceptions of the teaching profession, and other intrinsic motivations and external conditions that influence completion.

The urgency to improve teacher candidate retention and graduation rates is driven by long-standing teacher shortages and a desire to increase racial/ethnic and gender diversity in the teacher workforce to mirror the composition of K–12 students in the United States. Findings from this study aim to inform program and policy-level solutions to support teaching candidates, particularly those from diverse backgrounds, ensuring they persist through their teacher preparation programs.

Dated: December 11, 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. 2024–29563 Filed 12–13–24; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: Election Assistance Commission.

ACTION: Sunshine Act notice; Notice of public meeting agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission Technical Guidelines Development Committee Meeting.

DATES: Tuesday, January14th, 2025, 9:00 a.m.–5:00 p.m. ET.

ADDRESSES: The meeting will be held in person at the National Cybersecurity Center of Excellence, 9700 Great Seneca Highway, Rockville, MD 20850. Pre-registration is required.

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct annual meeting of the EAC Technical Guidelines Development Committee (TGDC) to discuss regular business of the board.

Agenda: The EAC and TGDC members will hold an annual meeting to discuss program updates for EAC Testing and Certification and the National Institute of Standards and Technology (NIST) Voting Program, and more. The full agenda will be posted in advance on the EAC website: *https://www.eac.gov/events/2025/01/14/eac-technical-guidelines-development-committee-2024-annual-meeting.* Registration is required to attend. Please register by January 6, 2025.

The EAC will accept written comments and questions from members of the public. If you would like to participate, please email *clearinghouse@eac.gov* with your full name and question or comment no later than 9:00 a.m. E.T. on January 14, 2025.

Background: Section 221 of the Help America Vote Act (HAVA) of 2002 (52 U.S.C. 20971(b)) requires that the EAC adopt voluntary voting system guidelines, and provide for the testing, certification, decertification, and recertification of voting system hardware and software.

The TGDC was established in accordance with the requirements of Section 221 of the Help America Vote Act of 2002 (Pub. L. 107–252, codified at 52 U.S.C. 20961), to act in the public interest to assist the Executive Director of the EAC in the development of voluntary voting system guidelines.

Status: This meeting will be open to the public.

Camden Kelliher,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2024–29672 Filed 12–12–24; 4:15 pm]

BILLING CODE 4810–71–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: Election Assistance Commission.

ACTION: Notice, request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the EAC announces an information collection and seeks public comment on the provisions thereof. The EAC intends to submit this proposed information collection (National Mail Voter Registration Form) to the Director of the Office of Management and Budget for approval. Section 9(a) of the National Voter Registration Act of 1993 (''NVRA'') and Section 802 of the Help America Vote Act of 2002 (''HAVA'') requires the responsible agency to maintain a national mail voter registration form for U.S. citizens that want to register to vote, to update registration information due to a change of name, make a change of address or to register with a political party by returning the form to their state election office.

DATES: Comments must be received by 5 p.m. Eastern on Monday, February 17, 2025.

ADDRESSES: Comments on the proposed information collection should be submitted electronically via *https://www.regulations.gov* (docket ID: EAC–2024–0004) or by email at *research@eac.gov.* Written comments on the proposed information collection can also be sent to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: NVRA.

FOR FURTHER INFORMATION CONTACT: Raymond Williams at 202–924–0794, or email *research@eac.gov;* U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001.

SUPPLEMENTARY INFORMATION:

Comments: Public comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Obtaining a Copy of the National Mail Voter Registration Form: To obtain a free copy of the registration form: (1) Download a copy at *https://www.eac.gov/voters/national-mail-voter-registration-form*; or (2) write to the EAC (including your address and phone number) at U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: National Mail Voter Registration Form.

Title and OMB Number: National Voter Registration Act (NVRA) Regulations for Voter Registration Application; OMB Number 3265–0015.

Purpose: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the EAC is publishing notice of the proposed collection of information set forth in this document.

Background: Persons wishing to register to vote may use the National Mail Voter Registration form (''Federal form'' or ''form'') to apply for voter registration. After completing the form, an applicant submits her/his form to their respective state election office for processing. States covered by the NVRA process the information from the form to register an applicant to vote. Neither EAC nor any other Federal agency processes or collects any information from the Federal form that a registration applicant submits to a state. Rather, EAC prescribes the Federal form, and states collect and record the information applicants submit. The Federal form is composed of the registration application, instructions for completing the application (General Instructions and Application Instructions), and state-specific instructions that identify each state's particular requirements. A copy of the current form in English and 17 additional translated languages is available on EAC's website, at *https://www.eac.gov/voters/national-mail-voter-registration-form.*

Public Comments: Public comments are invited on:

- 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;
- The accuracy of the agency's estimate of the burden of the proposed information collection;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your submitted comments, including your personal information, will be available for public review.

Affected Public (Respondents): U.S. citizens eligible to vote in jurisdictions that accept and use the National Mail Voter Registration form.

Number of Respondents: 2,500,000.

Responses per Respondent: 1.

Estimated Burden per Response: 0.12 hours per response.

Estimated Total Annual Burden Hours: 291,667 hours annualized.

Frequency: Annually.

Camden Kelliher,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2024–29679 Filed 12–12–24; 4:15 pm]

BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY

Notice of Early Public and Governmental Engagement for Potential Designation of Tribal Energy Access, Southwestern Grid Connector, and Lake Erie-Canada National Interest Electric Transmission Corridors

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of early public and governmental engagement and request for comment.

SUMMARY: The U.S. Department of Energy (DOE) is issuing this Notice of Early Public and Governmental Engagement to invite input and comment from Federal and State agencies, regional entities, Tribal and local governments, the public, and other interested parties on DOE's consideration of three potential National Interest Electric Transmission Corridors (NIETCs). This notice also provides date, time, and registration information for informational webinars regarding the potential NIETCs. DOE is seeking input and comments on the possible scope of analysis, including environmental, cultural, or socioeconomic effects should DOE designate any of the potential NIETCs, and the contents of DOE's engagement framework, including appropriate methods and locations of future NIETC-specific meetings. DOE also invites any other relevant feedback. Following consideration of comments and suggestions, DOE intends to refine geographic boundaries of the three potential NIETCs identified in this notice and determine its obligations under the National Environmental Policy Act (NEPA) and other environmental review requirements for each potential NIETC designation identified in this notice. If DOE determines that NIETC designation is a major federal action significantly affecting the quality of the human environment, DOE will subsequently begin any necessary NEPA process. If DOE determines that NIETC designation is not a major federal action significantly affecting the quality of the human environment, then DOE expects that NEPA would not apply.

DATES: Comments and information are requested on or before February 14, 2025. Comments received or postmarked after that date will be considered to the extent practicable. There are three informational webinars scheduled during the comment period, one for each potential NIETC designation: the potential Tribal Energy Access Corridor on January 14, 2025, at 3 p.m. eastern; the potential Southwestern Grid Connector Corridor on January 15, 2025, at 3 p.m. eastern; and the potential Lake Erie-Canada Corridor on January 16, 2025, at 3 p.m. eastern. Information on how to register for these webinars can be found on DOE's NIETC website, at *https://www.energy.gov/gdo/national-interest-electric-transmission-corridor-designation-process.* These webinars will be recorded, and the recordings will be available at the same website when ready.

ADDRESSES: Interested parties are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under the relevant docket number(s). Alternatively,

interested parties may submit comments, identified by relevant docket number(s), by any of the following methods:

- *Email: NIETC@hq.doe.gov*. Include the relevant docket number(s) in the subject line of the email.
- *Mail:* Address written comments to U.S. Department of Energy, Grid Deployment Office, 1000 Independence Ave. SW, Suite 4H–065, Washington, DC 20585.

Instructions: There are four docket numbers associated with this Notice of Early Public and Governmental Engagement. DOE encourages interested parties to submit general recommendations and comments in response to the topics listed in ''Request for Comments'' (section IV) of the **SUPPLEMENTARY INFORMATION** section of this Notice of Early Public and Governmental Engagement under the docket number in which this notice has been posted. DOE encourages interested parties to submit recommendations and comments specific to the circumstances of individual potential NIETCs in the relevant dockets: DOE–HQ–2024–0088-Potential Designation of the Tribal Energy Access National Interest Electric Transmission Corridor; DOE–HQ–2024–0089—Potential Designation of the Southwestern Grid Connector National Interest Electric Transmission Corridor; DOE–HQ–2024–0090—Potential Designation of the Lake Erie-Canada National Interest Electric Transmission Corridor.

Docket: The dockets for this activity are available for review at *www.regulations.gov.* All documents in the dockets are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The docket web pages can be found at *www.regulations.gov.* The docket web pages contain instructions on how to access all documents, including public comments, in the dockets.

Further information about the NIETC program, including maps and underlying geographic information system (GIS) data displaying the geographic boundaries of the three potential NIETCs moving to Phase 3 and identification of transmission projects currently under development within the potential NIETCs, as well as information on how to attend the informational webinars, may be found on DOE's website at: *https://www.energy.gov/gdo/national-interest-electric-transmission-corridor-designation-process.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, Senior Technical Advisor, by email at *NIETC@hq.doe.gov* or by telephone at (202) 586–2006.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Power Act (FPA) (16 U.S.C. 791a *et seq.*) authorizes the Secretary of Energy to designate any geographic area as a NIETC if the Secretary finds, based on the DOE's triennial National Transmission Needs Study (Needs Study) or other relevant information, present or expected transmission capacity constraints or congestion that adversely affects consumers. The purpose for designating a NIETC is to facilitate timely development of electric transmission infrastructure to address the electric transmission needs identified in these areas. Designation of an area as a NIETC enables DOE and the Federal Energy Regulatory Commission (FERC) to use critical Federal financing and permitting tools to spur construction of transmission projects within the area. NIETC designation is not a route determination for any particular transmission project nor is it an endorsement of one or more transmission solutions to identified present or expected transmission capacity constraints or congestion within the NIETC.

Pursuant to section 216(a)(1) of the FPA, DOE must conduct a study every three years of electric transmission capacity constraints and congestion, which DOE refers to as the Needs Study. On October 30, 2023, DOE released its latest triennial Needs Study.[1] The 2023 Needs Study is an assessment of publicly available data and more than 120 recently published reports that consider current and anticipated future electric transmission needs given a range of electricity demand, public policy, and market conditions. As used in the 2023 Needs Study, an electric transmission need refers to the existence of present or expected electric transmission capacity constraints or congestion in a geographic area, consistent with FPA section 216(a)(1). The Needs Study supports the implementation of DOE programs, including the potential designation of NIETCs, consistent with the statutory direction in FPA section 216(a)(2) that DOE consider designating NIETCs based on the study required by section 216(a)(1) or other relevant information on transmission need.

DOE established a four-phase process, pursuant to FPA section 216(a), as amended by the Infrastructure Investment and Jobs Act (IIJA), 16 U.S.C. 824p(a), through which DOE may designate NIETCs. DOE initiated Phase 1 on December 19, 2023, with the release of DOE's final guidance setting forth the new four-phase NIETC designation process.[2] This guidance included DOE's preliminary assessment of the transmission needs found in the 2023 Needs Study and guidance on where DOE believed NIETC designation may be particularly valuable based on those findings. Phase 1 included a 45-day window for interested parties to submit information and recommendations on the geographic boundaries of potential NIETCs, the present or expected transmission capacity constraints or congestion within those geographic boundaries (*i.e.,* the transmission needs adversely affecting consumers), and the relevant discretionary factors from the list in FPA section 216(a)(4) that DOE may consider in designating a NIETC. DOE reviewed all information submissions, recommendations, and comments and considered the results of its 2023 Needs Study as well as other information relating to electric transmission capacity constraints and congestion to develop a preliminary list of potential NIETCs to initiate Phase 2 of the NIETC designation process.

DOE initiated Phase 2 on May 8, 2024, with the release of a preliminary list of 10 potential NIETCs that DOE was considering for NIETC designation in its first iteration of the four-phase designation process.[3] DOE provided a high-level explanation of the basis for those potential NIETCs and opened another 45-day public comment period, focused on the 10 potential NIETCs as well as additional information on potential impacts on environmental, community, and other resources of NIETC designation.

DOE initiated Phase 3 in December 2024, when DOE announced which potential NIETCs from the preliminary list released in May 2024 were moving to Phase 3. As a result of findings in the 2023 Needs Study and other relevant information on transmission needs, including review of substantial public comment during Phases 1 and 2, DOE preliminarily identified targeted, high-priority geographic areas for which: transmission development is critical to address transmission needs within the area, including key findings in the 2023 Needs Study, unmet through existing

[1] See *https://www.energy.gov/gdo/national-transmission-needs-study.*

[2] See *https://www.energy.gov/sites/default/files/2023-12/2023-12-15%20GDO%20NIETC%20Final%20Guidance%20Document.pdf.*

[3] See *https://www.energy.gov/sites/default/files/2024-05/PreliminaryListPotentialNIETCs PublicRelease.pdf.*

planning processes; there is clear utility to NIETC designation to further such transmission development in the nearer term in light of transmission projects under development in these areas; and the group of potential NIETCs balances DOE's resources to achieve timely, durable designations that follow from robust public and governmental engagement. Specifically, DOE announced that it was moving three potential NIETCs to Phase 3: the potential Tribal Energy Access Corridor, the potential Southwestern Grid Connector Corridor, and the potential Lake Erie-Canada Corridor. These potential NIETCs are significantly narrowed and refined from the 10 potential NIETCs included in the May 2024 preliminary list, and each were renamed to better describe their location and purpose. Each of these potential NIETCs are described in further detail in section II of this notice.

Phase 3 includes several concurrent activities. DOE continues to independently assess the basis for NIETC designation; assess and determine its NEPA obligations; and conduct robust public and governmental engagement. As part of the public and governmental engagement, DOE will continue to consider all issues and topics which may be relevant to its eventual release of draft NIETC designation reports (one for each potential NIETC) and draft environmental documents, if required, for public comment.

Based upon the information and analyses developed in Phase 3, DOE will proceed to Phase 4. The Director of the Grid Deployment Office has the authority, as delegated by Delegation Order No. S1–DEL–S3–2024 and Redelegation Order No. S3–DEL–GD1–2023, to issue final NIETC designation reports (one for each NIETC that proceeds to final designation).

II. Description of Each Potential NIETC

DOE has announced three potential NIETCs that have moved to Phase 3, described in detail below: the potential Tribal Energy Access Corridor, the potential Southwestern Grid Connector Corridor, and the potential Lake Erie-Canada Corridor.

The potential Tribal Energy Access Corridor includes portions of the Phase 2 Northern Plains potential NIETC and refocuses to a refined area on central sections in North Dakota, South Dakota, and Nebraska with portions of central North Dakota, South Dakota, Cheyenne River Reservation, and Standing Rock Reservation that were not in the Phase 2 potential NIETC map. The potential Tribal Energy Access Corridor primarily follows existing transmission line rights-of-way, and connects the Cheyenne River Reservation, Pine Ridge Reservation, Rosebud Indian Reservation, Standing Rock Reservation, and Yankton Reservation to existing or under development higher-voltage transmission lines, which can enable Tribal energy and economic development.

The potential Southwestern Grid Connector Corridor includes portions of the Phase 2 Mountain-Plains-Southwest and Plains-Southwest potential NIETCs, consisting of narrower areas of Colorado, New Mexico, and the Oklahoma panhandle with portions of southeastern Colorado and New Mexico not in the Phase 2 potential NIETC maps. This potential NIETC focuses on the seam between the Eastern and Western Interconnections including back-to-back high-voltage direct current substations which can support interregional and cross-interconnection transmission opportunities.

The potential Lake Erie-Canada Corridor includes portions of the Phase 2 Mid-Atlantic-Canada potential NIETC, focusing on Lake Erie and a narrower area in northern Pennsylvania, which can support connections between Canada and the PJM Interconnection region.

More information on these potential NIETCs, including maps and underlying GIS data displaying the geographic boundaries of the three potential NIETCs moving to Phase 3 and identification of transmission projects currently under development within the potential NIETCs, can be found on DOE's NIETC website at: *https://www.energy.gov/gdo/national-interest-electric-transmission-corridor-designation-process.*

As previously described, DOE may use comments and suggestions received during this early engagement period and other potential future engagements and consultations to help refine the geographic boundaries of the potential NIETCs identified in this notice, and the boundaries of any potential NIETC may continue to be refined until the issuance of a final NIETC designation report (Phase 4). In addition, for each potential NIETC that DOE is moving to Phase 3, DOE will assess and determine its NEPA obligations. DOE's assessment will include but is not limited to analyzing whether any potential NIETC designation constitutes a major federal action significantly affecting the quality of the human environment (and therefore, whether NEPA applies); whether there are any potential effects of such a designation, and, if any, can they be meaningfully evaluated; and, if required, the appropriate level of NEPA review.

III. Public Engagement Framework

To minimize the burden on communities, DOE intends to schedule virtual and in-person public meetings to provide additional information and receive comments in response to this notice. DOE will use feedback received during this comment period to tailor any future public engagement for each potential NIETC designation. Interested parties may request meetings at any time during Phase 3 by emailing *NIETC@hq.doe.gov.* DOE may not be able to accommodate all meeting requests received and may organize group meetings based on topic, geography, or other common feature.

During Early Engagement Period (Through February 14, 2025)

There are three informational webinars scheduled during the comment period, one for each potential NIETC designation: the potential Tribal Energy Access Corridor on January 14, 2025, at 3 p.m. eastern; the potential Southwestern Grid Connector Corridor on January 15, 2025, at 3 p.m. eastern; and the potential Lake Erie-Canada Corridor on January 16, 2025, at 3 p.m. eastern. In addition to these webinars, interested parties may request virtual informational meetings with DOE by contacting *NIETC@hq.doe.gov.*

After Early Engagement Period

While DOE reviews and considers comments received in response to this Notice of Early Public and Governmental Engagement and assesses its NEPA obligations, DOE welcomes requests for meetings to discuss the potential NIETCs. Meeting requests can be made by emailing *NIETC@hq.doe.gov.* Note that DOE intends to initiate NEPA, if required, for each potential NIETC on its own timeline and the designation process will proceed on a NIETC-by-NIETC basis.

Upon any determination by DOE to initiate NEPA, if required and at the appropriate level, the dates and locations of any potential NIETC-specific public and governmental engagements will be announced via subsequent announcements, **Federal Register** notices, local media, and/or other appropriate methods. Commonly used methods of public and governmental engagements include:

- Public meetings (may be virtual or in person),
- Meetings upon request, and
- Periodic meetings (either virtual or in-person) to provide updates and discuss concerns, where relevant.

Additional Opportunities for Engagement

Tribal Engagement

Any government-to-government consultations with affected federally recognized Indian Tribes will be conducted in a manner appropriate to such consultations, respectful of Tribal sovereignty and consistent with the ongoing trust responsibility between the United States and Tribes.

Regional Entity Engagement

Pursuant to FPA section 216(a)(3), DOE will consult with regional entities during Phase 3.

IV. Request for Comments

DOE specifically requests recommendations and comments on the contents of the public engagement framework, including topics such as: the number, location, and format of public meetings; preferred day of week or time of day for such engagements; and identifying existing forums for engaging with interested or potentially affected stakeholders.

DOE additionally requests recommendations and comments on methods of outreach, including topics such as: names of any specific entities, such as community-based organizations, that should be included in or contacted directly as part of public engagement; and appropriate local news outlets, newspapers, and other news and media outlets for reaching interested or potentially affected stakeholders.

DOE additionally seeks suggestions on how to organize group meetings if all individual meeting requests cannot be accommodated, including topics around which meetings should be organized.

DOE invites suggestions on environmental, cultural, or socioeconomic considerations or potential effects that DOE should consider during its review and analysis of its potential NIETC designations, including comments on whether any potential effects can be meaningfully evaluated. DOE additionally seeks input on whether each potential NIETC maximizes existing rights-of-way and avoids and minimizes, to the maximum extent practicable, and offsets to the extent appropriate and practicable, sensitive environmental areas and cultural heritage sites (FPA section 216(a)(4)(G)). Commenters are encouraged to submit only non-sensitive information necessary to sufficiently inform potential NIETC designations and avoid submitting any potentially sensitive data. If DOE determines that additional information is needed to support NIETC designation, DOE will contact the commenter directly to request that data.

For all of the previous topics, DOE encourages general recommendations and comments, which interested parties should submit under the docket number in which this notice has been posted, as well as recommendations and comments specific to the circumstances of individual potential NIETCs, which interested parties should submit under the relevant docket number: DOE–HQ–2024–0088-Potential Designation of the Tribal Energy Access National Interest Electric Transmission Corridor; DOE–HQ–2024–0089-Potential Designation of the Southwestern Grid Connector National Interest Electric Transmission Corridor; DOE–HQ–2024–0090-Potential Designation of the Lake Erie-Canada National Interest Electric Transmission Corridor.

Signing Authority

This document of the Department of Energy was signed on December 9, 2024, by Maria D. Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by the 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 December 10, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–29419 Filed 12–13–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL25–31–000]

CPV Shore, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 10, 2024, the Commission issued an order in Docket No. EL25–31–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether CPV Shore, LLC's Rate Schedule is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *CPV Shore, LLC,* 189 FERC ¶ 61,186 (2024).

The refund effective date in Docket No. EL25–31–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL25–31–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2024), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *https://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, 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, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help

members of the public, including landowners, environmental justice communities, tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: December 10, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–29531 Filed 12–13–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974; System of Records

AGENCY: Federal Energy Regulatory Commission (FERC), Department of Energy (DOE).

ACTION: Rescindment of a system of records notice.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, the Federal Energy Regulatory Commission (Commission or FERC) proposes to rescind an existing system of records notice (SORN) titled ''*Commission Reconsideration of Retirement Refund Decisions File (FERC—27).*'' The Rescindment of System of Records Notice identifies the system of records and explains why it is being rescinded.

DATES: Comments on this rescindment notice must be received no later than 30 days after the date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by FERC, the rescindment will become effective a minimum of 30 days after the date of publication in the **Federal Register**. If FERC receives public comments, FERC shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted in writing to Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, or electronically to *privacy@ferc.gov.* Comments should indicate that they are submitted in response to ''*Commission Reconsideration of Retirement Refund Decisions File (FERC—27).*''

FOR FURTHER INFORMATION CONTACT: Director, Human Resource Division, Chief Human Capital Officer Directorate, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6852.

SUPPLEMENTARY INFORMATION: Commission Reconsideration of Retirement Refund Decisions File (FERC—27) was identified for rescindment from the FERC's Privacy Act systems of records inventory because the Commission no longer retains records related to the refund of Civil Service Retirement/Federal Employees Retirement System deductions. Instead, former employees are directed to file directly with Office of Personnel Management (OPM). The records are covered by the OPM SORN titled ''*Civil Service Retirement and Insurance Records (OPM Central–1)*'' (75 FR 15013; 80 FR 74815).

SYSTEM NAME AND NUMBER:

Commission Reconsideration of Retirement Refund Decisions File (FERC—27).

HISTORY:

65 FR 21749 (April 24, 2000).

Dated: December 10, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–29532 Filed 12–13–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP25–274–000.

Applicants: Ovintiv Marketing Inc., FourPoint Resources, LLC.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of Ovintiv Marketing Inc., et al.

Filed Date: 12/9/24.

Accession Number: 20241209–5154.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: RP25–275–000.

Applicants: Mountain Valley Pipeline, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement—12/10/2024 to be effective 12/10/2024.

Filed Date: 12/9/24.

Accession Number: 20241209–5164.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: RP25–276–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Southeast Reliability Enhancement (Interim) to be effective 12/11/2024.

Filed Date: 12/10/24.

Accession Number: 20241210–5074.

Comment Date: 5 p.m. ET 12/23/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24–982–004.

Applicants: Southern Natural Gas Company, L.L.C.

Description: Compliance filing: SNG Fuel Partial Settlement Compliance Filing in Dockets RP24–982 and RP25–36 to be effective 10/1/2024.

Filed Date: 12/9/24.

Accession Number: 20241209–5238.

Comment Date: 5 p.m. ET 12/23/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *https://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: December 10, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–29533 Filed 12–13–24; 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: EC25–27–000.

Applicants: Alabama Power Company, Tenaska Alabama Partners, L.P.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Tenaska Alabama Partners, L.P., et al.

Filed Date: 12/9/24.

Accession Number: 20241209–5258.

Comment Date: 5 p.m. ET 1/23/25.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG25–54–000.

Applicants: Bocanova Power II LLC.

Description: Bocanova Power II LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 12/9/24.

Accession Number: 20241209–5225.

Comment Date: 5 p.m. ET 12/30/24.

Docket Numbers: EG25–55–000.

Applicants: Washington Wind LLC.

Description: Washington Wind LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 12/10/24.

Accession Number: 20241210–5124.

Comment Date: 5 p.m. ET 12/31/24.

Docket Numbers: EG25–56–000.

Applicants: Blue Moon Energy LLC.

Description: Blue Moon Energy LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 12/10/24.

Accession Number: 20241210–5127.

Comment Date: 5 p.m. ET 12/31/24.

Docket Numbers: EG25–57–000.

Applicants: Crossover Wind LLC.

Description: Crossover Wind LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 12/10/24.

Accession Number: 20241210–5142.

Comment Date: 5 p.m. ET 12/31/24.

Docket Numbers: EG25–58–000.

Applicants: Winfield Solar I, LLC.

Description: Winfield Solar I, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 12/10/24.

Accession Number: 20241210–5154.

Comment Date: 5 p.m. ET 12/31/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL25–5–000.

Applicants: Welcome Solar, LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC v. PJM Interconnection, L.L.C.

Description: Amended and Restated Complaint of Welcome Solar, LLC, et al. v. PJM Interconnection, L.L.C.

Filed Date: 12/6/24.

Accession Number: 20241206–5217.

Comment Date: 5 p.m. ET 12/26/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2186–003; EL20–62–001.

Applicants: Fern Solar LLC.

Description: Fern Solar LLC submits a compliance filing to the 10/17/2024 Commission's order, Opinion No. 591, Order on Initial Decision.

Filed Date: 12/9/24.

Accession Number: 20241209–5257.

Comment Date: 5 p.m. ET 12/30/24.

Docket Numbers: ER25–271–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of NSA, SA No. 7393; AE2–323 in Docket No. ER25–271–000 to be effective 12/30/2024.

Filed Date: 12/10/24.

Accession Number: 20241210–5126.

Comment Date: 5 p.m. ET 12/31/24.

Docket Numbers: ER25–684–000.

Applicants: ITC Midwest LLC.

Description: § 205(d) Rate Filing: Filing of Contribution in Aid and Construction Agreement_ITCMW RS 236 to be effective 2/8/2025.

Filed Date: 12/9/24.

Accession Number: 20241209–5226.

Comment Date: 5 p.m. ET 12/30/24.

Docket Numbers: ER25–685–000.

Applicants: LS Power Grid California, LLC.

Description: § 205(d) Rate Filing: LS Power Grid California eTariff Filing to be effective 2/9/2025.

Filed Date: 12/10/24.

Accession Number: 20241210–5048.

Comment Date: 5 p.m. ET 12/31/24.

Docket Numbers: ER25–686–000.

Applicants: Otter Tail Power Company.

Description: § 205(d) Rate Filing: 2024–12–10_OTP Addition to NSP Zone Schedule 7,8,9 to be effective 1/1/2025.

Filed Date: 12/10/24.

Accession Number: 20241210–5119.

Comment Date: 5 p.m. ET 12/31/24.

Docket Numbers: ER25–687–000.

Applicants: Washington Wind LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Application and Request for Waivers and Blanket Approvals to be effective 2/9/2025.

Filed Date: 12/10/24.

Accession Number: 20241210–5155.

Comment Date: 5 p.m. ET 12/31/24.

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.

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Dated: December 10, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–29526 Filed 12–13–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2023–0063; FRL–12485–01–OAR]

Guidance on the Preparation of State Implementation Plan Provisions That Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has posted on its website a final guidance document titled, ''Final Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter.''

FOR FURTHER INFORMATION CONTACT: For general questions concerning this final guidance document, please contact Michael Ling, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539–04, Research Triangle Park, NC 27711, telephone (919) 541–4729, email at *ling.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

How can I get copies of this guidance document and other related information?

Docket: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2023–0063. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *e.g.,* Confidential Business Information 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. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

Agency Web Site: The EPA has a website to house the final guidance at: *https://www.epa.gov/air-quality-implementation-plans/final-contingency-measures-guidance.* This website includes the final guidance document, and a link to the previous website for the public comment process on the draft guidance.

What is the purpose of the EPA's guidance?

The purpose of the guidance is to assist air agencies that are required to prepare nonattainment plan State implementation plan submissions for the ozone or particulate matter National Ambient Air Quality Standard under Part D of Title I of the Clean Air Act (CAA). Specifically, the guidance focuses on the statutory requirement for those plans to include contingency measures (CMs), which are control requirements that would take effect if the EPA determines that a State has failed to attain by an applicable attainment date or failed to meet reasonable further progress related requirements. These CM requirements are specified in CAA section 172(c)(9) for nonattainment areas generally, and in CAA section 182(c)(9) for ozone nonattainment areas classified Serious and higher.

The guidance document provides a broad overview of CM requirements and prior EPA guidance (contained in section 2 of the CM guidance), much of which is unaffected by the updated guidance. The document focuses primarily on three aspects of CM guidance that the EPA is revising or updating. Specifically, the revised CM guidance: (1) recommends changes to the methodology for determining the amount of reductions that CMs should provide (described in section 3 of the of the CM guidance); (2) recommends an approach for developing an infeasibility justification for an air agency to use if it cannot identify feasible CMs in a sufficient quantity to produce the recommended amount of CM emission reductions (described in section 4 of the CM guidance); and (3) recommends changes to the time period within which reductions from CMs should occur following a triggering event (described in section 5 of the CM guidance).

The EPA accepted comments on the draft guidance from March 23, 2023, through April 24, 2023. The EPA received comments from 24 entities. All comments received by the EPA are included in the docket for this guidance. The EPA thoroughly considered the points raised in the comments in the development of this final guidance.

Scott Mathias,

Director, Air Quality Planning Division.

[FR Doc. 2024–29468 Filed 12–13–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS24–29]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of special closed meeting.

Description: In accordance with section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, codified at 12 U.S.C. 3333(b), notice is hereby given that the Appraisal Subcommittee (ASC) met for a Special Closed Meeting on this date.

Location: Virtual meeting via Teams.

Date: December 4, 2024.

Time: 11:03 a.m. ET.

Discussion Item

Personnel Matter

The ASC convened a Special Closed Meeting to discuss a personnel matter pursuant to section 1104(b) of Title XI (12 U.S.C. 3333(b)). No action was taken by the ASC.

Loretta Schuster,

Management & Program Analyst.

[FR Doc. 2024–29562 Filed 12–13–24; 8:45 am]

BILLING CODE 6700–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0325; Docket No. 2024–0001; Sequence No. 16]

Information Collection; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: General Services Administration (GSA).

ACTION: Notice; request for comment.

SUMMARY: The General Services Administration (GSA), as part of its continuing effort to reduce paperwork and respondent burden, is announcing an opportunity for public comment on an extension of an existing information collection. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on an extension of a collection proposed by the Agency.

DATES: Submit comments on or before February 14, 2025.

ADDRESSES: Submit comments identified by Information Collection 3090–0325, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), to: *https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments to *https://www.regulations.gov,* will be posted to the docket unchanged. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite Information Collection

3090–0325, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Nicole Bynum, at 202–501–4755, or email to *nicole.bynum@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the PRA, (44 U.S.C. 3501–3520) Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, GSA is publishing notice of the proposed collection of information set forth in this document.

Whether seeking a loan, Social Security benefits, veterans benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. GSA will limit its inquiries to data collections that solicit strictly voluntary opinions or responses.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on *performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

Method of Collection

GSA will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. GSA may also utilize observational techniques to collect this information.

Form Number(s): None.

Type of Review: Extension.

B. Annual Reporting Burden

Affected Public: Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

Estimated Number of Respondents: 2,001,550.

Estimated Time per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 2 hours to participate in an interview.

Estimated Total Annual Burden Hours: 101,125.

Estimated Total Annual Cost to Public: $0.

C. Public Comments

GSA invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

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. 3090–0325, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

Lois Mandell,

Director, Regulatory Secretariat Division, General Services Administration.

[FR Doc. 2024–29580 Filed 12–13–24; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0332; Docket No. 2024–0001; Sequence No. 13]

Submission for OMB Review; Data Collection for a National Evaluation of the American Rescue Plan

AGENCY: Office of Evaluation Sciences (OES); General Services Administration (GSA).

ACTION: Notice; request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, OES is proposing new data collection activities conducted for the National Evaluation of the American Rescue Plan (ARP). The objective of this project is to provide a

systematic look at the contributions of selected ARP-funded programs toward achieving equitable outcomes to inform program design and delivery across the Federal Government. The project will include in-depth, cross-cutting evaluations and data analysis of selected ARP programs, especially those with shared outcomes, common approaches, or overlapping recipient communities; and targeted, program-specific analyses to fill critical gaps in evidence needs. This information collection request is for three mixed or multi-method evaluations under the American Rescue Plan National Evaluation Generic Clearance (OMB #: 3090–0332, expires 05/31/2027).

DATES: Submit comments on or before January 15, 2025.

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: Elizabeth Martin, Senior Program Manager, 267–455–8556 at *arp.national.evaluation@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The goal of this study is to look systematically across the selected subset of ARP programs, to provide an integrated account of whether, how, and to what extent their implementation served to achieve their intended outcomes, particularly with respect to advancing equity.

This package updates the generic request with instruments tailored to a study on state coordination (State Coordination Strategies to Equitably Serve Children Through the American Rescue Plan (State Coordination Strategies study).

Data collection activities covered under this request focus on case studies.

Respondents: State and local program administrators; local and tribal policy leaders, program and county administrators, and service providers; and parents and guardians who were recipients of ARP services and supports for children.

B. Annual Burden Estimates

The burden estimates included in the supporting statements reflect the expectations for information collection and related activities associated with the conduct of this phase of three studies. During this phase, we anticipate information collection to include:

Total respondents: 442.

Total Burden Hours: 335.80.

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 the information 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 appropriate technological 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. 3090–0332, Data Collection for a National Evaluation of the American Rescue Plan.

Lois Mandell,

Director, Regulatory Secretariat Division, General Services Administration.

[FR Doc. 2024–29584 Filed 12–13–24; 8:45 am]

BILLING CODE 6820–TZ–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Solicitation for Nominations for Members of the U.S. Preventive Services Task Force

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Solicitation of nominations.

SUMMARY: The Agency for Healthcare Research and Quality invites nominations of individuals qualified to serve as members of the U.S. Preventive Services Task Force (USPSTF).

DATES: Nominations must be received electronically by March 15th of a given year to be considered for appointment to begin in January of the following year.

ADDRESSES: Submit your responses electronically via: *https://uspstfnominations.ahrq.gov/register.*

FOR FURTHER INFORMATION CONTACT: Lydia Hill at (301) 427–1587.

SUPPLEMENTARY INFORMATION:

Arrangement for Public Inspection

Nominations and applications are kept on file at the Center for Evidence and Practice Improvement, AHRQ, and are available for review during business hours. AHRQ does not reply to individual nominations but considers all nominations in making recommendation for appointment. Information regarded as private and personal, such as a nominee's social security number, home and email addresses, home telephone and fax numbers, or names of family members will not be disclosed to the public in accord with the Freedom of Information Act. 5 U.S.C. 552(b)(6); 45 CFR 5.31(f).

Nomination Submissions

Nominations must be submitted electronically, and should include:

1. The applicant's current curriculum vitae and contact information, including mailing address, and email address; and

2. A letter explaining how this individual meets the qualification requirements and how he or she would contribute to the USPSTF. The letter should also attest to the nominee's willingness to serve as a member of the USPSTF.

AHRQ will later ask people under serious consideration for USPSTF membership to provide detailed information that will permit evaluation of possible significant conflicts of interest. Such information will concern matters such as financial holdings, consultancies, non-financial scientific interests, and research grants or contracts.

To obtain a diversity of perspectives, AHRQ particularly encourages nominations of women, members of underrepresented populations, and persons with disabilities. Interested individuals can nominate themselves. Organizations and individuals may nominate one or more people qualified for membership on the USPSTF at any time. Individuals nominated prior to March 15, 2024, who continue to have interest in serving on the USPSTF should be re-nominated.

Qualification Requirements

To qualify for the USPSTF and support its mission, an applicant or nominee should, at a minimum, demonstrate knowledge, expertise, and national leadership in the following areas:

1. The critical evaluation of research published in peer-reviewed literature and in the methods of evidence review;

2. Clinical prevention, health promotion and primary health care; and

3. Implementation of evidence-based recommendations in clinical practice

including at the clinician-patient level, practice level, and health-system level.

Additionally, the Task Force benefits from members with expertise in the following areas:

- Public Health
- Health Equity and The Reduction of Health Disparities
- Application of Science to Health Policy
- Decision modeling
- Dissemination and Implementation
- Behavioral Medicine/Clinical Health Psychology
- Communication of Scientific Findings to Multiple Audiences Including Health Care Professionals, Policy Makers, and the General Public.

Candidates with experience and skills in any of these areas should highlight them in their nomination materials.

Applicants must have no substantial conflicts of interest, whether financial, professional, or intellectual, that would impair the scientific integrity of the work of the USPSTF and must be willing to complete regular conflict of interest disclosures.

Applicants must have the ability to work collaboratively with a team of diverse professionals who support the mission of the USPSTF. Applicants must have adequate time to contribute substantively to the work products of the USPSTF.

Nominee Selection

Nominated individuals will be selected for the USPSTF on the basis of how well they meet the required qualifications, and the current expertise needs of the USPSTF. It is anticipated that new members will be invited to serve on the USPSTF beginning in January, 2026. All nominated individuals will be considered; however, strongest consideration will be given to individuals with demonstrated training and expertise in the areas of Family Medicine, Pediatrics, Behavioral Medicine, and Obstetrics and Gynecology. AHRQ will retain and may consider for future vacancies nominations received this year and not selected during this cycle.

Some USPSTF members without primary health care clinical experience may be selected based on their expertise in methodological issues such as meta-analysis, analytic modeling, or clinical epidemiology. For individuals with clinical expertise in primary health care, additional qualifications in methodology would enhance their candidacy.

Background

Under title IX of the Public Health Service Act, AHRQ is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. 42 U.S.C. 299(b). AHRQ accomplishes these goals through scientific research and promotion of improvements in clinical practice, including clinical prevention of diseases and other health conditions. See 42 U.S.C. 299(b).

The USPSTF, a body of experts in prevention and evidence-based medicine, works to improve the health of people nationwide by making evidence-based recommendations about the effectiveness of clinical preventive services and health promotion. The recommendations made by the USPSTF address clinical preventive services for adults and children, and include screening tests, counseling services, and preventive medications.

The USPSTF was first established in 1984 under the auspices of the U.S. Public Health Service. AHRQ provides ongoing scientific, administrative, and dissemination support for the USPSTF's operation. See 42 U.S.C. 299b-4(a)(3). Members are appointed by the Secretary of the U.S. Department of Health and Human Services to serve four-year terms. New members are selected each year to replace those members who are completing their appointments.

The USPSTF rigorously evaluates the effectiveness of clinical preventive services and formulating or updating recommendations regarding the appropriate provision of preventive services. Current USPSTF recommendations and associated evidence reviews are available on the internet (*www.uspreventiveservices taskforce.org*).

USPSTF members meet three times a year for two days in the Washington, DC area or virtually if necessary. A significant portion of the USPSTF's work occurs between meetings during video conference calls and via email discussions. Member duties include prioritizing topics, designing research plans, reviewing and commenting on systematic evidence review reports, discussing evidence and making recommendations on preventive services, reviewing stakeholder comments, drafting final recommendation documents, and participating in workgroups on specific topics and methods. Members can expect to receive frequent emails, can expect to participate in multiple video conference calls each month, and can expect to have periodic interaction with stakeholders. AHRQ estimates that members devote approximately 250 hours a year outside of in-person meetings to their USPSTF duties. The members are all volunteers and do not receive any compensation beyond support for travel to attend the thrice yearly meetings and trainings.

Dated: December 10, 2024.

Marquita Cullom,

Associate Director.

[FR Doc. 2024–29479 Filed 12–13–24; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10538]

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 February 14, 2025.

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–10538 Hospice Information for Medicare Part D Plans

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 Collections

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Hospice Information for Medicare Part D Plans; *Use:* The Social Security Act in section 1861(dd) and Federal regulations in 42 CFR 418.106 and 418.202(f) require hospice programs to provide individuals under hospice care with drugs and biologicals related to the palliation and management of the terminal illness as defined in the hospice plan of care. Medicare payment is made to the hospice for each day an eligible beneficiary is under the hospice's care, regardless of the amount of services provided on any given day. Because hospice care is a Medicare Part A benefit, drugs provided by the hospice and covered under the Medicare payment to the hospice program are not covered under Part D.

The form would be completed by the prescriber or the beneficiary's hospice, or if the prescriber or hospice provides the information verbally to the Part D sponsor, the form would be completed by the sponsor. Information provided on the form would be used by the Part D sponsor to establish coverage of the drug under Medicare Part D. Per statute, drugs that are necessary for the palliation and management of the terminal illness and related conditions are not eligible for payment under Part D. The standard form provides a vehicle for the hospice provider, prescriber or sponsor to document that the drug prescribed is ''unrelated'' to the terminal illness and related conditions. It also gives a hospice organization the option to communicate a beneficiary's change in hospice status and/care plan to Part D sponsors. *Form Number:* CMS–10538 (OMB control number: 0938–1296); *Frequency:* Yearly; *Affected Public:* Private Sector (business or other for-profits); *Number of Respondents:* 319; *Number of Responses:* 57,027; *Total Annual Hours:* 2,329. (For policy questions regarding this collection, contact Chad Buskirk at (410) 786–1630 or *chad.buskirk@cms.hhs.gov.*)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–29458 Filed 12–13–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

RIN 0917–AA25

Reimbursement Rates for Calendar Year 2025

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is provided that the Director of the Indian Health Service (IHS) has approved the rates for inpatient and outpatient medical care provided by the IHS facilities for Calendar Year 2025.

SUPPLEMENTARY INFORMATION:

Background

The Director of the Indian Health Service, under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248 and 249(b)), Public Law 83–568 (42 U.S.C. 2001(a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2025 for Medicare and Medicaid beneficiaries, beneficiaries of other Federal programs, and for recoveries under the Federal Medical Care Recovery Act (42 U.S.C. 2651–2653). The inpatient rates for Medicare Part A are excluded from the table below. That is because Medicare inpatient payments for IHS hospital facilities are made based on the prospective payment system, or (when IHS facilities are designated as Medicare Critical Access Hospitals) on a reasonable cost basis. Since the inpatient per diem rates set forth below do not include all physician services and practitioner services, additional payment shall be available to the extent that those services are provided.

Please note that the Centers for Medicare and Medicaid Services (CMS) has issued a Final Rule to pay an add-on to the Medicare Outpatient Per Visit Rate listed below for certain high-cost drugs for people with Medicare who receive care at IHS or Tribal hospitals. *See* 89 FR 93912, (November 27, 2024), *also available at https://www.federalregister.gov/documents/2024/11/27/2024-25521/medicare-and-medicaid-programs-hospital-outpatient-prospective-payment-and-ambulatory-surgical.* Further information regarding this proposal will be issued directly from CMS.

Inpatient Hospital Per Diem Rate (Excludes Physician/Practitioner Services)

Calendar Year 2025

Lower 48 States: $5,580.
Alaska: $5,074.

Outpatient Per Visit Rate (Excluding Medicare)

Calendar Year 2025

Lower 48 States: $801.
Alaska: $1,209.

Outpatient Per Visit Rate (Medicare)

Calendar Year 2025

Lower 48 States: $718.

Alaska: $1,193.

Medicare Part B Inpatient Ancillary Per Diem Rate

Calendar Year 2025

Lower 48 States: $1,074.
Alaska: $1,567.

Outpatient Surgery Rate (Medicare)

Established Medicare rates for freestanding Ambulatory Surgery Centers.

Effective Date for Calendar Year 2025 Rates

Consistent with previous annual rate revisions, the Calendar Year 2025 rates will be effective for services provided on or after January 1, 2025, to the extent consistent with payment authorities, including the applicable Medicaid State plan.

Roselyn Tso,

Director, Indian Health Service.

[FR Doc. 2024–29505 Filed 12–13–24; 8:45 am]

BILLING CODE 4166–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Proposed Purchased/Referred Care Delivery Area Redesignation for the Shoshone-Bannock Tribes

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: This Notice advises the public that the Indian Health Service (IHS) proposes to expand the geographic boundaries of the Purchased/Referred Care Delivery Area (PRCDA) for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation in Idaho to include the Idaho counties of Ada, Bear Lake, Blaine, Bonneville, Butte, Canyon, Cassia, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Jefferson, Jerome, Madison, Minidoka, Oneida, Payette, Teton, Twin Falls, and Washington. The current PRCDA for the Shoshone-Bannock Tribes includes the Idaho counties of Bannock, Bingham, Caribou, Lemhi, and Power. Shoshone-Bannock Tribal members who reside outside of the PRCDA are eligible for direct care services; however, they are not eligible for Purchased/Referred Care (PRC) services. The sole purpose of this expansion would be to authorize additional Shoshone-Bannock Tribal members and beneficiaries to receive PRC services.

DATES: Comments must be submitted by January 15, 2025.

ADDRESSES: Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the ''Submit a Comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Carl Mitchell, Director, Division of Regulatory and Policy Coordination, Indian Health Service, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, Maryland 20857.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the above address.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to the address above.

If you intend to deliver your comments to the Rockville address, please call telephone number (301) 443–1116 in advance to schedule your arrival with a staff member.

FOR FURTHER INFORMATION CONTACT: CAPT John Rael, Director, Office of Resource Access and Partnerships, Indian Health Service, 5600 Fishers Lane, Mail Stop: 10E85C, Rockville, Maryland 20857. Telephone (301) 443–0969 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment.

Background: The IHS provides services under regulations in effect as of September 15, 1987, and republished at 42 CFR part 136, subparts A–C. Subpart C defines a Contract Health Service Delivery Area (CHSDA), now referred to as a PRCDA, as the geographic area within which PRC will be made available by the IHS to members of an identified Indian community who reside in the PRCDA. Residence within a PRCDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 136.12, creates no legal entitlement to PRC services but only potential eligibility for services. Services needed, but not available at an IHS/Tribal facility, are provided under the PRC program depending on the availability of funds, the relative medical priority of the services to be provided, and the actual availability and accessibility of alternate resources in accordance with the regulations.

The regulations at 42 CFR part 136, subpart C provide that, unless otherwise designated, a PRCDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation. 42 CFR 136.22(a)(6). The regulations also provide that after consultation with the Tribal governing body or bodies on those reservations included within the PRCDA, the Secretary may, from time to time, redesignate areas within the United States for inclusion in or exclusion from a PRCDA. 42 CFR 136.22(b). The regulations require that certain criteria be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the Tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the Tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of PRC. Additionally, the regulations require that any redesignation of a PRCDA be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553). 42 CFR 136.22(c). In compliance with this requirement, the IHS is publishing this Notice and requesting public comments.

The Shoshone-Bannock Tribes of the Fort Hall Indian Reservation is located in Fort Hall, Idaho, and operates their PRC program under an Indian Self-Determination and Education Assistance Act (ISDEAA) agreement with the IHS. The IHS and the Shoshone-Bannock Tribes estimate that approximately 323 Tribal members reside in Ada, Bear Lake, Blaine, Bonneville, Butte, Canyon, Cassia, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Jefferson, Jerome, Madison, Minidoka, Oneida, Payette, Teton, Twin Falls, and Washington Counties of Idaho and would become PRC eligible through the proposed redesignation and expansion of the Tribes' PRCDA. The Shoshone-Bannock Tribes states that the Tribal members who reside in the proposed expansion counties are socially and economically affiliated with the Tribe, and that the Tribe would like to recognize these persons as eligible for PRC services. Accordingly, the IHS proposes to expand the PRCDA

of the Shoshone-Bannock Tribes to include the counties of Ada, Bear Lake, Blaine, Bonneville, Butte, Canyon, Cassia, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Jefferson, Jerome, Madison, Minidoka, Oneida, Payette, Teton, Twin Falls, and Washington in the State of Idaho. The proposed, expanded PRCDA would not create an overlap with any other existing PRCDA.

Under 42 CFR 136.23, those otherwise eligible Indians who do not reside on a reservation, but reside within a PRCDA, must be either members of the Tribe or other IHS beneficiaries who maintain close economic and social ties with the Tribe. In this case, applying the aforementioned PRCDA redesignation criteria required by operative regulations codified at 42 CFR part 136, subpart C, the following findings are made:

1. By expanding the Shoshone-Bannock Tribes' PRCDA to include Ada, Bear Lake, Blaine, Bonneville, Butte, Canyon, Cassia, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Jefferson, Jerome, Madison, Minidoka, Oneida, Payette, Teton, Twin Falls, and Washington Counties of Idaho, the Shoshone-Bannock Tribes' PRC-eligible population will increase by an estimated 323 Tribal members.

2. The IHS finds that the Tribal members within the proposed, expanded PRCDA are socially and economically affiliated with the Shoshone-Bannock Tribes, based on a statement from the Shoshone-Bannock Tribes that Tribal members who reside in Idaho and receive direct care services from Tribal and Federal health programs located on the Tribes' reservation retain social and economic ties to the Tribes.

3. The expanded PRCDA counties form a contiguous area with the existing PRCDA, and members of the Shoshone-Bannock Tribes reside in each of the counties proposed for inclusion in the expanded PRCDA. Additionally, as noted above, Tribal members who reside in these counties seek direct care services from programs located on the Tribes' reservation. For these reasons, the IHS has determined the additional counties proposed for inclusion herein to be geographically proximate, meaning ''on or near,'' to the Tribes' reservation.

4. The governing body of the Shoshone-Bannock Tribes has indicated that the PRC program can continue providing the same level of care to the PRC-eligible population if the PRCDA is expanded as proposed, without requiring additional funding or reduction of the current medical priority level.

This Notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Roselyn Tso,

Director, Indian Health Service.

[FR Doc. 2024–29506 Filed 12–13–24; 8:45 am]

BILLING CODE 4166–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel; BEITA at HBCU RFA–EB–23–006 Review.

Date: February 11, 2025.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIBIB, Democracy II, Suite 200, 6707 Democracy Blvd., Bethesda, MD 20817.

Meeting Format: Virtual Meeting.

Contact Person: Tianhong Wang, MD, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 451–1189, *wangt3@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: December 11, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29546 Filed 12–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK High Impact, Interdisciplinary Science RC2 Review Meeting.

Date: February 19, 2025.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892, 301–451–2405, *nisan.bhattacharyya@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 11, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29535 Filed 12–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; The Genetic Testing Registry (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health Office (NIH) of the Director (OD) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Taunton Paine, Director, Division of Scientific Data Sharing Policy, Office of Science Policy, NIH, 6705 Rockledge Dr., Suite 631, Bethesda, MD 20892, or call non-toll-free number (301) 496–9838, or Email your request, including your address to: *SciencePolicy@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: The Genetic Testing Registry, 0925–0651, Expiration Date 1/31/2025–EXTENSION, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: Clinical laboratory tests are available for more than 26,000 genetic conditions. The Genetic Testing Registry (GTR) provides a centralized, online location for test developers, manufacturers, and researchers to voluntarily submit detailed information about the availability and scientific basis of their genetic tests. The GTR is of value to clinicians by providing information about the accuracy, validity, and usefulness of genetic tests. The GTR also highlights evidence gaps where additional research is needed. The GTR also has tests for microbes like for SARS–CoV–2 to diagnose COVID–19.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2837.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Laboratory Personnel Using Bulk Submission	Minimal Fields	11	16	18/60	53
	Optional Fields	250	16	17/60	1133
Laboratory Personnel Not Using Bulk Submission	Minimal Fields	84	16	54/60	1210
	Optional Fields	57	16	29/60	441
Total		402	6,432		2,837

Dated: December 10, 2024.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2024–29565 Filed 12–13–24; 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 Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Biomedical Informatics, Library, and Data Sciences Review Committee.

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: Biomedical Informatics, Library and Data Sciences Review Committee (BILDS).

Date: February 27–28, 2025.

Time: February 27, 2025, 9:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892 (Virtual Meeting).

Date: February 28, 2025, 9:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Zoe E. Huang, MD, Chief Scientific Review Officer, Scientific Review Office, Extramural Programs, National Library of Medicine, National Institutes of Health (NIH), 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 11, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29559 Filed 12–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Digestive Diseases Research Core Centers (P30).

Date: March 27–28, 2025.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 7011, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 11, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29534 Filed 12–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Deafness and Other Communication Disorders Advisory Council.

This is a virtual meeting and will be open to the public as indicated below. The url link to this meeting is: *https://www.nidcd.nih.gov/about/advisory-council/upcoming-meetings.* Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Deafness and Other Communication Disorders Advisory Council.

Date: January 23–24, 2025.

Open: January 23, 2025, 11:00 a.m. to 3:30 p.m.

Agenda: Staff reports on divisional, programmatical, and special activities.

Address: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Closed: January 24, 2025, 9:30 a.m. to 1:05 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Rebecca Wagenaar-Miller, Ph.D., Director, Division of Extramural Activities, NIDCD/NIH, 6001 Executive Boulevard, Bethesda, MD 20892, (301) 496–8693, *rebecca.wagenaar-miller@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nidcd.nih.gov/about/advisory-council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 11, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29547 Filed 12–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Deafness and Other Communication Disorders Special Emphasis Panel; Research Opportunities for New Investigators to Promote Workforce Diversity.

Date: January 21, 2025.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Meeting Format: Virtual Meeting.

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6001 Executive Boulevard, Room 8351, Bethesda, MD 20892, (301) 451–6339, *kellya2@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Cooperative Agreement for Clinical Trials in Communication Disorders.

Date: February 6, 2025.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Meeting Format: Virtual Meeting.

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6001 Executive Boulevard, Room 8351, Bethesda, MD 20892, (301) 451–6339, *kellya2@nih.gov.*

Name of Committee: Communication Disorders Review Committee.

Date: February 20–21, 2025.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: Hilton Garden Inn Orlando at SeaWorld Orlando, FL.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *shimk@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 11, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29558 Filed 12–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 NCBIB Review D–SEP.

Date: March 4–7, 2024.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, Suite 920, 6707 Democracy Blvd., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: John Hayes, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 451–3398, *john.hayes@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: December 11, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29551 Filed 12–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Trial Net Hub and Coordinating Center Cooperative Agreement (U01) Application Review.

Date: February 28, 2025.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Cheryl Nordstrom, Ph.D., MPH, Scientific Review Officer, Scientific Review Branch, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Boulevard, Room 7013, Bethesda, MD 20892, 301–402–6711, *cheryl.nordstrom@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 11, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29540 Filed 12–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting.

The meeting will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, 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: National Library of Medicine Board of Scientific Counselors.

Date: April 30, 2025.

Open: 9:00 a.m. to 10:20 p.m.

Agenda: Program Discussion and Investigator Report.

Closed: 10:20 p.m. to 11:45 a.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Open: 11:45 a.m. to 12:30 p.m.

Agenda: Program Discussion and Investigator Report.

Closed: 12:30 p.m. to 2:00 p.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Open: 2:00 p.m. to 2:45 p.m.

Agenda: Program Discussion and Investigator Report.

Place: National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892 (In-person and Virtual Meeting).

Contact Person: David Landsman, Ph.D., Branch Chief, National Library of Medicine, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD 20894, 301–435–5981, *landsman@mail.nih.gov.*

Any member of the public may submit written comments no later than 15 days in advance of the meeting. Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Open sessions will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*) on April 30, 2025. Please direct any questions to the Contact Person listed on this notice.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 11, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29560 Filed 12–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Proposed Project: Treatment Episode Data Set (TEDS) (OMB No. 0930–0335)—Revision

The Center for Behavioral Health Statistics and Quality (CBHSQ) at the Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting an extension with changes to the combined data collection of the Treatment Episode Data Set (TEDS), the Mental Health Client Level Data (MH–CLD), and the Mental Health Treatment Episode Data Set (MH–TEDS) (OMB No. 0930–0335), which expires on December 31, 2024.

TEDS collects episode-level data on clients aged 12 and older receiving substance use treatment services from publicly funded facilities. MH–CLD collects demographic, clinical, and National Outcome Measures data on clients receiving mental health and support services funded or operated by the State Mental Health Agencies (SMHAs). MH–TEDS is an alternative reporting method to MH–CLD. It collects episode-level data on clients receiving mental health treatment services from publicly funded facilities. MH–TEDS data can be converted to MH–CLD format.

Under section 505 of the Public Health Service Act (42 U.S.C. 290aa–4), CBHSQ is authorized to collect annual data on the national incidence and prevalence of the various forms of mental illness and substance abuse. CBHSQ is also authorized to collect data on the number and variety of public and nonprofit private mental health and substance use treatment programs and the number and demographic characteristics of individuals receiving treatment through such programs. In addition, States, receiving fundings from SAMHSA's Community Mental Health Services Block Grant (MHBG) and Substance Use Prevention, Treatment, and Recovery Services Block Grant (SUPTRS BG) (formally known as the Substance Abuse Prevention and Treatment Block Grant [SABG]), utilize TEDS and MH–CLD/MH–TEDS data to meet the block grant reporting mandate and requirement.

SAMHSA is requesting OMB approval of revisions to the TEDS/MH–CLD/MH–TEDS data collections, to include changes to the following instruments:

Proposed Changes to TEDS/MH–TEDS

- Add a combined TEDS/MH–TEDS State Crosswalk to map the data elements, codes, and categories in the state system to the appropriate TEDS/MH–TEDS data elements, codes, and categories; to obtain contextual information, including state data collection protocol and reporting capabilities and data footnotes; and to collect information on the state TEDS/MH–TEDS reporting characteristics, framework, and scope.
- Add Fentanyl and Xylazine in the list of Detailed Drug Code to improve the comprehensiveness and greater details of the substance recorded.
- Remove the term ''Crack'' from the existing option of ''Cocaine/Crack'' under the ''Substance Use'' data field.
- Revise existing ''Gender'' data field to ''Sex'' and add ''Sexual Orientation'' and ''Gender Identity'' (SOGI) as optional data fields to provide inclusive measures. These revisions align with both SAMHSA's efforts in enhancing behavioral health equities among diverse populations and the BG Reporting requirement (OMB No. 0930–0168). All SUPTRS BG tables which collect/report SOGI information have been updated.
- Revise terms with negative connotations to non-stigmatizing terms. Examples include changing the word ''abuse'' to ''use,'' ''detoxification'' to ''withdrawal management,'' and ''Medication-Assisted Opioid Therapy'' to ''Medications for Opioid Use Disorder.'' These revisions align with the current edition of The Diagnostic and Statistical Manual of Mental Disorders (5th ed., American Psychiatric Association, 2013), and the White House Office of National Drug Control Policy 2017 Memo on ''Changing Federal Terminology regarding Substance Use and Substance Use Disorders.''
- Original ''TEDS and MH–TEDS/MH–CLD Admission and Update/Discharge Data Elements'' form with combined TEDS/MH–TEDS and MH–CLD data elements is separated into two documents to be more user friendly and improve clarity. Data elements are reorganized in the order of the code number to facilitate clearer mapping. Other minor modifications are made to enhance language consistency and clarity. For example, all ''SABG'' are updated to ''SUPTRS BG.''

Proposed Changes to MH–CLD

- Add the MH–CLD State Crosswalk to map the data elements, codes, and categories in the state system to the appropriate MH–CLD data elements, codes, and categories; to obtain contextual information, including state data collection protocol and reporting capabilities, and data footnotes; and to collect information the state MH–CLD reporting characteristics, framework, and scope.
- Revise existing ''Gender'' data field to ''Sex'' and add SOGI as optional reporting data fields to provide inclusive measures. These revisions align with both SAMHSA's efforts in enhancing behavioral health equities among diverse populations and the BG Reporting requirement (OMB No. 0930–0168). All MHBG tables and related URS tables which collect/report SOGI information have been updated.
- Add a new ''School attendance status at admission or start of the reporting period'' as a required data field to assess the changes and outcomes of clients receiving mental health treatment and support services through SMHAs.
- Add optional reporting tables for Type of Funding Support, Mental

Health Block Grant-Funded Services, and Veteran Status.

• Replace existing data elements ''Substance Use Problem'' and ''Substance Abuse Diagnosis'' with non-stigmatizing terms of ''Substance Use Disorder'' and ''Substance Use Diagnosis'' to help reduce stigma and support treatment for substance use disorders. These revisions align with the current edition of The Diagnostic and Statistical Manual of Mental Disorders (5th ed., American Psychiatric Association, 2013), where ''abuse'' has been replaced by ''use.'' These revisions also align with the White House Office of National Drug Control Policy 2017 Memo on ''Changing Federal Terminology regarding Substance Use and Substance Use Disorders.''

• Data Elements are reorganized in the order of the code number to facilitate clearer mapping. Make minor modifications to MH–CLD data elements to enhance language consistency and clarity.

The estimated annual burden for the TEDS/MH–CLD/MH–TEDS activities is as follows:

Type of activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours	Wage rate	Total hour cost
TEDS Admission Data	52	4	208	55	11,440	$30.28	$346,403
TEDS Discharge/Update Data	52	4	208	55	11,440	30.28	346,403
TEDS State Data Crosswalk	52	1	52	12	624	53.21	33,203
MH–CLD BCI Data	35	1	35	105	3,675	30.28	111,279
MH–CLD SHR Data	34	1	34	35	1,190	30.28	36,033
MH–CLD State Data Crosswalk	35	1	35	24	840	53.21	44,696
MH–TEDS Admissions Data	19	4	76	55	4,180	30.28	126,570
MH–TEDS Discharge/Update Data	19	4	76	55	4,180	30.28	126,570
MH–TEDS State Data Crosswalk	19	1	19	40	760	53.21	40,440
State Total					38,329		1,211,597

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.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2024–29515 Filed 12–13–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2024 Notice of Reissued Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Notice of intent to reissue the Women's Behavioral Health Technical Assistance Center Notice of Funding Opportunity (NOFO).

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Service Administration plans to withdraw the previously announced notice of funding opportunity (NOFO) for the Women's Behavioral Health Technical Assistance Center SM–24–012 and reissue the NOFO as the National Women's Behavioral Health Technical Assistance Center SM–25–014. The revised NOFO includes updates to the required activities and application evaluation criteria. The cancellation of NOFO SM–24–012 does not represent an assessment of the technical merits of any applications submitted. SAMHSA will notify organizations that submitted an application.

FOR FURTHER INFORMATION CONTACT: Nima Sheth, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857; telephone: 240–276–0513; email: *Nima.sheth@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: FY 2024 Women's Behavioral Health Technical Assistance Center, SM–24–012.

Assistance Listing Number: 94.243.

Authority: Section 2702 of the American Rescue Plan Act.

Justification: Changes to the required activities and application evaluation criteria are needed to: ensure appropriate programmatic capacity of applicants to carry out the required activities; ensure that applicants are knowledgeable about best practices and standards in women's mental health and substance use care; clarify the recipients of training and technical assistance (TTA); clarify the intended program impacts; clarify the expectations for the Consultative Meeting Board meeting frequency and format; ensure that applicants can demonstrate the capacity for and experience with TTA activities that have a national reach; clarify expectations on use of data to monitor and enhance program performance; clarify that the program goals and objectives span all five years of the grant program.

Dated: December 10, 2024.

Ann Ferrero,

Public Health Analyst.

[FR Doc. 2024–29467 Filed 12–13–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2024–0037]

Request for Comment on the National Cyber Incident Response Plan Update

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of availability; request for comments.

SUMMARY: CISA has released a draft of the National Cyber Incident Response Plan (NCIRP) Update for public comment. CISA invites cybersecurity and incident response stakeholders from across public and private sectors or other interested parties to review the draft update document and provide comments, relevant information, and feedback.

DATES: Written comments are requested on or before January 15, 2025. Submissions received after the deadline for receiving comments may not be considered.

ADDRESSES: You may submit comments, identified by docket number CISA–2024–0037, by clicking on the ''Submit a Public Comment'' button above or by

following the instructions below for submitting comments directly via the Federal public document portal, at *https://www.regulations.gov.*

Instructions: All comments received must include the agency name and docket number CISA–2024–0037. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. CISA reserves the right to publicly republish relevant and unedited comments in their entirety that are submitted to the docket. Do not include personal information such as account numbers, social security numbers, or names of other individuals. Do not submit confidential business information or otherwise sensitive or protected information.

Docket: For access to the docket to read the draft National Cyber Incident Response Plan (NCIRP) Update or comments received, go to *https://www.regulations.gov.* For convenience, CISA has also posted the draft NCIRP Update on *https://www.cisa.gov/national-cyber-incident-response-plan-ncirp.*

FOR FURTHER INFORMATION CONTACT:

Technical Content information: Mark Peters, 771–212–7125, *mark.peters@cisa.dhs.gov.*

Program information: Michael Fogarty, 202–412–8385, *michael.fogarty@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NCIRP was first written and developed in accordance with Presidential Policy Directive 41 (PPD–41)—U.S. Cyber Incident Coordination and describes how the federal government; private sector; and state, local, tribal, and territorial (SLTT) government entities will coordinate to manage, respond to, and mitigate the consequences of significant cyber incidents. Due to the evolving cyber threat landscape—including increasing risks to critical infrastructure and public services—the need to update the NCIRP has never been greater.

II. NCIRP Update

The NCIRP Update is being led by CISA through the Joint Cyber Defense Collaborative (JCDC), a public-private cybersecurity collaborative established by CISA to unite the global cyber community in the collective defense of cyberspace. The JCDC leverages joint cyber planning authorities granted to the agency by Congress in the 2021 National Defense Authorization Act (codified at 6 U.S.C. 665b). The update addresses changes in the cyber threat and operations landscape by incorporating feedback and lessons learned from stakeholders to make the updated NCIRP more fully inclusive across non-federal stakeholders—further establishing a foundation for continued improvement of the nation's response to significant cyber incidents.

III. Coordination

CISA, through JCDC, coordinated with a range of experts and stakeholders across a wide spectrum of federal government agencies, international partners, SLTT entities, and private industry to receive each entity's input to help guide the content of the NCIRP Update. For more information, including background information and opportunities for stakeholder engagement, you can visit *https://www.cisa.gov/national-cyber-incident-response-plan-ncirp.*

IV. Draft NCIRP Update Document Availability

The draft NCIRP Update is available on CISA's website for download at: *https://www.cisa.gov/national-cyber-incident-response-plan-ncirp* and on the docket to read the draft National Cyber Incident Response Plan (NCIRP) Update on *www.regulations.gov.*

This notice is issued under the authority of 6 U.S.C. 652, 659, 660, and 665b.

Jeffrey E. Greene,

Executive Assistant Director for Cybersecurity, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2024–29395 Filed 12–13–24; 8:45 am]

BILLING CODE 9111–LF–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Revision of Agency Information Collection Activity Under OMB Review: TSA Claims Application

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0039, abstracted below to OMB for review and approval of an revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of additional information from claimants in order to thoroughly examine and resolve tort claims against the agency.

DATES: Send your comments by January 15, 2025. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology, TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on September 25, 2024, at 89 FR 78326. TSA did not receive any comments on the notice.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *https://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: TSA Claims Application.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0039.

Forms(s): Supplemental Information Form, Payment Form and Authorization for Disclosure of Protected Health Information Pursuant to HIPAA.

Affected Public: Members of the traveling public who believe they have experienced property loss or damage, a personal injury, or other damages due to the negligent or wrongful act or omission of a TSA employee within their scope of employment, and who decide to seek compensation by filing a federal tort claim against TSA.

Abstract: TSA adjudicates tort claims pursuant to the Federal Tort Claims Act (28 U.S.C. 1346(b), 1402(b), 2401(b), 2671–2680). OMB Control Number 1652–0039, TSA Claims Application, allows the agency to collect information from claimants to examine and resolve tort claims against the agency.

TSA receives approximately 750 tort claims per month arising from airport screening activities, motor vehicle accidents, and employee loss, among others. Because TSA requires further clarifying information, claimants are asked to complete a Supplemental Information page added to the SF–95. TSA is revising the collection to include TSA Form 600, *Authorization for Disclosure of Protected Health Information Pursuant to HIPAA.* If TSA requires information protected by Health Insurance Portability and Accountability Act (HIPAA) in order to fully adjudicate a claim, claimants are asked to complete TSA Form 600 to provide TSA with the claimant's: (1) name, (2) date of birth, (3) social security number, (4) address, (5) a description of the information to be disclosed, and (6) signature.

Estimated Number of Respondents: 7,500.

Estimated Annual Burden Hours: 3,900.

Dated: December 11, 2024.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2024–29585 Filed 12–13–24; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2024–N065; FXES11130500000–256–FF05E00000]

Endangered Species; Receipt of Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application for a permit to conduct scientific research to promote conservation or other activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on the application. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive any written comments on or before January 15, 2025.

ADDRESSES: Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant's name and application number (*e.g.,* PER0001234):

- *Email: permitsR5ES@fws.gov.*
- *U.S. Mail:* Abby Goldstein, Ecological Services, U.S. Fish and Wildlife Service, 300 Westgate Center Dr., Hadley, MA 01035.

FOR FURTHER INFORMATION CONTACT: Abby Goldstein, 413–253–8212 (phone), or *permitsR5ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on an application for a permit under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permit would allow the applicant to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species, unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Application Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the application in table 1.

TABLE 1—PERMIT APPLICATION RECEIVED

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
60422D–5	Sea Research Foundation, dba Mystic Aquarium, Mystic, CT.	Kemp's ridley sea turtle (*Lepidochelys kempii*), leatherback sea turtle (*Dermochelys coriacea*), hawksbill sea turtle (*Eretmochelys imbricata*), loggerhead sea turtle (*Caretta caretta*), and green sea turtle (*Chelonia mydas*).	Connecticut, Rhode Island, and New York.	Stranding response, rehabilitation, necropsy, and release.	Capture, collect ...	Renew.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to the applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martin Miller,

Manager, Division of Endangered Species, Ecological Services, Northeast Region.

[FR Doc. 2024–29571 Filed 12–13–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2024–N058; FXES11140400000–256–FF04E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct scientific research to promote conservation or other activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the applications by January 15, 2025.

ADDRESSES:

Reviewing Documents: Submit requests for copies of applications and other information submitted with the applications to Karen Marlowe (see **FOR FURTHER INFORMATION CONTACT**). All requests and comments should specify the applicant's name and application number (*e.g.,* Mary Smith, ESPER0001234).

Submitting Comments: If you wish to comment, you may submit comments by one of the following methods:

- *Email (preferred method): permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the U.S. Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT**.
- *U.S. mail:* U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: Karen Marlowe, Permit Coordinator, via telephone at 404–679–7097 or via email at *karen_marlowe@fws.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: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a), and the Freedom of Information Act (5 U.S.C. 552).

Background

With some exceptions, the ESA prohibits take of listed species unless a federal permit is issued that authorizes such take. The definition of ''take'' in the ESA includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. Our regulations implementing section 10(a)(1)(A) of the ESA for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES68773B–1	Olivia Munzer; Raleigh, NC.	Tricolored bat (*Perimyotis subflavus*).	North Carolina	Presence/probable absence surveys.	Enter hibernacula	Renewal and amendment.
ES48579B–5	Ecological Solutions, Inc.; Roswell, GA.	Tricolored bat (*Perimyotis subflavus*).	Throughout the range of the species.	Presence/probable absence surveys.	Enter hibernacula, capture with mist nets or harp traps, handle, identify, band, radio tag, and release.	Renewal and amendment.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES059008–10	CCR Environmental, Inc.; Atlanta, GA.	Reptiles: Alligator snapping turtle (*Macrochelys temminckii*), Pearl River map turtle (*Graptemys pearlensis*), Suwannee alligator snapping turtle (*Macrochelys suwanniensis*); Fishes: Coal darter (*Percina brevicauda*), frecklebelly madtom (*Noturus munitus*); Mussels: Cumberland moccasinshell (*Medionidus conradicus*), oblong rocksnail (*Leptoxis compacta*), Tennessee clubshell (*Pleurobema oviforme*), and Tennessee pigtoe (*Pleuronaia barnesiana*).	Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, and Tennessee.	Presence/probable absence surveys.	Capture, handle, and release.	Amendment.
ES42291D–1	Rebecca Johansen, Austin Peay State University; Clarksville, TN.	Duskytail darter (*Etheostoma percnurum*).	Kentucky, Tennessee, and Virginia.	Genetic analysis and genetic monitoring of populations.	Capture, handle, take fin clips, and release.	Renewal and amendment.
PER0007863–1	Jana Day; Louisville, KY.	Longsolid (*Fusconaia subrotunda*), round hickorynut (*Obovaria subrotunda*), and salamander mussel (*Simpsonaias ambigua*).	Kentucky	Presence/probable absence surveys.	Capture, handle, identify, and release.	Amendment.
ES30127D–2	National Park Service; Asheville, NC.	Alabama lampmussel (*Lampsilis virescens*), clubshell (*Pleurobema clava*), Cumberland bean (*Villosa trabalis*), Cumberland elktoe (*Alasmidonta atropurpurea*), Cumberlandian combshell (*Epioblasma brevidens*), dromedary pearlymussel (*Dromus dromas*), fluted kidneyshell (*Ptychobranchus subtentus*), littlewing pearlymussel (*Pegias fabula*), oyster mussel (*Epioblasma capsaeformis*), pink mucket (*Lampsilis abrupta*), spectaclecase (*Cumberlandia monodonta*), and tan riffleshell (*Epioblasma florentina walkeri*).	Kentucky and Tennessee.	Presence/probable absence surveys.	Capture, handle, identify, and release.	Renewal.
PER12698268–0 ...	USGS Cooperative Research Unit; Clemson, SC.	Black-capped petrel (*Pterodroma hasitata*).	North Carolina	Research on at-sea habitat use, movement patterns, and migration paths.	Capture, handle, band, satellite tag, collect blood, and release.	New.
ES52113D–1	Devin Bingham; Irmo, SC.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), and tricolored bat (*Perimyotis subflavus*).	Throughout the ranges of the species.	Presence/probable absence surveys.	Capture, handle, identify, band, radio tag, and release.	Renewal and amendment.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER12889073–0 ...	Forrest Collins; Gardendale, AL.	Kemp's ridley sea turtle (*Lepidochelys kempii*), loggerhead sea turtle (*Caretta caretta),* and green sea turtle (*Chelonia mydas*).	Alabama	Research on effects of climate change on sea turtle population dynamics.	Insert temperature and water data loggers within nests, excavate hatched nests, handle dead and alive hatchlings and eggshells.	New.
ES38642A–4	Avian Research and Conservation Institute, Gainesville, FL.	Audubon's crested caracara (*Polyborus plancus audubonii*) and Everglade snail kite (*Rostrhamus sociabilis plumbeus*).	Florida	Scientific research	Capture; weigh; measure; band; collect feathers, blood, and egg albumen; attach solar-powered transmitters; and release.	Renewal.
PER12962063–0 ...	Audubon Zoo; New Orleans, LA.	Dusky gopher frog (*Rana sevosa*).	Louisiana and Mississippi.	Disease pathogen research.	Capture with dip nets, swab, and collect dead or diseased tadpoles.	New.
ES21276D–1	Christopher Carpenter; Winchester, KY.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), tricolored bat (*Perimyotis subflavus*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*).	Alabama, Arkansas, Georgia, Illinois, Indiana, Kentucky, Maryland, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.	Presence/probable absence surveys.	Enter hibernacula or maternity roost caves, capture with mist nets and harp traps, handle, identify, band, radio tag, and release.	Renewal and amendment.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed above in this notice, we will publish a subsequent notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the application number listed above in this document. Type in your search exactly as the application number appears above, with spaces and hyphens as necessary. For example, to find information about the potential issuance of Permit No. PER 1234567–0, you would go to *https://www.regulations.gov* and put ''PER 1234567–0'' in the Search field.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Christopher Cooley,

Deputy Assistant Regional Director, Ecological Services, Southeast Region.

[FR Doc. 2024–29568 Filed 12–13–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX25EN05ESBJF00]

Announcement of Advisory Council for Climate Adaptation Science Meeting

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA) of 1972, the U.S. Geological Survey (USGS) is publishing this notice to announce that a Federal Advisory Committee meeting of the Advisory Council for Climate Adaptation Science (ACCAS) will take place and is open to members of the public.

DATES: The meeting will be held virtually on January 9, 2025, from 10 a.m. ET to 5 p.m. ET. The final agenda will be made available in advance of the meeting at: *https://www.usgs.gov/programs/climate-adaptation-science-centers/advisory-council-climate-adaptation-science.*

ADDRESSES: The meeting will be held online via the Zoom meeting platform. The virtual meeting will be open to the public. A registration link for public attendees will be posted on the ACCAS website page no later than two weeks prior to the meeting: *https://www.usgs.gov/programs/climate-adaptation-science-centers/advisory-council-climate-adaptation-science.*

FOR FURTHER INFORMATION CONTACT: Isabella Ullerick, ACCAS Designated Federal Officer, USGS, by email at *iullerick@usgs.gov* or by telephone at (571) 477–4309.

SUPPLEMENTARY INFORMATION: This meeting is being held consistent with the provisions of the FACA (5 U.S.C. ch. 10), the Government in the Sunshine Act of 1976 (5 U.S.C. 552B, as amended), and 41 CFR part 102–3.

Purpose of the Meeting: The ACCAS advises the Secretary of the Interior on the operations of the USGS Climate Adaptation Science Centers (CASCs). ACCAS members represent State and local governments; Tribes and Indigenous organizations; non-governmental organizations; academia; and the private sector. Additional information about the ACCAS is available at: *https://www.usgs.gov/programs/climate-adaptation-science-*

centers/advisory-council-climate-adaptation-science.

Agenda Topics: Agenda topics will cover (a) ACCAS subcommittee progress to date, and (b) next steps and priorities for subcommittees. The final agenda will be made available in advance of the meeting at: *https://www.usgs.gov/programs/climate-adaptation-science-centers/advisory-council-climate-adaptation-science.*

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Public attendees should register by completing the registration form which will be posted at: *https://www.usgs.gov/programs/climate-adaptation-science-centers/advisory-council-climate-adaptation-science.* Registrations are due by January 3, 2025.

Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact *iullerick@usgs.gov* at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

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.

Public Disclosure of Comments: There will be an opportunity for public comment during the meeting. Please check the final agenda for the exact time for public comment on January 9. Depending on the number of people who wish to speak and the time available, the time for individual comments may be limited. Written comments may also be sent to the ACCAS for consideration. To allow for full consideration of information by ACCAS members, written comments must be provided to *iullerick@usgs.gov* at least three (3) business days prior to the meeting.

Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you may ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch. 10.

Isabella Ullerick,

Designated Federal Officer, Advisory Council for Climate Adaptation Science.

[FR Doc. 2024–29478 Filed 12–13–24; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NM_FRN_MO4540000247]

Notice of Public Meeting Northern New Mexico Resource Advisory Council, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, as amended, and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Northern New Mexico Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC is scheduled to participate in a field trip to Kasha-Katuwe Tent Rocks National Monument on Thursday, January 16, 2025, from 9 a.m. to 12 p.m. mountain time (MT). The RAC will reconvene for an in-person meeting on Friday, January 17, 2025, from 8 a.m. to 4 p.m. MT. The meeting and field tour are open to the public.

ADDRESSES: Participants for the January 16 field trip will meet at the Cochiti Visitor Center, 1101 State Road 22, Cochiti Pueblo, NM 87072 at 9 a.m. MT. The January 17, 2025, meeting will be held at the BLM Rio Puerco Field Office, 100 Sun Ave. NE, Suite 330, Albuquerque, NM 87109. A virtual participation option for the January 17, 2025, meeting is available on the Zoom Webinar platform. Registration for the January 17, 2025, meeting can be found at: *https://blm.zoomgov.com/webinar/register/WN_L11-2VgAR-Sw2FH940LboA.*

FOR FURTHER INFORMATION CONTACT: BLM Albuquerque District Public Affairs Specialist Jamie Garcia, 100 Sun Ave. NE, Suite 330, Albuquerque, New Mexico 87109; telephone: 505–761–8787; email: *jagarcia@blm.gov.* 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 can use relay services offered within their respective country to make international calls to the accessibility point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The chartered 12-member Northern New Mexico RAC advises the Secretary of the Interior, through the BLM New Mexico State Director, about planning and management of public land resources located within the jurisdictional boundaries of the RAC.

Planned meeting agenda items include updates from the BLM Rio Puerco, Farmington, and Taos field offices, and other issues that may arise. There will also be a discussion and vote on a small, proposed fee increase for Kasha-Katuwe Tent Rocks National Monument that would cover the *Recreation.gov* processing fee. A final agenda will be posted two weeks in advance of the meeting on the RAC web page at *www.blm.gov/get-involved/resource-advisory-council/near-you/new-mexico/northern-rac.*

Public Comment Procedures: The BLM welcomes comments from all interested parties. There will be a half-hour public comment period during the January 17, 2025, meeting beginning at 2 p.m. MT for any interested members of the public who wish to address the RAC. Written comments pertaining to this meeting may be submitted in advance to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Please include ''RAC Comment'' in your submission. Depending on the number of persons wishing to speak, the time for individual comments may be limited. Before including an address, phone number, email address, or other personal identifying information in any comment, please be aware that all comments—including personal identifying information—may be made publicly available at any time. While requests can be made to withhold personal identifying information from public review, BLM cannot guarantee it will be able to do so.

Meeting Accessibility/Special Accommodations: For sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations, please contact Jamie Garcia at least 14 business days before the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis. Detailed meeting minutes for the Northern New Mexico RAC are maintained in the Albuquerque District Office, located at 100 Sun Ave. NE, Suite 330, Albuquerque, NM 87109.

Meeting minutes will be available for public inspection and reproduction during regular business hours within 90 days following the meeting. Minutes will also be posted on the RAC web page at *www.blm.gov/get-involved/resource-advisory-council/near-you/new-mexico/northern-rac.*

(Authority: 43 CFR 1784.4–1)

Sabrina Flores,

BLM Albuquerque District Manager.

[FR Doc. 2024–29511 Filed 12–13–24; 8:45 am]

BILLING CODE 4331–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO4820000251]

Notice of Segregation of Public Lands for the Neptune Solar Project, Millard County, Utah

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of segregation.

SUMMARY: The Bureau of Land Management (BLM) is segregating 1,920 acres of public lands as part of the right-of-way (ROW) application for the Neptune Solar Project, from appropriation under the public land laws, including location under the Mining Law of 1872, but not the Mineral Leasing Act or Material Sales Act, for a period of 2 years from the date of publication of this notice, subject to valid existing rights. This segregation is to allow for the orderly administration of the public lands to facilitate consideration of development of renewable energy resources.

DATES: The segregation of the lands identified in this notice is effective on December 16, 2024.

FOR FURTHER INFORMATION CONTACT: Lennie McConnell, District Renewable Energy Project Manager, BLM West Desert and Color Country Districts, 176 E DL Sargent Drive, Cedar City, UT 84721, (435) 865–3052 or email at *lmcconnell@blm.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 for contacting Mr. McConnell. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Regulations found at 43 CFR 2091.3–1(e) and 2804.25(f) allow the BLM to temporarily segregate public lands described within a ROW application for solar energy development from the operation of the public land laws, including the Mining Law, by publication of a notice in the **Federal Register**. The BLM uses the temporary segregation authority to preserve the ability to approve, approve with modifications, or deny a proposed ROW, and to facilitate the orderly administration of the public lands. This temporary segregation is subject to valid existing rights.

Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature that will not significantly impact the application area may be allowed with the approval of the authorized officer of the BLM during the segregation period.

The public lands segregated by this notice are described as follows:

Neptune Solar Project—UTUT105853689

Salt Lake Meridian, Utah

T. 19 S., R. 8 W.,
Sec. 19, S½NE¼ and SE¼;
Sec. 20, SW¼NE¼, S½NW¼, SW¼, and SE¼SE¼;
Sec. 21, S½SE¼;
Sec. 28;
Sec. 29, E½NE¼, SW¼NE¼, SE¼NW¼, SW¼, N½SE¼, and SE¼SE¼;
Sec. 33, W½NE¼, N½NW¼, and SE¼NW¼.

The areas described aggregate 1,920 acres, according to the official plat of the survey of the said lands, on file with the BLM.

As provided in the regulations under 43 CFR 2091.3–1e(3), the segregation of the lands described in this notice will not exceed 2 years from the date of publication unless extended for an additional 2 years through publication of a new notice in the **Federal Register**.

For a period until December 16, 2026, subject to valid existing rights, the public lands described in this notice will be segregated from appropriation under the public land laws, including location under the Mining Law of 1872, but not from leasing under the mineral and geothermal leasing laws, or disposal under the Mineral Materials Act, while the ROW application is being processed. The segregation period will terminate and the lands will automatically open to appropriation under the public land laws, including the Mining Law, at the earliest of the following dates: upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a ROW; without further administrative action at the end of the segregation stated in the **Federal Register** notice initiating the segregation; or upon publication of a **Federal Register** notice terminating the segregation and opening the lands.

(Authority: 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f))

Matthew A. Preston,

State Director, Acting.

[FR Doc. 2024–29544 Filed 12–13–24; 8:45 am]

BILLING CODE 4331–25–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–106385733]

Notice of Proposed Withdrawal and Public Meeting, Upper Pecos River Watershed Protection Area Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed withdrawal.

SUMMARY: On behalf of the Bureau of Land Management (BLM) and the U.S. Department of Agriculture, Forest Service (USFS), the Secretary of the Interior proposes to withdraw 163,483 acres of National Forest System lands and 1,327.16 acres of public lands from location and entry under the United States mining laws, and leasing under the mineral and geothermal leasing laws, subject to valid existing rights. The lands would remain open to disposals under the mineral materials laws.

DATES: Comments must be received by the BLM by March 17, 2025. A public meeting on the proposed withdrawal will be held February 26, 2025, from 5 p.m. to 7:30 p.m. at the Village of Pecos Conference Room, 92 South Main St., Pecos, NM 87552.

ADDRESSES: Comments should be sent to State Director, Bureau of Land Management, New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508. Information regarding the proposed withdrawal will be available at the BLM New Mexico State Office and at the Santa Fe National Forest Supervisor's Office, 11 Forest Lane, Santa Fe, New Mexico 87508.

FOR FURTHER INFORMATION CONTACT: Jillian Aragon, Project Manager, BLM New Mexico State Office by email at *jgaragon@blm.gov* or Julian Madrid, Santa Fe National Forest by email at *julian.madrid@usda.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 for contacting Ms. Aragon. 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: The withdrawal is proposed for a 20-year term to protect the Upper Pecos River watershed area for its water and air quality, cultural resources, scenic integrity, critical fish and wildlife habitat, and recreational values. This notice segregates the land for 2 years from location and entry under the United States mining laws, and leasing under the mineral and geothermal leasing laws, subject to valid existing rights, and initiates a 90-day public comment period on the proposed withdrawal. The USFS and the BLM will host public meetings to provide information on the withdrawal application, as specified previously (see **DATES**).

The BLM and the USFS are jointly seeking this withdrawal. Their petition/application requests the Secretary of the Interior to withdraw the following Federal lands and interests in lands, and all non-Federal lands within the boundaries of the withdrawal application area that are subsequently acquired by the Federal Government, from location and entry under the United States mining laws, and leasing under the mineral and geothermal leasing laws, subject to valid existing rights.

National Forest System Lands:

New Mexico Principal Meridian, New Mexico
T. 16 N., R. 11 E.,
Secs. 1 and 2;
Sec. 3;
Sec. 4 lots 3 thru 12 and lot 14, SW¼NW¼, NW¼SW¼, NE¼SE¼, and SW¼SE¼;
Sec. 5 lots 5 thru 7 and lots 10 thru 20;
Sec. 6 lot 23;
Sec. 7 lots 5 and 12;
Sec. 8 lots 1 thru 4, lots 6 thru 10, and lots 15 and 16;
Sec. 9, lots 2 thru 8, W½NE¼, S½NW¼, SW¼, and E½SE¼;
Sec. 10, lots 3 thru 6, E½, E½NW¼, and S½SW¼;
Secs. 11 thru 13;
Sec. 14, lots 1 and 2, N½, W½SW¼, and SE¼;
Secs. 15 and 16;
Sec. 21, lots 1 thru 3 and lots 6 thru 9;
Sec. 24 N½ and E½SE¼;
Sec. 25 lots 3 thru 6;
Sec. 26 lot 4;
Sec. 35 lots 1 thru 5, W½NE¼, E½NW¼, NE¼NE¼SW¼, W½SE¼, and Parcel A.
T. 17 N., R. 11 E.,
Secs. 1 thru 3;
Sec. 4, E½NE¼, E½SW¼, and SE¼;
Sec. 8, SE¼NE¼ and E½SE¼;
Sec. 9, E½, NE¼NW¼, S½NW¼, and SW¼;
Secs. 10 thru 16;
Sec. 17, E½ and SE¼SW¼;
Sec. 20, E½ and NE¼SW¼;
Secs. 21 thru 24;
Sec. 25, excepting HES 293A and HES 293B;
Secs. 26 thru 28;
Sec. 29, E½, NE¼NW¼, S½NW¼, and SW¼;
Sec. 30, NE¼SE¼;
Sec. 32, E½, E½NW¼, and E½SW¼;
Sec. 33, lots 1 and 2, N½, SW¼, and N½SE¼;
Secs. 34 thru 36.
T. 18 N., R. 11 E., partially unsurveyed,
All those lands lying southeasterly of the Pecos Wilderness, being the westerly boundary of the Upper Pecos Watershed Withdrawal Application Area, comprised of approximately 4,693 acres.
T. 15 N., R. 12 E.,
Secs. 1 and 2;
Secs. 11 thru 13;
Secs. 23 thru 26;
Secs. 35 and 36.
T. 16 N., R. 12 E.,
Sec. 1, lot 4, SW¼NW¼, and SW¼;
Sec. 2, lots 1 thru 4, S½NE¼, S½NW¼, SW¼, and N½SE¼;
Sec. 3, lots 1 and 2, S½NE¼, SE¼NW¼, and S½;
Sec. 4, lots 1thru 3, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 5, lots 2 thru 4 and lots 6 and 7, S½NE¼, SE¼NW¼, S½, and NM 3492;
Sec. 6, lots 3 thru 5, E½SW¼, and SE¼;
Sec. 7, lots 1 thru 4, E½NE¼, E½SW¼, and SE¼;
Sec. 8;
Sec. 9, lots 1 thru 3, lots 5 thru 7, lots 8 thru 10, and lots 12 thru 14;
Sec. 10;
Sec. 11, SE¼NE¼, N½NW¼, SW¼NW¼, NW¼SW¼, S½SW¼, NE¼SE¼, and S½SE¼;
Sec. 12, W½NE¼, NW¼, and S½;
Sec. 13, N½ and SW¼;
Sec. 14;
Sec. 15, lots 1 thru 13;
Sec. 16, lots 4 thru 7;
Sec. 17, lots 3 thru 17;
Sec. 18, lot 1, W½NE¼, and NE¼NW¼;
Sec. 19, lot 1, E½NE¼, NE¼SE¼, and excepting M.S. 1959;
Sec. 20, lots 5 thru 16;
Sec. 21, lot 5;
Secs. 22 and 23;
Sec. 24, E½NE¼ and W½;
Sec. 25, W½NW¼NE¼, W½SW¼NE¼, and W½;
Secs. 26 thru 36;
T. 17 N., R. 12 E.,
Sec. 1, lots 9 thru 17, SE¼NW¼, and W½SW¼;
Sec. 2, lots 5 thru 9, lots 12 thru 15, and lot 17;
Sec. 3;
Sec. 4, lots 5 thru 8;
Secs. 5 and 6;
Sec. 7, lots 5 thru 10, lot 12, lots 15 thru 18, and Tract 38;
Sec. 8, lots 1 thru 4, SW¼NE¼, NW¼, and NW¼SW¼;
Sec. 9, lots 1 thru 3, lots 5 thru 11, and lot 13;
Sec. 10, lots 1 thru 11;
Sec. 11, lots 1 thru 4;
Sec. 12, lots 1 thru 14;
Sec. 13, lots 1 thru 10;
Sec. 14, lots 1 thru 6;
Sec. 15, lots 1 and 2;
Sec. 16;
Sec. 17 lots 1 thru 12;
Sec. 18, lots 5, 9, 13 and 14, W½SW¼, SE¼SW¼, and N½SE¼:
Sec. 19, lots 5 thru 15;
Sec. 20, lots 1 and 4 and Patent No. 058030;
Sec. 21, lots 1 thru 3;
Sec. 22, lots 1 thru 3;
Sec. 23, lots 1 thru 5;
Sec. 24, lots 1 thru 6, E½SW¼, and SE¼;
Sec. 25, NE¼, NE¼NW¼, S½NW¼, and S½;
Sec. 26, lots 1 thru 4, S½NE¼, S½NW¼, and SW¼;
Secs. 27 and 28;
Sec. 29, lots 1 and 2 and Ser Patent No. 103230;
Secs. 30, lots 5 thru 11;
Sec. 31;
Sec. 32, lots 1 thru 11;
Sec. 33, lots 1 thru 8;
Sec. 34, lots 1 thru 4 and SE¼;
Sec. 35, lots 1 thru 3, NE¼, W½NW¼, and SW¼;
Sec. 36, lots 1 thru 15.
T. 18 N., R. 12 E.,
Sec. 1;
Sec. 2, lots 5 thru 8;
Sec. 3, lots 5 and 6;
Sec. 10, lots 3 and 4, SW¼NE¼, W½, and SE¼;
Sec. 11, lots 1 thru 7, E½NE¼, SW¼SW¼, E½SE¼, and SW¼SE¼;
Secs. 12 thru 14;
Sec. 15, lots 1 thru 5, E½NE¼, NW¼NE¼, and W½;
Sec. 19;
Sec. 20, lot 1, N½, SW¼, N½SE¼, and SE1/SE¼;
Sec. 21, lot 1, N½, SW¼, NE¼SE¼, and W½SE¼;
Sec. 22, lots 3 thru 12, NW¼, and SE¼SE¼;
Sec. 23, excepting Tract 42;
Secs. 24 and 25;
Sec. 26, excepting M.S. 1984;
Sec. 27, lots 11 thru 17, E½NE¼ excepting M.S. 1984, and E½SE¼ excepting M.S.1984;
Sec. 28, lots 4 thru 7, NW¼NE¼, and W½;
Sec. 29, lots 1 thru 7, W½SE¼, and W½;
Secs. 30 thru 32;
Sec. 33, lots 1 thru 11, NW¼, and NW¼SW¼;
Sec. 34, excepting Tract 47;
Sec. 35, excepting Tract 48;
Sec. 36, excepting Tract 48.
T. 19 N., R. 12 E.,
Sec. 25, excepting HES 297A, HES 297B, and Patent No. 910127;
Sec. 26, E½, E½NW¼, E½NE¼NW¼NW¼, E½SE¼NW¼NW¼, E½NE¼SW¼NW¼,

S½SW¼SW¼NW¼,
NE¼SE¼SW¼NW¼,
S½SE¼SW¼NW¼, and SW¼;
Sec. 27, W½NE¼, W½, and W½SE¼;
Sec. 33;
Sec. 34, NE¼NW¼NE¼, W½NW¼NE¼, W½SW¼NE¼, N½SE¼NW¼NE¼, W½NW¼SE¼, and W½;
Sec. 35, lots 1 thru 11 and SE¼;
Sec. 36.
T. 15 N., R. 13 E.,
Secs. 1 thru 4;
Sec. 5, lots 1, 8, 9, and lots 13 thru 16 and E½SW¼;
Sec. 6, lots 4 thru 7 and lots 12 thru 14;
Sec. 8, lots 1 and 2, lots 4 thru 7, lots 10 and 13, NW¼NE¼, NE¼NW¼, and S½SW¼;
Sec. 9, lots 1 thru 4, E½, and E½SW¼;
Sec. 10, E½, W½NW¼, and W½SW¼;
Sec. 11;
Sec. 12, excepting HES No. 300;
Secs. 13 and 14;
Sec. 15, E½NE¼, W½NW¼, and SW¼;
Sec. 16, E½, E½NW¼, and E½SW¼;
Sec. 17, lot 2, SW¼NE¼, W½, and E½SE¼;
Sec. 18, lots 1 thru 4, S½NE¼, E½NW¼, E½SW¼, and SE¼;
Sec. 19;
Sec. 20, W½NE¼ and W½;
Sec. 21, E½, E½NW¼, NE¼SW¼, and SW¼SW¼;
Sec. 22, W½NE¼, W½, and SE¼;
Sec. 23, E½, E½NW¼, and SW¼;
Sec. 24, lots 1 thru 4, NE¼, W½, and NW¼SE¼;
Secs. 25 thru 27;
Sec. 28, E½;
Secs. 29 thru 31;
Sec. 33, lots 1, 4 and 5 and E½NE¼;
Sec. 34, lot 1, E½, NW¼, E½SW¼, and NW¼SW¼;
Secs. 35 and 36.
T. 16 N., R.13 E.,
Sec. 1;
Sec. 2, lots 5 thru 12, SE¼NW¼, and SW¼;
Sec. 3, lots 1 and 2, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 4, lots 1 thru 4;
Sec. 5, lots 1 and 4, SW¼NW¼, and NW¼SW¼;
Sec. 6, lots 1 thru 5, S½NE¼, SE¼NW¼, and SE¼;
Sec. 10, lots 1 thru 4, NE¼, and E½NW¼;
Secs. 11 and 12;
Sec. 13, N½ and SW¼;
Sec. 14;
Sec. 15, E½;
Sec. 16, S½;
Sec. 17, SW¼;
Sec. 18, lots 1 and 2, W½NE¼NW¼, W½SE¼NW¼, and SE¼;
Sec. 19, excepting Patent No. 1078570;
Sec. 20, NE¼, W½, N½SE¼, and SW¼SE¼;
Sec. 21, W½ and SE¼;
Secs. 22 thru 25;
Sec. 26, lots 1 and 2, N½NE¼, SE¼NE¼, N½NW¼, SW¼NW¼, W½SW¼, and N½SE¼;
Sec. 27;
Sec. 28, NW¼NE¼, E½NW¼, E½SW¼, and E½SE¼;
Sec. 29, W½NE¼, W½, and NW¼SE¼;
Sec. 30, lots 1 and 4, E½, NE¼NW¼, and SE¼SW¼;
Sec. 31, lots 3 and 7;
Sec. 32, lots 3 thru 8, NW¼, and N½SW¼;
Sec. 33;
Sec. 34, excepting Patent No. 479146;
Secs. 35 and 36.
T. 17 N., R. 13 E.,
Sec. 3, lots 2 thru 4, SW¼NE¼, S½NW¼, and SW¼;
Secs. 4 thru 6;
Sec. 7, lots 5 thru 20 and NE¼;
Sec. 8, lots 1 and 2, N½, E½SW¼, and SE¼;
Sec. 9;
Sec. 10, S½NE¼, NW¼NE¼, W½, and SE¼;
Sec. 11, S½NW¼ and SW¼;
Sec. 13, W½SW¼;
Sec. 14, W½NE¼, SE¼NE¼, W½ excepting HES 327, and SE¼;
Sec. 15, excepting HES 327;
Secs. 16 and 17;
Sec. 18, lots 5 thru 17, NE¼NE¼, S½NE¼, and SE¼;
Sec. 19, lots 5 thru 19, W½NE¼, W½SE¼, and SE¼SE¼;
Sec. 20, lots 1 thru 7, E½NE¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 21;
Sec. 22, NE¼ excepting HES 327, W½, and SE¼ excepting Tract 42;
Sec. 23, lots 1 thru 6, N½NE¼, SE¼NE¼, N½NW¼, SW¼NW¼, NE¼SE¼, and S½SE¼;
Sec. 24, NW¼NW¼, S½NW¼, and SW¼;
Sec. 25, W½NE¼, W½, W½SE¼, and W½SE¼SE¼;
Sec. 26, lots 1 thru 4, E½, SE¼NW¼, and E½SW¼;
Sec. 27, lots 1 thru 7, W½NW¼, SW¼, and W½SE¼;
Sec. 28;
Sec. 29, N½, E½NW¼SW¼, E½SE¼, E½NW¼SW¼SE¼, NW¼NW¼SE¼, E½SW¼NW¼SE¼, NW¼SW¼NW¼SE¼, and E½SW¼SE¼;
Secs. 30 and 31;
Sec. 32, E½NE¼, E½NW¼NE¼, NE¼NW¼SW¼NE¼, S½NW¼SW¼NE¼, SW¼SW¼NE¼, E½SE¼NE¼, and S½;
Sec. 33;
Sec. 34, excepting Tract 46;
Sec. 35, lots 1 thru 6, N½, NE¼SW¼, and S½SE¼;
Sec. 36.
T. 18 N., R. 13 E., partially unsurveyed,
Sec. 17;
PB 43, all those lands lying south of Pecos Wilderness;
PB 44;
Sec. 20;
Sec. 21, E½, NE¼NW¼, S½NW¼NW¼, and SW¼;
Sec. 22, W½;
Sec. 27, NW¼ and S½;
Secs. 28 and 29
PB 44 thru 52.
T. 14 N., R. 14 E.,
Sec. 1, lot 2, SW¼NE¼, S½SE¼NE¼, W½, and SE¼;
Secs. 2 thru 4;
Sec. 5, lots 1 thru 4, SE¼NE¼, SE¼NW¼, SE¼SW¼, and NE¼SE¼;
Sec. 12, NE¼, W½, W½NE¼SE¼, W½SE¼, and W½SE¼SE¼.
T. 15 N., R. 14 E.,
Sec. 6, lots 1 thru 15 and SE¼;
Sec. 7, lots 1 thru 9, NE¼, SE¼SW¼, and N½SE¼;
Sec. 18;
Sec. 19, lots 1 thru 4, E½, E½NW¼, and E½SW¼;
Sec. 22;
Sec. 23, SW¼NW¼ and SW¼;
Sec. 36, S½NW¼SW¼, SW¼SW¼, W½SE¼SW¼, and W½SE¼SE¼SW¼.
T. 15 N., R. 14 E., partially unsurveyed,
All those lands lying west of El Barro Peak ridge, being the easterly boundary of the Upper Pecos Watershed Withdrawal Application Area, comprising approximately 11,529 acres.
T. 16 N., R. 14 E.,
Sec. 6, lots 4 thru 6 and SE¼NW¼;
Sec. 7, lots 2 thru 4;
Sec. 18, lots 1 thru 4 and E½SW¼;
Sec. 19;
Sec. 20, W½;
Sec. 29, lots 2 thru 4, lots 7 and 8, N½NW¼, and SW¼;
Secs. 30 and 31;
Sec. 32, W½ and SE¼;
Sec. 33, S½.
T. 14 N., R. 15 E.,
Sec. 6, W½NW¼SW¼ and SW¼SW¼;
Sec. 7, W½NE¼NW¼, NW¼NW¼, and W½SW¼NW¼.

The areas described aggregate 163,483 acres.

Bureau of Land Management:
New Mexico Principal Meridian, New Mexico
T. 14 N., R. 13 E.,
Sec. 1, lots 1 and 2, S½NE¼, and SE¼;
Sec. 3, lots 1 thru 10 and SE¼NE¼;
Sec. 4, lots 1, 6, and 7;
Sec. 12, lots 1, 2, and 4 and SE¼NE¼;
Sec. 13, lots 1 and 2;
Sec. 23, S½NW¼.
T. 14 N., R. 14 E.,
Sec. 7, lots 1 thru 4, E½NW¼, and E½SW¼.

The areas described aggregate 1,327.16 acres, according to the official plats of the surveys of the said lands, on file with the BLM.

The total acreage for the proposed withdrawal is 164,810.16 acres.

A Secretarial Officer has approved the BLM's petition to file the withdrawal application. This approval constitutes the Department's proposal to withdraw the subject lands. The USFS has consented to proposing the withdrawal of lands under its administrative jurisdiction (43 CFR 2310.1–3(e)) and has joined the BLM as withdrawal applicant.

The use of a right-of-way, interagency agreement, or cooperative agreement, or surface management under 43 CFR part 3800, subpart 3809 regulations would not adequately constrain non-discretionary uses and would not provide adequate protection of cultural, recreational, and biological resources,

nor the financial investments in public campgrounds and other improvements on these lands.

There are no suitable alternative sites, as the described lands contain resource values that need protection.

Water rights will not be needed to fulfill the purpose of the proposed withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM New Mexico State Director at the address listed above (see **ADDRESSES**).

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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

For a period until December 16, 2026, subject to valid existing rights, the lands and mineral interests in this notice will be segregated from location and entry under the United States mining laws, and leasing under the mineral and geothermal leasing laws, subject to valid existing rights unless the proposal is canceled, or the withdrawal is approved prior to that date.

Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature may be allowed with the approval of the authorized officers of the USDA Forest Service or the BLM during the segregation period.

This proposed withdrawal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

(Authority: 43 U.S.C. 1714).

Melanie G. Barnes,

BLM New Mexico State Director.

[FR Doc. 2024–29674 Filed 12–12–24; 4:15 pm]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CEBE–39083; PPNECEBE00, PPMPSPD1Z.YM0000]

Cedar Creek and Belle Grove National Historical Park Advisory Commission Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, as amended, the National Park Service is hereby giving notice that the Cedar Creek and Belle Grove National Historical Park Advisory Commission (Commission) will meet as indicated below.

DATES: The Commission will meet on Thursday, March 20, 2025. The meeting will begin at 9 a.m. and will end by 11 a.m. (eastern).

ADDRESSES: The Commission will meet via teleconference and in-person at Warren County Government Center, 220 North Commerce Avenue, Front Royal, Virginia 22630. Information on joining the teleconference will be available on the Cedar Creek and Belle Grove National Historical Park website at *https://www.nps.gov/cebe/learn/management/park-advisory-commission.htm.*

FOR FURTHER INFORMATION CONTACT: Karen Beck-Herzog, Site Manager, Cedar Creek and Belle Grove National Historical Park, P.O. Box 700, Middletown, Virginia 22645, telephone (540) 868–9176, email *karen_beck_herzog@nps.gov,* or visit the park website: *https://www.nps.gov/cebe/index.htm.* 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: The Commission was designated by Congress to provide advice to the Secretary of the Interior on the preparation and implementation of the park's general management plan and to advise on land protection (16 U.S.C. 410iii–7). The meeting is open to the public. Individuals who are interested in the park, the implantation of the plan, or the business of the Commission are encouraged to attend the meeting. Interested members of the public may present, either orally or through written comments, information for the Commission to consider during the public meeting. Attendees and those wishing to provide comment are strongly encouraged to preregister through the contact information provided. Written comments may be sent to Karen Beck-Herzog (see **FOR FURTHER INFORMATION CONTACT**). All comments received will be provided to the Commission. A detailed final agenda will be posted 48 hours in advance of the meeting on the Commission's website at *https://www.nps.gov/cebe/learn/management/park-advisory-commission.htm.* If a meeting date and location are changed, the Superintendent will issue a press release and use local newspapers and/or radio stations to announce the rescheduled meeting. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Purpose of the Meeting: The topics to be discussed include: general management plan next steps, visitor services and interpretation, land protection planning, historic preservation, and natural resource protection.

Commission meetings consist of the following:

1. General Introductions
2. Park Operations Briefing
3. Reports and Discussions
4. Old Business
5. New Business
6. Public Comments
7. Closing Remarks

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch. 10.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2024–29557 Filed 12–13–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CACO–39070; PPNECACOS0, PPMPSPD1Z.YM0000]

Cape Cod National Seashore Advisory Commission; Notice of Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, as amended, the National Park Service (NPS) is hereby giving notice of the 314th and 315th meetings of the Cape Cod National Seashore Advisory Commission (Commission).

DATES: The Commission will meet on Monday, January 13, 2025, and Monday, April 7, 2025. All scheduled meetings will begin at 1 p.m. and will end by 4:30 p.m. (eastern time).

ADDRESSES: The meetings will be held at the Salt Pond Visitors Center, 50 Nauset Road, Eastham, Massachusetts 02642. Information on joining the teleconference will be available to the public on the Cape Cod National Seashore website at least two weeks prior to the meetings at *https://www.nps.gov/caco/learn/management/advisory-commission.htm.*

FOR FURTHER INFORMATION CONTACT: Jennifer Flynn, Superintendent and Designated Federal Officer, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, Massachusetts 02667, telephone (508) 771–2144 or *caco_superintendent@nps.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: The Commission was established by section 8 of Public Law 87–126, as amended, and expired on September 26, 2018. The Commission was reestablished by div. DD, title VI, subtitle B, section 613 of Public Law 117–328, the Consolidated Appropriations Act, 2023. The Commission's new termination date is September 26, 2029. The purpose of the Commission is to consult with the Secretary of the Interior, or her designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of the Act establishing the Seashore. The meetings are open to the public. Interested persons may make oral presentations to the Commission. Such requests should be made to the Superintendent at the beginning of the meeting. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Written comments can be sent to Jennifer Flynn [see **FOR FURTHER INFORMATION CONTACT**]. All comments received will be provided to the Commission.

The Commission meeting location may change based on inclement weather or exceptional circumstances. If a meeting location is changed, the Superintendent will issue a press release and use local newspapers to announce the change. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Purpose of the Meeting: The standing agenda/purpose of each meeting is to discuss the following:

1. Adoption of agenda
2. Approval of meeting minutes
3. Superintendent report
4. Old business
5. New business: emerging issues identified by members
6. Public comment
7. Adjournment

Focus of each meeting as follows:

January—Establishing Rule of Order for Commission Meetings.

Status of each town's implementation of Massachusetts ADU Law (Accessory Dwelling Units).

April—Protecting the Seashore District Character.

Meeting Accessibility/Special Accommodations: The meetings are open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch. 10.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2024–29491 Filed 12–13–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–D–COS–POL–39129; PPWODIREP0, PPMPSAS1Y.YP0000]

Notice of Public Meeting for the National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, as amended, the National Park Service (NPS) is hereby giving notice that the National Park System Advisory Board (Board) will meet as noted below.

DATES: The Board will meet virtually on Wednesday, March 19, 2025, from 12 p.m. until 4 p.m. (eastern). Individuals who wish to participate must contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than Monday, March 17, 2025, to receive instructions for accessing the meeting. The meeting will be held online through the Teams platform and is open to the public.

ADDRESSES: The meeting will be accessible virtually via webinar and audio conference technology. Electronic submissions of materials or requests to speak at the meeting are to be sent to *alma_ripps@nps.gov.*

FOR FURTHER INFORMATION CONTACT: For information concerning attending the Board meeting or to request to address the Board, contact Alma Ripps, Designated Federal Officer, National Park Service, telephone (202) 354–3951, or email *alma_ripps@nps.gov.* Written comments specific to any Board matter must be submitted by no later than March 12, 2025. 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: The Board has been established by authority of the Secretary of the Interior under 54 U.S.C. 100906 and is regulated by the Federal Advisory Committee Act. All meetings are open to the public.

Purpose of the Meeting: The Board will be discussing the final recommendations related to Executive Order 14121, Recognizing and Honoring Women's History, and other topics as appropriate. There will be an opportunity for public comment. The final agenda and briefing materials will be posted to the Board's website prior to the meeting at *https://www.nps.gov/resources/advisoryboard150.htm.* Interested parties may attend the Board meeting virtually and, upon request, may choose to make oral comments at the virtual meeting during the designated time for this purpose. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited.

Interested parties should contact Alma Ripps (see **FOR FURTHER INFORMATION CONTACT**) for advance placement on the public speaker list for this meeting. Members of the public may also choose to submit written comments by emailing them to *alma_ripps@nps.gov.* Due to time constraints during the meeting, the Board is not able to read written public comments submitted into the record. All comments will be made part of the public record and will be electronically distributed to all Board members. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch. 10.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2024–29556 Filed 12–13–24; 8:45 am]

BILLING CODE 4312–52–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (a portion of which will be open to the public).

DATES: Monday, January 6, 2025, from 9 a.m. to 5 p.m., and Tuesday, January 7, 2025, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at (202) 317–3648 or *elizabeth.j.vanosten@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, on Monday, January 6, 2025, from 9 a.m. to 5 p.m. and Tuesday, January 7, 2025, from 8:30 a.m. to 4 p.m. A portion of the meeting will be open to the public.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2024 Pension (EA–2F) to make recommendations relative thereto, including the minimum acceptable passing score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2025 Basic (EA–1) Examination and the May 2025 Pension (EA–2L) Examination also will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. 1009(d), that the portions of the meeting dealing with the discussion of questions that may appear on the Joint Board's examinations and the review of the November 2024 EA–2F Examination fall within the exception to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The open portion of the meeting dealing with the discussion of the other topics will commence at 12 p.m. on January 6, 2025, and will continue for as long as necessary to complete the discussion, but not beyond 1 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should contact the Designated Federal Officer at *NHQJBEA@IRS.GOV* and include the written text or outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. Persons who wish to attend the public session should contact the Designated Federal Officer at *NHQJBEA@IRS.GOV* to obtain access instructions. Notifications of intent to make an oral statement or to attend the meeting must be sent electronically to the Designated Federal Officer no later than December 27, 2024. In addition, any interested person may file a written statement for consideration by the Joint Board and the Advisory Committee by sending it to *NHQJBEA@IRS.GOV.*

Dated: December 11, 2024.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2024–29527 Filed 12–13–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0019]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Federal Firearms License (FFL) RENEWAL Application—ATF Form 8 (5310.11) Part II

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for

review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until January 15, 2025.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Leslie Anderson, ATF–FFLC, by email at *Leslie.anderson@atf.gov,* or telephone at 304–616–4634.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register**, 89 FR 81551, on Tuesday, October 8, 2024, allowing a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1140–0019. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Federal Firearms License (FFL) RENEWAL Application.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 8 (5310.11) Part II.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Individuals or households, Private Sector-for or not for profit institutions.

Abstract: Section 923 of chapter 44 of title 18 requires persons wishing to be licensed to renew their license every three years. In order to renew their license, licensees must complete ATF Form 8 (5310.11) Part II to certify compliance with the provisions of the law for the FFL business. Information Collection (IC) OMB is being revised to include major material changes to the form, such as removal and addition of section items, grammatical changes (sentence rephrasing/statement modification) and instruction modification and clarification.

5. *Obligation to Respond:* Mandatory per title 18 U.S.C. chapter 44.

6. *Total Estimated Number of Respondents:* 33,500 total respondents.

7. *Estimated Time per Respondent:* 30 minutes.

8. *Frequency:* 1 time per every 3 years.

9. *Total Estimated Annual Time Burden:* 16,750.

10. *Total Estimated Annual Other Costs Burden:* No new cost is associated with this collection. However, the annual cost has increased due to a change in the postal rate from $0.63 during the last renewal in 2023, to $0.73 in 2024. Consequently, the new public cost burden will be reported as $24,455.00, which is equal to .73 (mailing cost per respondent) * 33,500 (# of respondents.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: December 11, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–29519 Filed 12–13–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On December 10, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Pennsylvania in the lawsuit entitled *United States and Commonwealth of Pennsylvania* v. *PennEnergy Resources, LLC,* Civil Action No. 2:24–cv–01675.

The lawsuit seeks injunctive relief and civil penalties for violations of the Clean Air Act and its implementing regulations at oil and natural gas production facilities owned and operated by PennEnergy Resources, LLC (''PennEnergy'') in Butler County, Pennsylvania. The violations relate to alleged failures to adequately design, operate, and maintain storage tank vapor control systems, resulting in emissions of volatile organic compounds (''VOC'') and other pollutants to the atmosphere.

The proposed Consent Decree covers 49 PennEnergy facilities in Pennsylvania. The proposed decree requires PennEnergy to perform injunctive relief, including conducting engineering evaluations of the vapor control systems at each of the controlled well pads to ensure that they are adequately sized and designed, and complete an environmental mitigation project. PennEnergy must also pay a civil penalty of $2,000,000. Entering into and fully complying with the proposed Consent Decree would release PennEnergy from past civil liability for violations of Clean Air Act Title V and Clean Air Act regulations applicable to new and modified storage vessels and related state law at the facilities subject to the proposed consent decree.

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 and Commonwealth of Pennsylvania* v. *PennEnergy Resources, LLC,* D.J. Ref. No. 90–5–2–1–12465. All comments

must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Any comments submitted in writing may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the proposed Consent Decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Jason A. Dunn,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–29524 Filed 12–13–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On December 10, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of New Jersey in *United States* v. *Arnet Realty Company, L.L.C., Old Bridge Minerals, Inc., and HB Warehousing, LLC, Inc.,* (''Defendants'') Civil Action No. 3:24–cv–11009 (D.N.J.).

The United States, on behalf of the Environmental Protection Agency (''EPA''), filed a Complaint against the Defendants under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607. In the Complaint, the United States seeks (1) reimbursement of costs incurred and to be incurred by EPA and the Department of Justice for response actions at the CPS/Madison Superfund Site (''Site'') in Old Bridge Township, New Jersey, together with accrued interest, and (2) performance by the Defendants of response actions at the Site consistent with the National Contingency Plan, 40 CFR part 300. The proposed Consent Decree requires the Defendants to perform certain aspects of the Remedial Design and Remedial Action (''RD/RA'') for Operable Unit 1 and the RD/RA for Operable Unit 3 of the Site, which are estimated to cost approximately $14 million, and to pay EPA's future costs associated with oversight of that work. Under the proposed Consent Decree, the United States agrees not to sue the Defendants under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for the work that Defendants have agreed to perform.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Arnet Realty Company, L.L.C., et al.,* D.J. Ref. No. 90–11–3–1525/3. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

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.* We will provide a paper copy of the proposed consent decree upon email request to *pubcomment-ees.enrd@usdoj.gov.*

Eric D. Albert,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–29476 Filed 12–13–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rates for Non-Range Occupations

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is issuing this notice to announce updates to the Adverse Effect Wage Rates (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H–2A workers) to perform agricultural labor or services other than the herding or production of livestock on the range. AEWRs are the minimum wage rates the DOL has determined must be offered, advertised in recruitment, and paid by employers to H–2A workers and workers in corresponding employment so that the wages and working conditions of workers in the United States (U.S.) similarly employed will not be adversely affected. The AEWRs established in this notice are applicable to H–2A job opportunities classified: in six Standard Occupational Classification (SOC) codes comprising the field and livestock workers (combined) category, and in the field and livestock workers (combined) occupational category that are located in States or regions, or equivalent districts or territories, in which the United States Department of Agriculture's (USDA) Farm Labor Report (better known as the Farm Labor Survey, or FLS) reports wages. In this notice, DOL also announces an update to the average AEWR, which is used to calculate adjustments to required bond amounts for H–2A Labor Contractors.

DATES: These rates are effective December 16, 2024. However, for entities and states subject to the court order in *Kansas et. al.* v. *U.S. Department of Labor,* these rates are effective December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5311, Washington, DC 20210, telephone: (202) 693–8200 (this is not a toll-free number). For persons with a hearing or speech disability who need assistance to use the telephone system, please dial 711 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A nonimmigrant temporary and seasonal agricultural workers in the U.S. unless the petitioner has received an H–2A labor certification from DOL. DOL issues such labor certification when it

determines that: (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

FLS-Based AEWR Updates

DOL's H–2A regulations at 20 CFR 655.122(l) provide that employers must pay their H–2A workers and workers in corresponding employment at least the highest of the various wage sources listed in § 655.120(a), including the AEWR. Further, when the AEWR is updated during a work contract, the employer must pay at least that updated AEWR upon the effective date of the new AEWR, if the updated AEWR is higher than the highest of the previous AEWR, a prevailing wage rate for the crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity and geographic area, the agreed-upon collective bargaining wage, the Federal minimum wage rate, or the State minimum wage rate. *See* 20 CFR 655.120(b)(3). Similarly, when the AEWR is updated during a work contract and is lower than the wage rate that is guaranteed on the job order, the employer must continue to pay at least the wage rate guaranteed on the job order. *See* 20 CFR 655.120(b)(4).

Pursuant to the final rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H–2A Nonimmigrants in Non-Range Occupations in the United States,* 88 FR 12760 (Feb. 28, 2023), most AEWRs will continue to be based, as they have been since 1987, on the USDA FLS. AEWRs based on DOL's Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics (OEWS) survey will apply to H–2A job opportunities classified: (1) in SOC codes other than the six SOC codes comprising the field and livestock workers (combined) category, and (2) in the field and livestock workers (combined) occupational category that are located in States or regions, or equivalent districts or territories, for which the USDA FLS does not report a wage.[1]

The final rule, noted above, requires the OFLC Administrator to publish a **Federal Register** Notice at least once in each calendar year to establish each set of AEWRs. *See* 20 CFR 655.120(b)(2). The OFLC Administrator provides this notice by publishing two separate announcements in the **Federal Register**, one to update the non-range AEWRs based on the wage data reported by the USDA's FLS and a second to update the non-range AEWRs based on data reported by the BLS OEWS survey. *See* 88 FR at 12775.

The updated AEWRs for all non-range agricultural employment classified in the field and livestock workers (combined) category, for which temporary H–2A certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) in the State or region as published by the USDA in the November 20, 2024, FLS. DOL's regulation, 20 CFR 655.120(b)(2), requires that the OFLC Administrator publish the USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** Notice. Accordingly, the updated AEWRs to be paid for agricultural work performed by H–2A and workers in corresponding employment on and after the effective date of this notice are set forth in the table below:

TABLE—ADVERSE EFFECT WAGE RATES FOR FIELD AND LIVESTOCK WORKERS

[Combined]

State AEWRs	
Alabama	$16.08
Arizona	17.04
Arkansas	14.83
California	19.97
Colorado	17.84
Connecticut	18.83
Delaware	17.96
Florida	16.23
Georgia	16.08
Hawaii	20.08
Idaho	16.83
Illinois	19.57
Indiana	19.57
Iowa	18.65
Kansas	19.21
Kentucky	15.87
Louisiana	14.83
Maine	18.83
Maryland	17.96
Massachusetts	18.83
Michigan	18.15
Minnesota	18.15
Mississippi	14.83
Missouri	18.65
Montana	16.83
Nebraska	19.21
Nevada	17.84
New Hampshire	18.83
New Jersey	17.96
New Mexico	17.04
New York	18.83
North Carolina	16.16
North Dakota	19.21
Ohio	19.57
Oklahoma	15.79
Oregon	19.82
Pennsylvania	17.96
Rhode Island	18.83
South Carolina	16.08
South Dakota	19.21
Tennessee	15.87
Texas	15.79
Utah	17.84
Vermont	18.83
Virginia	16.16
Washington	19.82
West Virginia	15.87
Wisconsin	18.15
Wyoming	16.83

The AEWRs set forth in the table above are the AEWRs applicable to the following SOC titles and codes: Farmworkers and Laborers, Crop, Nursery, and Greenhouse (45–2092); Farmworkers, Farm, Ranch, and Aquacultural Animals (45–2093); Agricultural Equipment Operators (45–2091); Packers and Packagers, Hand (53–7064); Graders and Sorters, Agricultural Products (45–2041); and All Other Agricultural Workers (45–2099). These AEWRs are published by the OFLC Administrator in accordance with 20 CFR 655.120(b)(2). Accordingly, the simple average of these AEWRs constitutes the average AEWR. *See* 20 CFR 655.103(b) (definition of average AEWR). The simple average is calculated by finding the sum of the AEWRs listed in the table above, then dividing by the total number of AEWRs, which is currently 49 ($869.20/49 = $17.74). On and after the effective date of this notice, the average AEWR to be used to calculate the bond amounts required under 20 CFR 655.132(c)(2)(ii) is $17.74.

Delayed Effective Date With Respect to Certain States and Entities

On April 29, 2024, DOL published the final rule, *Improving Protections for Workers in Temporary Agricultural Employment in the United States,* 89 FR 33898 (Apr. 29, 2024) (''Farmworker Protection Rule''). The Farmworker Protection Rule amended the regulation at 20 CFR 655.120(b)(2) to state that

[1] In the event an employer's job opportunity requires the performance of agricultural labor or services that are not encompassed in a single SOC code's description and tasks, the applicable AEWR will be the highest AEWR for all applicable SOCs. *See* 20 CFR 655.120(b)(5).

''[t]he updated AEWR will be effective as of the date of publication of the notice in the **Federal Register**.'' On August 26, 2024, the United States District Court for the Southern District of Georgia issued a preliminary injunction in the case *Kansas, et al.* v. *U.S. Department of Labor,* No. 2:24–cv–00076–LGW–BWC (S.D. Ga., Aug. 26, 2024) (''*Kansas*''), prohibiting DOL from enforcing the Farmworker Protection Rule in certain states and with respect to certain entities. The preliminary injunction specifically prohibits DOL from enforcing the Farmworker Protection Rule in the states of Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, Tennessee, Texas, and Virginia, and against Miles Berry Farm and members of the Georgia Fruit and Vegetable Growers Association as of August 26, 2024.[2]

Therefore, for work performed at places of employment located in Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, Tennessee, Texas, and Virginia, as well as for work performed by Miles Berry Farm and members of the Georgia Fruit and Vegetable Growers Association as of August 26, 2024, the effective date of this **Federal Register** Notice is December 30, 2024. As an example, for work performed at places of employment located in Missouri, a state subject to the *Kansas* Order, this **Federal Register** Notice would be effective on December 30, 2024, but for work performed at places of employment located in Illinois, a state not subject to the *Kansas* Order, this **Federal Register** Notice would be effective December 16, 2024.

Authority: 20 CFR 655.120(b)(2); 20 CFR 655.103(b).

José Javier Rodríguez,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2024–29549 Filed 12–11–24; 4:15 pm]

BILLING CODE 4510–FP–P

[2] Neither the preliminary injunction issued in *Barton, et al.* v. *U.S. Department of Labor, et al.,* No. 5:24–cv–249–DCR (E.D. Ky., Nov. 25, 2024), nor the Section 705 stay issued in *International Fresh Produce Association, et al.* v. *U.S. Department of Labor, et al.,* No. 1:24–cv–309–HSO–BWR (S.D. Miss., Nov. 25, 2024) affect DOL's implementation or enforcement of 20 CFR 655.120(b)(2) as to the parties or entities subject to those orders.

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rate for Range Occupations

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is issuing this notice to announce updates to the Adverse Effect Wage Rate (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H–2A workers) to perform herding or production of livestock on the range. AEWRs are the minimum wage rates the DOL has determined must be offered, advertised in recruitment, and paid by employers to H–2A workers and workers in corresponding employment so that the wages and working conditions of workers in the United States (U.S.) similarly employed will not be adversely affected. In this notice, DOL announces the annual update of the AEWR for workers engaged in the herding or production of livestock on the range, as required by the methodology previously established in 2015.

DATES: The rate is effective January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5311, Washington, DC 20210, telephone: (202) 693–8200 (this is not a toll-free number). For persons with a hearing or speech disability who need assistance to use the telephone system, please dial 711 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A nonimmigrant temporary and seasonal agricultural workers in the U.S. unless the petitioner has received an H–2A labor certification from DOL. DOL issues such labor certification when it determines that (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

Adverse Effect Wage Rate

DOL's H–2A regulations covering the herding or production of livestock on the range, published in the **Federal Register** as the *Temporary Agricultural Employment of H–2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States,* 80 FR 62958 (Oct. 16, 2015), provide that employers must offer, advertise in recruitment, and pay each worker employed under 20 CFR 655.200 through 655.235 a wage that is at least the highest of the various wage sources listed in § 655.211(a)(1), including the monthly AEWR. *See* 20 CFR 655.210(g). Further, when the monthly AEWR is adjusted during a work contract, and is higher than both the agreed-upon collective bargaining wage and the applicable minimum wage imposed by Federal or State law or judicial action in effect at the time the work is performed, the employer must pay that adjusted monthly AEWR upon publication by DOL in the **Federal Register**. *See* 20 CFR 655.211(a)(2).

As provided in 20 CFR 655.211(c)(2), the monthly AEWR for range occupations in all States for a calendar year is based on the monthly AEWR for the previous calendar year ($1,982.96), adjusted by the Employment Cost Index (ECI) for wages and salaries published by the Bureau of Labor Statistics for the preceding annual period. The 12-month change in the ECI for wages and salaries of private industry workers between September 2023 and September 2024 was 3.8 percent, resulting in a monthly AEWR for range occupations in effect for the following year of $2,058.31.[1] The national monthly AEWR rate for all range occupations in the H–2A program is calculated by multiplying the

[1] The regulation at 20 CFR 655.211(c)(2) states that the monthly AEWR is calculated based on the ECI for wages and salaries ''for the preceding October–October period.'' This regulatory language was intended to identify the Bureau of Labor Statistics' (BLS) October publication of ECI for wages and salaries, which presents data for the September to September period. Accordingly, the most recent 12-month change in the ECI for private sector workers published on October 31, 2024, by BLS was used for establishing the monthly AEWR under the regulations. *See https://www.bls.gov/news.release/archives/eci_10312024.pdf.* The ECI for private sector workers was used rather than the ECI for all civilian workers given the characteristics of the H–2A herder workforce.

monthly AEWR for the previous year by the October 2024 ECI adjustment ($1,982.96 × 1.038 = $2,058.31) or $2,058.31. Accordingly, any employer certified or seeking certification for range workers must pay each worker a wage that is at least the highest of the various wage sources listed in § 655.211(a)(1), including the monthly AEWR of $2,058.31, at the time work is performed on or after the effective date of this notice.

Authority: 20 CFR 655.211(b).

José Javier Rodríguez,

Assistant Secretary Employment and Training, Labor.

[FR Doc. 2024–29550 Filed 12–11–24; 4:15 pm]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Rockwell Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 15, 2025.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0107 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0107.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–082–C.

Petitioner: Rockwell Mining, LLC, 250 West Main Street, Suite 2000 Lexington KY 40507.

Mine: Coal Branch No. 1 Mine, MSHA ID No. 46–09588, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) taken into or used inby the last open crosscut. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR–800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR–800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Coal Branch No. 1 Mine currently makes available to all miners NIOSH-approved high efficiency l00 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Coal Branch No. 1 Mine desires to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, MSHA's final rule *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect. The rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR–800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the ''fit test'' requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be taken into or used inby the last open crosscut.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used inby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used inby the last open crosscut shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment, prior to taking the equipment underground, to ensure that the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case.

(2) Remove the battery and inspect for corrosion.

(3) Inspect the contact points to ensure a secure connection to the battery.

(4) Reinsert the battery and power up and shut down to ensure proper connections.

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly, and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR–800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR inby the last open crosscut, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled or modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N; or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air, and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR or the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Rockwell Mining, LLC, Coal Branch No. 1 Mine, are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Rockwell Mining, LLC, Coal Branch No. 1 Mine, on November 21, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–29501 Filed 12–13–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Rockwell Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 15, 2025.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0108 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0108.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at

the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–083–C.

Petitioner: Rockwell Mining, LLC, 250 West Main Street, Suite 2000 Lexington KY 40507.

Mine: Coal Branch No. 1 Mine, MSHA ID No. 46–09588, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.507–1(a) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) taken into or used inby the last open crosscut or used in the return air outby the last open crosscut. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR–800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR–800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Coal Branch No. 1 Mine currently makes available to all miners NIOSH-approved high efficiency l00 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Coal Branch No. 1 Mine desires to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, MSHA's final rule *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect. The rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR–800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the ''fit test'' requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be taken into or used inby the last open crosscut or used in return air outby the last open crosscut.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used inby the last open crosscut or in the return air outby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used inby the last open crosscut or in the return air outby the last open crosscut shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment, prior to taking the equipment underground, to ensure that the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case.

(2) Remove the battery and inspect for corrosion.

(3) Inspect the contact points to ensure a secure connection to the battery.

(4) Reinsert the battery and power up and shut down to ensure proper connections.

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower

assembly are both contained within the ''power unit'' assembly, and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR–800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR inby the last open crosscut or in the return air outby the last open crosscut, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled or modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N; or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air, and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR or the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Rockwell Mining, LLC, Coal Branch No. 1 Mine are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Rockwell Mining, LLC, Coal Branch No. 1 Mine, on November 21, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–29499 Filed 12–13–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Rockwell Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 15, 2025.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0109 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0109.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–084–C.

Petitioner: Rockwell Mining, LLC, 250 West Main Street, Suite 2000, Lexington KY 40507.

Mine: Coal Branch No. 1 Mine, MSHA ID No. 46–09588, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.1002(a) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) within 150 feet of pillar workings or longwall faces. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR–800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR–800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Coal Branch No. 1 Mine currently makes available to all miners NIOSH-approved high efficiency l00 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Coal Branch No. 1 Mine desires to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, MSHA's final rule *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect. The rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR–800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the ''fit test'' requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be used within 150 feet of pillar workings or longwall faces.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used within 150 feet of pillar workings or longwall faces. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used within 150 feet of pillar workings or longwall faces shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment, prior to taking the equipment underground, to ensure that the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case.

(2) Remove the battery and inspect for corrosion.

(3) Inspect the contact points to ensure a secure connection to the battery.

(4) Reinsert the battery and power up and shut down to ensure proper connections.

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly, and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR–800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR within 150 feet of pillar workings or longwall faces, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled or modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N; or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air, and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR or the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Rockwell Mining LLC, Coal Branch No. 1 Mine, are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Rockwell Mining LLC, Coal Branch No. 1 Mine, on November 21, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–29503 Filed 12–13–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Rockwell Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 15, 2025.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0111 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0111.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–086–C.

Petitioner: Rockwell Mining, LLC, 250 West Main Street, Suite 2000, Lexington KY 40507.

Mine: Coal Branch No. 2 Mine, MSHA ID No. 46–09663, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.507–1(a) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) taken into or used inby the last open crosscut or used in the return air outby the last open crosscut. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR–800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR–800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Coal Branch No. 2 Mine currently makes available to all miners NIOSH-approved high efficiency l00 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Coal Branch No. 2 Mine desires to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, MSHA's final rule *Lowering Miners' Exposure to*

Respirable Crystalline Silica and Improving Respiratory Protection took effect. The rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR–800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the ''fit test'' requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be taken into or used inby the last open crosscut or used in return air outby the last open crosscut.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used inby the last open crosscut or in the return air outby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used inby the last open crosscut or in the return air outby the last open crosscut shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment, prior to taking the equipment underground, to ensure that the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case.

(2) Remove the battery and inspect for corrosion.

(3) Inspect the contact points to ensure a secure connection to the battery.

(4) Reinsert the battery and power up and shut down to ensure proper connections.

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly, and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR–800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR inby the last open crosscut or in the return air outby the last open crosscut, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled or modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N; or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air, and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR or the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Rockwell Mining, LLC, Coal Branch No. 2 Mine are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at

Rockwell Mining, LLC, Coal Branch No. 2 Mine, on November 21, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–29504 Filed 12–13–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Rockwell Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 15, 2025.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0110 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0110.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–085–C.

Petitioner: Rockwell Mining, LLC, 250 West Main Street, Suite 2000, Lexington KY 40507.

Mine: Coal Branch No. 2 Mine, MSHA ID No. 46–09663, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) taken into or used inby the last open crosscut. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR–800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR–800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Coal Branch No. 2 Mine currently makes available to all miners NIOSH-approved high efficiency l00 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Coal Branch No. 2 Mine desires to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, MSHA's final rule *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect. The rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR–800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the ''fit test'' requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be taken into or used inby the last open crosscut.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used inby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used inby the last open crosscut shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment, prior to taking the equipment underground, to ensure that the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case.

(2) Remove the battery and inspect for corrosion.

(3) Inspect the contact points to ensure a secure connection to the battery.

(4) Reinsert the battery and power up and shut down to ensure proper connections.

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly, and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR–800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR inby the last open crosscut, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled or modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N; or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air, and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR or the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Rockwell Mining, LLC, Coal Branch No. 2 Mine, are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Rockwell Mining, LLC, Coal Branch No. 2 Mine, on November 21, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–29500 Filed 12–13–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Rockwell Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 15, 2025.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0112 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0112.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–087–C.

Petitioner: Rockwell Mining, LLC, 250 West Main Street, Suite 2000, Lexington KY 40507.

Mine: Coal Branch No. 2 Mine, MSHA ID No. 46–09663, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.1002(a) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) within 150 feet of pillar workings or longwall faces. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR–800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR–800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Coal Branch No. 2 Mine currently makes available to all miners NIOSH-approved high efficiency l00 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Coal Branch No. 2 Mine desires to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, MSHA's final rule *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect. The rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR–800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the ''fit test'' requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be used within 150 feet of pillar workings or longwall faces.I

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used within 150 feet of pillar workings or longwall faces. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used within 150 feet of pillar workings or longwall faces shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment, prior to taking the equipment underground, to ensure that the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case.

(2) Remove the battery and inspect for corrosion.

(3) Inspect the contact points to ensure a secure connection to the battery.

(4) Reinsert the battery and power up and shut down to ensure proper connections.

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly, and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR–800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR within 150 feet of pillar workings or longwall faces, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled or modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N; or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air, and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR or the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Rockwell Mining LLC, Coal Branch No. 2 Mine, are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Rockwell Mining LLC, Coal Branch No. 2 Mine, on November 21, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–29502 Filed 12–13–24; 8:45 am]

BILLING CODE 4520–43–P

NATIONAL SCIENCE FOUNDATION

Request for Comments on NSF's Proposed Intellectual Property Options

AGENCY: U.S. National Science Foundation.

ACTION: Request for comments.

SUMMARY: The U.S. National Science Foundation (NSF) seeks public comments to inform the experimental implementation of new intellectual property (IP) provisions to be used in public-private partnerships, particularly those advancing research and development, that include co-funding by private partners. NSF is committed to fostering innovation and promoting the translation of research into practical applications. To enhance the effectiveness of public-private partnerships, NSF seeks to implement a set of options for IP provisions that provide greater flexibility and balance the interests of both academia and industry. Recent engagements, including the 2023 NSF-Industry Partnership Summit and subsequent listening sessions, have highlighted the need for optional IP strategies that can adapt to the unique requirements of various funded projects. NSF intends to incorporate these IP options into partnership agreements involving industry and/or non-profit organizations for funding opportunities whose funded awards may result in the generation of IP. Through this Request for Comments (RFC), NSF invites input from a wide range of stakeholders, including industry, academia, non-profit organizations, other government agencies, and other interested parties.

DATES: Interested persons or organizations are invited to submit comments on or before 11:59 p.m. (EST) on Friday, January 24, 2025.

ADDRESSES: To respond to this Request for Comments, please use the official submission form available at: *https://airtable.com/app9KPUhqR2lAb4Zf/pag9d0QhLcOXkGlud/form.*

Respondents only need to provide feedback on one or more questions of interest or relevance to them. Each question is voluntary and optional. The response to each question has a 4,000-character limit including spaces.

FOR FURTHER INFORMATION CONTACT: For further information, please direct questions to Allen Walker through email at *NSF-IPOptions-RFC@nsf.gov,* phone at 703–292–2291, or mail at U.S. National Science Foundation, ATTN: Allen Walker, 2415 Eisenhower Avenue, Alexandria, VA 22314, USA.

SUPPLEMENTARY INFORMATION: The 2023 NSF-Industry Partnership Summit and subsequent engagements revealed differing viewpoints in stakeholders' perspectives regarding NSF's existing IP terms. In response, the Directorate for Technology, Innovation and Partnerships (TIP) has developed a series of IP grant-of-rights options to address these concerns. These options are informed by the Bayh-Dole Act and aim to promote the practical application and commercialization of federally funded research while preserving potential access to the IP for the U.S. Government.

Below is the language for each of the three IP grant-of-rights options to be used in partnership agreements. These IP options can be tailored according to the particular research area and the specific terms and conditions agreed upon between NSF and the partner(s) in a particular public-private partnership.

A. Research License With Commercial Option

The disposition of rights to inventions or works of authorship made during NSF-funded research is governed by Federal law, regulation, and policy, including but not limited to, 35 U.S.C. 200–212 and 37 CFR part 401. Pursuant to applicable laws, regulations, and policies, the entire right, title, and

interest of Intellectual Property (IP) that directly results from activities funded by NSF (''Project IP'') is retained by the entity that created it. While recipients are permitted to temporarily withhold the publication of data and software related to inventions to facilitate patent application filings, NSF terms and conditions require the subsequent prompt publication of all research outputs—including results, data, and software—generated in the performance of the research.

All partners are entitled to a non-exclusive, royalty-free license for use of Project IP for research purposes for a period of 18 months from the date of disclosure of the Project IP. This license shall not extend to any IP other than Project IP. This 18-month period is structured as follows:

1. *Notice Period:* For the first 12 months after disclosure of the Project IP, any partner shall have a right to indicate in writing that they are exercising their Right of First Negotiation (''ROFN'') for an opportunity to secure an exclusive commercial license during the Negotiation/Option Period.

2. *Negotiation/Option Period:* Following the 12-month Notice Period, there shall be a 6-month period during which partners so exercising their ROFN may negotiate for an exclusive commercial license.

If an exclusive commercial license is secured by one partner during the Negotiation/Option Period, all other partners' rights shall automatically become a perpetual, non-exclusive, royalty-free license for research purposes only.

If no exclusive commercial license is secured by the end of the Negotiation/Option Period, the non-exclusive license granted herein shall, for all partners, automatically convert into a perpetual non-exclusive, royalty-free license for research purposes only.

Pursuant to the Bayh-Dole Act, NSF is entitled to a non-exclusive, irrevocable, paid-up license throughout the world for use of Project IP that directly results from activities funded by NSF.

B. Convertible Commercial License

The disposition of rights to inventions or works of authorship made during NSF-funded research is governed by Federal law, regulation, and policy, including but not limited to, 35 U.S.C. 200–212 and 37 CFR part 401. Pursuant to applicable laws, regulations, and policies, the entire right, title, and interest of Intellectual Property (IP) that directly results from activities funded by NSF (''Project IP'') is retained by the entity that created it. While recipients are permitted to temporarily withhold the publication of data and software related to inventions to facilitate patent application filings, NSF terms and conditions require the subsequent prompt publication of all research outputs—including results, data, and software—generated in the performance of the research.

All partners are entitled to a non-exclusive, royalty-free license for use of Project IP for both research and commercial purposes for a period of 18 months from the date of disclosure of the Project IP. This license shall not extend to any IP other than Project IP. This 18-month period is structured as follows:

1. *Notice Period:* For the first 12 months after disclosure of the Project IP, any partner shall have the have a right to indicate in writing that they are exercising their Right of First Negotiation (''ROFN'') for an opportunity to secure an exclusive commercial license during the Negotiation/Option Period.

2. *Negotiation/Option Period:* Following the 12-month Notice Period, there shall be a 6-month period during which partners so exercising their ROFN may negotiate for an exclusive commercial license.

If an exclusive commercial license is secured by one partner during the Negotiation/Option Period, all other partners' rights shall automatically convert into a perpetual non-exclusive, royalty-free license for research purposes only.

If no exclusive commercial license is secured by the end of the Negotiation/Option Period, the non-exclusive license granted herein shall, for all partners, automatically convert into a perpetual non-exclusive, royalty-free license for research purposes only.

Pursuant to the Bayh-Dole Act, NSF is entitled to a non-exclusive, irrevocable, paid-up license throughout the world for use of Project IP that directly results from activities funded by NSF.

C. Research-Only License

The disposition of rights to inventions or works of authorship made during NSF-funded research is governed by Federal law, regulation, and policy, including but not limited to, 35 U.S.C. 200–212 and 37 CFR part 401. Pursuant to applicable laws, regulations, and policies, the entire right, title, and interest of Intellectual Property (IP) that directly results from activities funded by NSF (''Project IP'') is retained by the entity that created it, following applicable Federal law. While recipients are permitted to temporarily withhold the publication of data and software related to inventions to facilitate patent application filings, NSF terms and conditions require the subsequent prompt publication of all research outputs—including results, data, and software—generated in the performance of the research.

All partners are entitled to a non-exclusive, royalty-free license for use of Project IP for research purposes. This license shall not extend to any intellectual property other than Project IP.

Pursuant to the Bayh-Dole Act, NSF is entitled to a non-exclusive, irrevocable, paid-up license throughout the world for use of Project IP that directly results from activities funded by NSF.

Questions for Public Comment

NSF welcomes comments from the public on any issues that are relevant to this topic, and is particularly interested in answers to the following questions:

Overall Impact: How do you believe these proposed IP options will impact innovation, technology transfer, and economic growth?

Balance: Do these options ensure a balanced distribution of IP rights between academia and industry partners? How can the proposed IP options be further refined to ensure maximum balance in IP arrangements?

Flexibility: What additional flexibility should be incorporated into the IP options to accommodate and incentivize a range of research initiatives?

Adoption: What strategies could NSF employ to encourage widespread adoption of these IP options among potential partners?

Barriers: What potential barriers exist to implementing these IP options, and how might they be overcome?

Translation and Incentives: Do the proposed IP options effectively promote the translation of research into practice while incentivizing industry participation and ensuring benefits for universities and researchers? What improvements could be made to enhance these aspects?

Additional Options: Are there other IP grant-of-rights options or frameworks that NSF should consider to better support collaborative research initiatives and facilitate research impact?

NSF, at its discretion, will use the information submitted in response to this RFC to help inform future program directions, new initiatives, and potential funding opportunities. The information provided will be analyzed, may appear in reports, and may be shared publicly on agency websites. Respondents are advised that the government is under no obligation to acknowledge receipt of the information or provide feedback to

respondents with respect to any information submitted. *No proprietary, classified, confidential, or sensitive information should be included in your response submission.* The government reserves the right to use any non-proprietary technical information in any resultant solicitations, policies, or procedures.

(Authority: Pub L. 117–167.)

Dated: December 11, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–29523 Filed 12–13–24; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of December 16, 23, 30, 2024 and January 6, 13, 20, 2025. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of December 16, 2024

There are no meetings scheduled for the week of December 16, 2024.

Week of December 23, 2024—Tentative

There are no meetings scheduled for the week of December 23, 2024.

Week of December 30, 2024—Tentative

There are no meetings scheduled for the week of December 30, 2024.

Week of January 6, 2025—Tentative

There are no meetings scheduled for the week of January 6, 2025.

Week of January 13, 2025—Tentative

Tuesday, January 14, 2025

9:00 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Nuclear Materials Users Business Lines (Public Meeting) (Contact: Araceli Billoch Colon: 301–415–3302)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of January 20, 2025—Tentative

There are no meetings scheduled for the week of January 20, 2025.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: December 12, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–29660 Filed 12–12–24; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 99902056; NRC–2024–0146]

Tennessee Valley Authority; Clinch River Nuclear Site; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a request dated November 30, 2023, from Tennessee Valley Authority for approval to conduct certain excavation support activities prior to the issuance of a construction permit application for the Clinch River Nuclear Site.

DATES: The exemption was issued on December 10, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0146 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0146. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Allen Fetter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8556; email: *Allen.Fetter@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: December 11, 2024.

For the Nuclear Regulatory Commission.

Allen Fetter,

Senior Project Manager, Licensing and Regulatory Infrastructure Branch, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

[Docket No. 99902056; NRC–2024–0146]

Tennessee Valley Authority Clinch River Nuclear Site; Exemption

1.0 Background

By letter dated November 30, 2023 (Agency wide Documents Access and Management System (ADAMS) Accession Number ML23335A100), Tennessee Valley Authority (TVA) submitted a request for an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.10(c). The U.S. Nuclear Regulatory Commission (NRC or the NRC staff) has reviewed this request for an exemption, pursuant to 10 CFR 50.12, as it relates to TVA's request to conduct certain excavation support activities that are otherwise prohibited by 10 CFR 50.10(c) prior to the issuance of a construction permit (CP) application for the Clinch River Nuclear (CRN) Site, which is expected to be submitted for NRC review in 2025. This exemption would authorize TVA to conduct certain excavation activities at the CRN Site and to abandon in place the initial ground support system, which may include rock bolts, wire mesh, horizontal gravity drains, and pressurized grout.

Granting this exemption does not obviate the need for the applicant to meet the Permit Conditions or Action Items in the Early Site Permit for the CRN Site. Granting this exemption would also not constitute a commitment by the NRC to issue a CP for the CRN Site. TVA would conduct these excavation activities assuming the risk that its CP application may later be denied.

2.0 Request/action

The proposed action, as described in TVA's request for an exemption from 10 CFR 50.10(c), would allow TVA to conduct certain excavation activities which would otherwise be prohibited prior to issuance of a CP. This exemption would authorize TVA to abandon in place the initial ground support system for conducting certain excavation activities at the CRN Site. According to TVA, the initial ground support system for the reactor will serve no function in the completed reactor building (RB). As such, TVA's interpretation of NRC regulations is that this proposed construction does not have a reasonable nexus to nuclear safety or security and therefore does not meet the definition of ''construction,'' as defined in 10 CFR 50.10(a). However, NRC regulations clearly require that the activities described by TVA that involve the placement/installation of permanent parts of the overall facility are considered ''construction'' as defined in 10 CFR 50.10(a) (see 72 FR 57416, pp. 57416–57447). Therefore, an exemption from the requirements of 10 CFR 50.10(c) is needed for TVA's request.

TVA states that the initial ground support system includes the following activities:

- rock bolts to secure unstable rock blocks, as required;
- wire mesh and a non-structural sprayed-gunite lining to stabilize and protect exposed rock walls;
- horizontal gravity drains to manage groundwater, as required;
- pressurized grout to seal any notable areas of water entry, as required.

TVA also states that additional components of the initial ground support system, depending on the excavation method selected, may include items such as the following or similar:

- steel soldier beams with timber lagging through the soil overburden and weathered rock;
- rock bolts to secure soldier beams; and
- reinforced concrete compression rings to provide lateral support for the soldier beams.

As construction of the permanent plant structures proceeds, TVA states that the initial ground support system is infeasible to remove and would be abandoned in place. After abandonment, the initial ground support system would have no function in the completed RB construction.

In its exemption request, TVA stated that the proposed exemption is needed to allow excavation to proceed in advance of the issuance of the CP for the CRN Site. The initial ground support system would allow TVA to complete certain on-site activities in parallel with the licensing process, so that it can begin construction promptly upon issuance of the CP. The on-site activities will ensure worker safety as the excavation activities proceed.

3.0 Discussion

Pursuant to 10 CFR 50.12(a), the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemption is authorized by law, will not present an undue risk to public health or safety, and is consistent with the common defense and security; and

(2) when special circumstances are present.

Under 10 CFR 50.12(b), to issue an exemption from 10 CFR 50.10 that would allow for the conduct of activities prior to the issuance of a construction permit, the Commission may grant such an exemption upon considering and balancing the following factors: (1) whether conduct of the proposed activities will give rise to a significant adverse impact on the environment and the nature and extent of such impact, if any; (2) whether redress of any adverse environment impact from conduct of the proposed activities can reasonably be effected should such redress be necessary; (3) whether conduct of the proposed activities would foreclose subsequent adoption of alternatives; and (4) the effect of delay in conducting such activities on the public interest, including the power needs to be used by the proposed facility, the availability of alternative sources, if any, to meet those needs on a timely basis and delay costs to the applicant and to consumers.

10 CFR 50.12(a)(1): Authorized by Law

This exemption would authorize the applicant to abandon in place the initial ground support system prior to issuance of a CP for the CRN Site. Granting of the applicant's proposed exemption will not otherwise result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the NRC staff finds that the exemption is authorized by law.

10 CFR 50.12(a)(1): No Undue Risk to Public Health and Safety

In determining that the proposed exemption would not pose an undue risk to public health and safety and that the applicant could be exempted from the prohibition on construction for the limited purpose of the installation and subsequent abandonment of the initial ground support system to ensure worker safety during the onsite excavation activities, the NRC staff evaluated the safety aspects of the exemption in the areas of Geology and Geotechnical Engineering because the excavation activities described by TVA are specific to those technical review areas.

Geology

The NRC staff reviewed geologic information in the CRN Site exemption request using the criteria in NUREG–0800, Standard Review Plan (SRP), Chapter 2.5.1, ''Geological Characterization Information'' and Chapter 2.5.3, ''Surface Deformation.''

The related excavation support activities requested in the exemption request would result in covering the excavation floor and walls; therefore, the purpose of staff's review was to determine whether the proposed activities to be completed under the exemption request would affect TVA's ability to meet the terms of the Clinch River Site early site permit (ESP–006), issued on December 19, 2019 (ML19352D868), with respect to geologic mapping of the foundation-bearing rock unit, to include the floor and walls of the open excavation. ESP–006 included permit condition #3, which requires TVA to perform detailed geologic mapping of excavations for safety-related engineered structures, examine and evaluate geologic features discovered in those excavations, and notify the staff once excavations for safety related structures are open for examination. The geologic mapping of the foundation-bearing unit in the open excavation required under permit condition #3 would not be implementable once the excavations support activities proposed in this exemption request are complete. Therefore, the staff considered how this permit condition can be met under this exemption request.

For this exemption request, staff planned and conducted a virtual regulatory audit between March 5, 2024, and May 3, 2024. Audit information needs were provided to TVA in an audit plan (ML24060A069) and through a supplemental additional information request from the NRC staff (ML24075A322).

During the virtual audit (see NRC Audit Summary Report, ML24145A107), the applicant summarized how it would perform the geologic mapping of the excavation as required in permit condition #3 of ESP–006 (Early Site Permit for the Clinch River Nuclear Site, ML1935D868). The applicant clarified that during the excavation activities requested in the exemption, geologic mapping will be conducted for each lift before the excavation walls are covered by any stabilization methods and the subsequent lift commences. The applicant further clarified that the data obtained from mapping each lift will be available as it is recovered during the excavation activities.

The staff reviewed the applicant's response to audit questions about how the applicant intends to perform the necessary geologic mapping to obtain the required information to address permit condition #3 in ESP–006 related to geologic mapping of the excavation. The staff concludes that because the applicant will perform the geologic mapping as the requested early excavation activities proceed and that information will be made available before the subsequent lifts commence, these early excavation activities will not affect the satisfactory addressing of permit condition #3 in ESP–006. Because the applicant will obtain the information necessary to meet the terms of the geologic mapping permit condition to ensure the foundation-bearing geologic unit meets the criteria reviewed and approved in the ESP, the staff concludes that there is no undue risk to public health and safety in approving this exemption request.

Geotechnical Engineering

The NRC staff evaluated geotechnical engineering information in the CRN Site exemption request using the criteria in NUREG–0800, Standard Review Plan (SRP), Chapter 2.5.4, ''Stability of Subsurface Materials and Foundations''. The guidance that applies to aspects of the early excavation exemption request includes specific criteria from:

1. RG 1.132, ''Site Investigations for Foundations of Nuclear Power Plants.''

2. RG 1.138 ''Laboratory Investigations of Soils and Rocks for Engineering Analysis and Design of Nuclear Power Plants.''

For this exemption request, staff conducted a virtual regulatory audit between March 5, 2024, and May 3, 2024. Audit information needs were provided to TVA in an audit plan (ML24060A069) and through a supplemental additional information request from the NRC staff (ML24075A322). In response to the staff's information needs, the applicant provided a summary of disposition regarding Early Site Permit (ESP) permit condition #4 that relate to geotechnical engineering (Audit Summary Report ML24145A107).

ESP–006 permit condition #4 requires TVA to remove the material above El. 225.9 m (741 ft) NAVD88 in the areas where safety-related structures will be located to minimize adverse effects of discontinuities, weathered and shear-fracture sones, and karst features on the stability of the subsurface materials and foundations. Permit condition #4 also requires TVA to perform additional investigations at the excavation level to identify any potential geologic features that may adversely impact the stability of subsurface materials and foundations. The staff considered how this permit condition can be met under this exemption request.

The applicant intends to address the ESP–006 permit condition #4 to ensure that compliance with relevant terms and conditions of the early site permit will not be affected by the excavation performed pursuant to the exemption request. Specifically, the applicant stated that the proposed BWRX–300 RB foundation elevation is located below the required permit condition excavation elevation and the applicant will remove the material above Elevation 225.9m (741 ft) NAVD 88 in the RB area as part of the early excavation. In addition, the applicant stated that it will provide details of its supplemental site investigation program at the center and perimeter of the RB shaft as part of a future CP application. The applicant will perform additional investigations in accordance with RG 1.132 at the foundation level if any significant anomalous issues are discovered while performing the excavation and geologic mapping of the RB shaft. In addition, the applicant stated that the activities related to this early excavation exemption request should not affect addressing the permit conditions and CP or COL action items in a future application.

The staff reviewed the applicant's summary of dispositions clarifying how the applicant intends to address permit condition #4. Given that the applicant will gather all necessary data during the activities that involve this early excavation exemption request and will utilize it to address regulatory requirements in a subsequent application, the staff finds that this early excavation activities would not pose an undue risk to public health and safety and would not affect addressing permit condition #4 in ESP–006.

The applicant states that it plans to use a combination of stabilization methods as the initial ground support system for erosion control to ensure the safety of their employees and to facilitate construction activities. The applicant stated that the initial ground support system serves no function in the completed RB construction, but that its components are not feasible to remove and will remain in place. The applicant indicated that the initial ground support system is expected to be composed of rock bolts, wire mesh and non-structural sprayed-gunite, horizontal gravity drains, and pressurized grout. Depending on the final excavation method, the applicant stated that the initial ground support system could also include steel soldier beams and reinforced concrete compression rings. In addition, the applicant stated that no part of the RB walls or foundations will be installed before a CP is approved.

During the virtual audit, the applicant provided a conceptual excavation plan describing its planning efforts for the excavation, such as site preparation

activities, installation of field instrumentation, methods of excavation, construction of temporary crane pads, temporary dewatering systems, a finite element model to assess the impact of dewatering and construction stages on excavation support and foundation, geologic mapping, and stabilization methods. In a CP application, the applicant plans to quantify and incorporate the impacts of rock excavation on the mechanical properties in a numerical simulation for the assessment of the foundations. The applicant stated that it will also develop an instrumentation and monitoring program consistent with Chapter 3.4 of the approved Licensing Topical Report (LTR) NEDO–33914–A to meet regulatory requirements. The applicant stated that it plans to monitor lateral and vertical displacement during excavation and construction. In addition, during the excavation the applicant plans to monitor slope movement, heave, changes in pore pressures and dewatering, and settlement.

During the virtual audit, the applicant clarified that neither the annulus filled with lean concrete nor the steel plate composite RB walls, as shown in Figure 1 ''Conceptual Layout of Excavation utilizing Soldier Beams and Compression Rings'' of the exemption request, are considered part of this early excavation exemption request. Furthermore, the applicant stated that the emplacement of the annulus will occur after CP issuance and that it will be approximately 5 feet wide around the RB shaft, thus separating the RB from the excavation and any abandoned initial ground support system.

The staff reviewed the description of the design methodology for the BWRX–300 as approved in the LTR NEDO–33914–A Section 5.0, Revision 1, and notes that the BWRX–300 design does not rely on the resistance provided by initial ground support system. However, the staff noted that in accordance with the design methodology, the applicant must consider the effects of the initial ground support system in its seismic sensitivity analysis for a future application. Therefore, in the event that, during early excavation, the applicant needs additional retaining measures as part of the initial ground support system, the potential effects of all retaining measures on the RB structure shall be included as part of the SSI sensitivity analysis in a future CP licensing application.

Based on the foregoing and in accordance with 10 CFR 50.12(a)(1), the staff finds that the proposed exemption that would permit the installation of an initial ground support system for erosion control measures and subsequently abandon it in place prior to the issuance of a CP, would not pose an undue risk to public health and safety because (1) the applicant will gather all necessary data during the activities that involve this early excavation exemption request and will utilize it to address regulatory requirements and relevant ESP–006 permit conditions; (2) the applicant will include demonstration of the structural integrity of the RB prior to the presence or use of radiological materials on the CRN Site to provide adequate protection of the public health and safety; (3) the initial ground support system will not perform a support function of the RB since the BWRX–300 design does not rely on the resistance provided by initial ground support system; (4) the annulus filled with lean concrete will separate the RB from the excavation and any abandoned initial ground support system, and (5) the applicant will consider the potential effects of all retaining measures (including the initial ground support system) on the RB structure as part of the Soil-Structure Interaction (SSI) sensitivity analysis in a future licensing application.

10 CFR 50.12(a): Consistent With Common Defense and Security

The proposed exemption would allow the applicant to pursue excavation of the CRN Site and install the initial ground support system to ensure worker safety during excavation activities. Because the exemption would allow for early excavation and excavation wall support only, the exemption has no relation to defense and security issues. Therefore, the common defense and security is not impacted by this exemption.

10 CFR 50.12(a)(2): Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(iii), are present whenever ''compliance [with a regulation] would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated''. The applicant cited undue hardship or other costs as a special circumstance that would warrant granting this exemption. The applicant stated that removal of the initial ground support system, which would make the system temporary and therefore not ''construction,'' as defined in 10 CFR 50.10(a), is infeasible because the initial ground support system is necessary for personnel safety and removal of these items could potentially destabilize the rock walls. The applicant stated that the delay in excavation for the RB at the CRN Site until receipt of the CP will result in substantial costs due to delays to the construction schedule and commercial operation of CRN Unit 1, hence delaying the deployment of carbon-free electricity generation.

10 CFR 50.12(b): Environmental Considerations

The applicant has also provided information on this proposed action pursuant to 10 CFR 50.12(b) which states any person may request an exemption permitting the conduct of activities prior to the issuance of the construction permit prohibited by 10 CFR 50.10. The NRC staff considered the balancing factors for granting such an exemption and its evaluation is documented in the environmental assessment (EA) that is attached to this package. The ADAMS Accession number for this associated EA is ML24310A024. The staff made a finding of no significant impact.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a) and 10 CFR 50.12 (b), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present.

Therefore, the Commission hereby grants Tennessee Valley Authority an exemption from the requirements in 10 CFR 50.10(c) for the installation of initial ground support system prior to and during excavation activities.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (89 FR 90319).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 10th day of December 2024.

For the Commission

/RA/

Michele Sampson,
Director Division of New and Renewed Licenses Office of New Reactors.

[FR Doc. 2024–29564 Filed 12–13–24; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Performance Review Board Members

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) announces the appointment of members of the PBGC Performance Review Board.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), made applicable by PBGC's Senior Level Performance Management System, PBGC announces the appointment of those individuals who have been selected to serve as members of PBGC's Performance Review Board. The Performance Review Board is responsible for making recommendations on each senior level (SL) professional's annual summary rating, performance-based adjustment, and performance award to the appointing authority.

The following individuals have been designated as members of PBGC's 2024 Performance Review Board:

1. Ann Orr, Acting Director
2. David Foley, Chief of Benefits Administration
3. Patricia Kelly, Chief Financial Officer
4. Alice Maroni, Chief Management Officer

Issued in Washington, DC.

Ann Y. Orr,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2024–29553 Filed 12–13–24; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2020–246; MC2025–691 and K2025–690; MC2025–692 and K2025–691; MC2025–693 and K2025–692; MC2025–694 and K2025–693; MC2025–695 and K2025–694; MC2025–696 and K2025–695; MC2025–697 and K2025–696; MC2025–698 and K2025–697; MC2025–699 and K2025–698; MC2025–700 and K2025–699; MC2025–701 and K2025–700; MC2025–702 and K2025–701; MC2025–703 and K2025–702; MC2025–704 and K2025–703; MC2025–705 and K2025–704; MC2025–706 and K2025–705; MC2025–707 and K2025–706; MC2025–708 and K2025–707; MC2025–709 and K2025–708; MC2025–710 and K2025–709; MC2025–711 and K2025–710; MC2025–712 and K2025–711; MC2025–713 and K2025–712; MC2025–714 and K2025–713; MC2025–715 and K2025–714; MC2025–716 and K2025–715; MC2025–717 and K2025–716; MC2025–718 and K2025–717; MC2025–719 and K2025–718; MC2025–720 and K2025–719; MC2025–721 and K2025–720; MC2025–722 and K2025–721; MC2025–723 and K2025–722; MC2025–724 and K2025–723; MC2025–725 and K2025–724; MC2025–726 and K2025–725; MC2025–727 and K2025–726; MC2025–728 and K2025–727; MC2025–729 and K2025–728; MC2025–730 and K2025–729]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 17, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*https://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).:* CP2020–246; *Filing Title:* Request of the United States Postal Service Concerning Modification Four to Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 8 Negotiated Service Agreement, Which Includes an Extension of That Agreement; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 CFR 3035.105, 39 CFR 3041.505, and 39 CFR 3041.515; *Public Representative:* Katalin Clendenin; *Comments Due:* December 17, 2024.

2. *Docket No(s).:* MC2025–691 and K2025–690; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 949 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Katalin Clendenin; *Comments Due:* December 17, 2024.

3. *Docket No(s).:* MC2025–692 and K2025–691; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 950 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Katalin Clendenin; *Comments Due:* December 17, 2024.

4. *Docket No(s).:* MC2025–693 and K2025–692; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 951 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 17, 2024.

5. *Docket No(s).:* MC2025–694 and K2025–693; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 952 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 17, 2024.

6. *Docket No(s).:* MC2025–695 and K2025–694; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 953 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* December 17, 2024.

7. *Docket No(s).:* MC2025–696 and K2025–695; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 954 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* December 17, 2024.

8. *Docket No(s).:* MC2025–697 and K2025–696; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 955 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* December 17, 2024.

9. *Docket No(s).:* MC2025–698 and K2025–697; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 519 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* December 17, 2024.

10. *Docket No(s).:* MC2025–699 and K2025–698; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 956 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 17, 2024.

11. *Docket No(s).:* MC2025–700 and K2025–699; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 957 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 17, 2024.

12. *Docket No(s).:* MC2025–701 and K2025–700; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 958 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 17, 2024.

13. *Docket No(s).:* MC2025–702 and K2025–701; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 959 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jana Slovinska; *Comments Due:* December 17, 2024.

14. *Docket No(s).:* MC2025–703 and K2025–702; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 960 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jana Slovinska; *Comments Due:* December 17, 2024.

15. *Docket No(s).:* MC2025–704 and K2025–703; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 961 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* December 17, 2024.

16. *Docket No(s).:* MC2025–705 and K2025–704; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 962 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Samuel Robinson; *Comments Due:* December 17, 2024.

17. *Docket No(s).:* MC2025–706 and K2025–705; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 963 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39

CFR 3041.310; *Public Representative:* Samuel Robinson; *Comments Due:* December 17, 2024.

18. *Docket No(s).:* MC2025–707 and K2025–706; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 520 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Samuel Robinson; *Comments Due:* December 17, 2024.

19. *Docket No(s).:* MC2025–708 and K2025–707; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 964 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 17, 2024.

20. *Docket No(s).:* MC2025–709 and K2025–708; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 965 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 17, 2024.

21. *Docket No(s).:* MC2025–710 and K2025–709; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 966 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* December 17, 2024.

22. *Docket No(s).:* MC2025–711 and K2025–710; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 967 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 17, 2024.

23. *Docket No(s).:* MC2025–712 and K2025–711; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 968 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* December 17, 2024.

24. *Docket No(s).:* MC2025–713 and K2025–712; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 969 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* December 17, 2024.

25. *Docket No(s).:* MC2025–714 and K2025–713; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 970 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* December 17, 2024.

26. *Docket No(s).:* MC2025–715 and K2025–714; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 971 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 17, 2024.

27. *Docket No(s).:* MC2025–716 and K2025–715; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 972 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 17, 2024.

28. *Docket No(s).:* MC2025–717 and K2025–716; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 973 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 17, 2024.

29. *Docket No(s).:* MC2025–718 and K2025–717; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 974 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* December 17, 2024.

30. *Docket No(s).:* MC2025–719 and K2025–718; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 975 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* December 17, 2024.

31. *Docket No(s).:* MC2025–720 and K2025–719; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 976 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* December 17, 2024.

32. *Docket No(s).:* MC2025–721 and K2025–720; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 977 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* December 17, 2024.

33. *Docket No(s).:* MC2025–722 and K2025–721; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 978 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* December 17, 2024.

34. *Docket No(s).:* MC2025–723 and K2025–722; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 979 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* December 17, 2024.

35. *Docket No(s).:* MC2025–724 and K2025–723; *Filing Title:* USPS Request to Priority Mail & USPS Ground Advantage Contract 521 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 17, 2024.

36. *Docket No(s).:* MC2025–725 and K2025–724; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 980 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* December 17, 2024.

37. *Docket No(s).:* MC2025–726 and K2025–725; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 981 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 17, 2024.

38. *Docket No(s).:* MC2025–727 and K2025–726; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 982 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 17, 2024.

39. *Docket No(s).:* MC2025–728 and K2025–727; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 983 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 17, 2024.

40. *Docket No(s).:* MC2025–729 and K2025–728; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 984 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 17, 2024.

41. *Docket No(s).:* MC2025–730 and K2025–729; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 985 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 17, 2024.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Mallory S. Richards,

Federal Register Liaison.

[FR Doc. 2024–29513 Filed 12–13–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101868; File No. SR–NYSEARCA–2024–90]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule Concerning the Options Regulatory Fee (ORF)

December 10, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 25, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding the Options Regulatory Fee (''ORF''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) temporarily waive the ORF for the period December 1, 2024 through December 31, 2024 (the ''Waiver Period''), and (2) delete outdated language relating to a prior ORF waiver and superseded ORF rate.

Background

As a general matter, the Exchange may only use regulatory funds such as the ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[4] More specifically, the ORF is designed to recover a material portion, but not all, of the Exchange's costs for the supervision and regulation of OTP Holders and OTP Firms (collectively, ''OTP Holders''), including the Exchange's regulatory program and legal expenses associated with options regulation, such as the costs related to in-house staff, third-party service providers, and technology that facilitate regulatory functions such as surveillance, investigation, examinations, and enforcement (collectively, the ''ORF Costs''). ORF funds may also be used for indirect expenses such as human resources and other administrative costs. The Exchange monitors the amount of revenue collected from the ORF to ensure that this revenue, in combination with other regulatory fees and fines, does not exceed regulatory costs.

The ORF is assessed on OTP Holders for options transactions that are cleared

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange considers surveillance operations part of regulatory operations. The limitation on the use of regulatory funds also provides that they shall not be distributed. *See* Bylaws of NYSE Arca, Inc., Art. II, Sec. 2.03.

by the OTP Holder through the Options Clearing Corporation (''OCC'') in the Customer range regardless of the exchange on which the transaction occurs and is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca.[5] All options transactions must clear via a clearing firm and such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. The Exchange notes that the costs relating to monitoring OTP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring OTP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating OTP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the OTP Holder's relationship with its Customers via more labor-intensive exam-based programs.[6] As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* OTP Holder proprietary transactions) of its regulatory program.

Because the ORF is based on options transactions volume, the amount of ORF collected is variable. For example, if options transactions reported to OCC in a given month increase, the ORF collected from OTP Holders will likely increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from OTP Holders will likely decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed [sic] the ORF Costs. If the Exchange determines the amount of ORF collected exceeds [sic] or may exceed [sic] ORF Costs, the Exchange will, as appropriate, adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the ''Commission''). Exchange rules establish that market participants must be notified of any change in the ORF via Trader Update at least 30 calendar days prior to the effective date of the change.[7]

Proposed Rule Change

Based on the Exchange's recent review of regulatory costs, ORF collections, and options transaction volume, the Exchange proposes to waive the ORF from December 1 through December 31, 2024 in order to help ensure that the amount collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange proposes to resume assessing the ORF on January 1, 2025 at the current rate of $0.0038 per contract. The Exchange notified OTP Holders of the proposed change to the ORF via Trader Update on October 30, 2024[8] (which was at least 30 calendar days prior to the proposed operative date of the waiver, December 1, 2024) so that market participants have sufficient opportunity to configure their systems to account properly for the waiver of the ORF.

The proposed waiver is based on the Exchange's analysis of recent options volumes and its regulatory costs. The Exchange believes that, if the ORF is not adjusted, the ORF revenue to the Exchange year over year could exceed a material portion of the Exchange's ORF Costs. The options industry has continued to experience very high options trading volumes and volatility, and although the Exchange recently reduced the ORF as of January 1, 2024,[9] the persisting increased options volumes have impacted the Exchange's ORF collection.

The options industry has continued to experience high options trading volumes, as illustrated in the table below reflecting industry data from OCC for 2022, 2023, and 2024:[10]

	2022	2023	2024
Customer ADV	34,091,409	35,957,560	38,412,142
Total ADV	76,488,459	81,483,685	86,706,482

Both total average daily volume and customer average daily volume in 2024 increased over the already elevated levels in 2022 and 2023. In addition, the below industry data from OCC demonstrates the high options trading volumes and volatility that the industry has continued to experience in 2024:

	May 2024	June 2024	July 2024	August 2024	September 2024	October 2024
Customer ADV	36,231,012	39,784,756	40,657,739	38,558,587	39,214,407	39,920,560
Total ADV	72,462,024	79,569,512	81,315,478	77,117,174	78,428,814	79,841,120

[5] *See* Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, Regulatory Fees, Options Regulatory Fee (''ORF''), *available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.* The Exchange uses reports from OCC when assessing and collecting the ORF. The ORF is not assessed on outbound linkage trades. An OTP Holder is not assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE Arca. *See id.*

[6] The Exchange notes that many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running, and contrary exercise advice violations/expiring exercise declarations. The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. *See, e.g.,* Securities Exchange Act Release No. 85097 (February 11, 2019), 84 FR 4871 (February 19, 2019).

[7] *See* Fee Schedule, *supra* note 5.

[8] *See https://www.nyse.com/trader-update/history#110000945374.*

[9] *See* Securities Exchange Act Release No. 98676 (October 3, 2023), 88 FR 69969 (October 10, 2023) (SR–NYSEARCA–2023–68) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule To Modify the Options Regulatory Fee). The Exchange also previously filed to waive the ORF from October 1, 2023 through December 31, 2023. *See id.*

[10] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.* The volume discussed in this filing is based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, in contract sides.

Because of the sustained impact of the trading volumes that have persisted through 2024, along with the difficulty of predicting if and when volumes may return to historical levels, the Exchange proposes to waive the ORF from December 1 through December 31, 2024 to help ensure that ORF collection will not exceed [sic] ORF Costs for 2024. The Exchange cannot predict whether options volumes will remain at these levels going forward and projections for future regulatory costs are estimated, preliminary, and may change. However, the Exchange believes that the proposed waiver of the ORF would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs without the need to account for any ORF collection during the Waiver Period.

Based on the Exchange's estimated projections for its regulatory costs, balanced with the observed increase in options volumes, the Exchange proposes to resume assessing the current ORF rate of $0.0038 per contract as of January 1, 2025. As noted above, although the options industry has experienced high options trading volumes in recent years, the Exchange cannot predict with certainty whether options volumes will remain at these levels going forward. The Exchange believes that maintaining the current rate when ORF collection resumes following the Waiver Period would allow the Exchange to continue assessing an ORF designed to recover a material portion, but not all, of the Exchange's ORF Costs, based on current projections that the Exchange's ORF Costs will increase in 2025. The Exchange will continue monitoring ORF Costs in advance of the resumption of the ORF and when it resumes assessing ORF on January 1, 2025, and, if the Exchange determines that, in light of projected volumes and ORF Costs, the ORF rate should be modified to help ensure that ORF collections would not exceed a material portion of ORF Costs, adjust the ORF by submitting a proposed rule change and notifying OTP Holders of such change by Trader Update.

The Exchange also proposes to delete language in the Fee Schedule pertaining to the ORF waiver that was in effect from October 1, 2023 to December 31, 2023, as well as the old ORF rate of $0.0058 per contract, which was superseded by the current ORF rate of $0.0038 as of January 1, 2024. The Exchange believes this change would improve the clarity of the Fee Schedule by removing obsolete language.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[11] of the Act, in general, and Section 6(b)(4) and (5)[12] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange believes the proposed temporary waiver of the ORF is reasonable because it would help ensure that collections from the ORF do not exceed a material portion of the Exchange's ORF Costs. As noted above, the ORF is designed to recover a material portion, but not all, of the Exchange's ORF Costs.

Although there can be no assurance that the Exchange's final costs for 2024 will not differ materially from its expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at current or similar levels going forward, the Exchange believes that the amount collected based on the current ORF rate, when combined with regulatory fees and fines, may result in collections in excess of the estimated ORF Costs for the year. Particularly, as noted above, the options market has continued to experience elevated volumes and volatility in 2024, thereby resulting in higher ORF collections than projected despite the reduced ORF rate in effect as of January 1, 2024. The Exchange therefore believes that it would be reasonable to waive ORF from December 1 through December 31, 2024 to help ensure that ORF collection does not exceed [sic] the ORF Costs for 2024. Particularly, the Exchange believes that waiving the ORF from December 1 through December 31, 2024 and taking into account all of the Exchange's other regulatory fees and fines would allow the Exchange to continue covering a material portion of ORF Costs, while lessening the potential for generating excess funds that may otherwise occur using the current rate. The Exchange proposes to resume assessing its current ORF ($0.0038 per contract) following the Waiver Period. The Exchange believes that resumption of the ORF at the current rate on January 1, 2025 (unless the Exchange determines it necessary to adjust the ORF rate to help ensure that ORF collections do not exceed [sic] ORF Costs) is reasonable because it would permit the Exchange to resume collecting an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange's proposal to resume ORF collection following the Waiver Period at the current ORF rate is based on the Exchange's estimated projections for its regulatory costs, which are currently projected to increase in 2025, balanced with the increase in options volumes that has persisted into 2024 and that may continue into 2025. The Exchange will continue monitoring ORF Costs in advance of the resumption of the ORF and when it resumes assessing ORF on January 1, 2025, and, if the Exchange determines that, in light of projected volumes and ORF Costs, the ORF rate should be modified to help ensure that ORF collections would not exceed a material portion of ORF Costs, adjust the ORF by submitting a proposed rule change and notifying OTP Holders of such change by Trader Update.

The Exchange also believes that the proposed deletion of language relating to an ORF waiver period that has now elapsed and a superseded ORF rate is reasonable because it would remove obsolete language and thus improve the clarity of the Fee Schedule.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed waiver would not place certain market participants at an unfair disadvantage because it would apply equally to all OTP Holders on all their transactions that clear in the Customer range at the OCC and would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs. The Exchange also believes that recommencing the ORF on January 1, 2025 at the current rate, unless the Exchange determines it necessary to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs, is equitable because the ORF would resume applying equally to all OTP Holders on options transactions in the Customer range, at a rate designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, based on current projections that such costs will increase in 2025.

The proposed change to remove language relating to an ORF waiver period that has now elapsed and a superseded ORF rate is also equitable

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

because it would eliminate language from the Fee Schedule that is no longer applicable to any OTP Holders.

The Proposed Fee Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the proposed waiver of the ORF would not place certain market participants at an unfair disadvantage because the change would apply to all OTP Holders subject to the ORF and would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs. The Exchange also has provided all such OTP Holders with 30 days' advance notice of the planned change to the ORF. The Exchange also believes that recommencing the ORF on January 1, 2025 at the current rate, unless the Exchange determines it necessary to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs, is not unfairly discriminatory because the Exchange would resume assessing an ORF designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, based on current projections that such costs will increase in 2025. In addition, the ORF would resume applying equally to all OTP Holders based on their transactions that clear in the Customer range at the OCC.

The proposed change to remove language relating to an ORF waiver period that has now elapsed and a superseded ORF rate is also not unfairly discriminatory because it would eliminate outdated language from the Fee Schedule that no longer impacts any OTP Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes the proposed change would not impose an undue burden on intramarket competition because the ORF is charged to all OTP Holders on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed temporary waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. The ORF is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca and is assessed on all options transactions cleared at the OCC in the Customer range. The Exchange also believes recommencing the ORF on January 1, 2025 at the current rate (unless the Exchange determines it necessary at that time to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs) would not impose an undue burden on competition because it would permit the Exchange to resume assessing an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, based on current projections that such costs will increase in 2025. The ORF would, as currently, apply to all OTP Holders on their options transactions that clear in the Customer range at the OCC when ORF collection resumes on January 1, 2025. The Exchange also believes that the proposed change to eliminate language relating to an ORF waiver period that has now elapsed and a superseded ORF rate would not impact intramarket competition because it is intended only to add clarity to the Fee Schedule by removing obsolete text.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total collections from regulatory fees do not exceed [sic] total regulatory costs and to promote clarity in the Fee Schedule by deleting obsolete text.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and Rule 19b–4(f)(2)[14] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEARCA–2024–90 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–NYSEARCA–2024–90. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–90 and should be submitted on or before January 6, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29471 Filed 12–13–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101864; File No. SR–NYSEARCA–2024–104]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade Shares of the Bitwise Bitcoin and Ethereum ETF under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

December 10, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 26, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Bitwise Bitcoin and Ethereum ETF (the ''Trust'') under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the Trust[4] pursuant to NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity Based Trust Shares.[5]

According to the Registration Statement, the Trust will not be registered as an investment company under the Investment Company Act of 1940,[6] and is not required to register thereunder. The Trust is not a commodity pool for purposes of the Commodity Exchange Act.[7]

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Rule 8.201–E and thereby qualify for listing on the Exchange.[8]

Operation of the Trust[9]

The Trust will issue the Shares which, according to the Registration Statement, represent units of undivided beneficial ownership of the Trust. The Trust is a Delaware statutory trust and will operate pursuant to a trust agreement (the ''Trust Agreement'') between Bitwise Investment Advisers, LLC (the ''Sponsor'' or ''Bitwise'') and Delaware Trust Company, as the Trust's trustee (the ''Trustee''). Coinbase Custody Trust Company, LLC will maintain custody of the Trust's bitcoin and ether (the ''Bitcoin and Ether Custodian''). Bank of New York Mellon will be the custodian for the Trust's cash holdings (in such role, the ''Cash Custodian''), the administrator of the Trust (in such role, the ''Administrator''), and the transfer agent for the Trust (in such role, the ''Transfer Agent'').

According to the Registration Statement, the investment objective of the Trust is to seek to provide exposure to the value of bitcoin and ether held by the Trust, less the expenses of the Trust's operations and other liabilities. The Trust's allocation of its assets to bitcoin and ether will approximate the relative market capitalization of bitcoin and ether to one another.[10] In seeking to achieve its investment objective, the Trust will hold bitcoin and ether and establish its Net Asset Value (''NAV'') at the end of every business day by reference to the CME CF Bitcoin—New York Variant for its bitcoin holdings (the ''Bitcoin Pricing Benchmark'') and to the CME CF Ether—Dollar Reference Rate—New York Variant for its ether holdings (the ''Ether Pricing Benchmark,'' and, with the Bitcoin Pricing Benchmark, the ''Pricing Benchmarks'').[11]

The Trust's only assets will be bitcoin, ether, and cash.[12] The Trust

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Trust is a Delaware statutory trust. On November 26, 2024, the Trust filed with the Commission an initial registration statement (the ''Registration Statement'') on Form S–1 under the Securities Act of 1933 (15 U.S.C. 77a). The description of the operation of the Trust herein is based, in part, on the most recent Registration Statement. The Registration Statement is not yet effective, and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[5] Commodity-Based Trust Shares are securities issued by a trust that represents investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust.

[6] 15 U.S.C. 80a–1.

[7] 17 U.S.C. 1.

[8] With respect to the application of Rule 10A–3 (17 CFR 240.10A–3) under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

[9] The description of the operation of the Trust, the Shares, and the ether market contained herein is based, in part, on the Registration Statement. *See* note 4, *supra.*

[10] As of the date of this filing, the relative market capitalization of bitcoin and ether is 83% bitcoin and 17% ether. The Trust will calculate the market capitalization of bitcoin and ether by multiplying the Pricing Benchmarks by the current circulating supply of bitcoin and ether respectively, as determined by the Sponsor, and will calculate the relative market capitalization by dividing each of bitcoin and ether's market capitalization by the combined market capitalization of both.

[11] The Pricing Benchmarks are calculated by CF Benchmarks Ltd. (the ''Benchmark Provider'') based on an aggregation of executed trade flow of major bitcoin and ether trading platforms. As further discussed below, the Pricing Benchmarks are designed to provide a daily, 4:00 p.m. Eastern Time (''E.T.'') reference rate of the U.S. dollar price of one bitcoin or one ether that may be used to develop financial products.

[12] The Trust conducts creations and redemptions of its Shares for cash. Authorized Participants (defined below) will deliver cash to the Cash Custodian pursuant to creation orders for Shares and the Cash Custodian will hold such cash until such time as it can be converted to bitcoin or ether, which the Trust intends to do on the same business day in which such cash is received by the Cash Custodian. Additionally, the Trust will sell bitcoin and ether in exchange for cash pursuant to redemption orders of its Shares. In connection with such sales, an approved Digital Asset Trading Counterparty (defined below) will send cash to the Cash Custodian. The Cash Custodian will hold such cash until it can be distributed to the redeeming Authorized Participant, which it intends to do on the same business day in which it is received. In connection with the purchases and sales of bitcoin and ether pursuant to its creation and redemption activity, it is possible that the Trust may retain de minimis amounts of cash as a result of rounding differences. The Trust may also initially hold small amounts of cash to initiate Trust operations in the

does not seek to hold any non-bitcoin or non-ether crypto assets and has expressly disclaimed ownership of any such assets in the event the Trust ever involuntarily comes into possession of such assets.[13] The Trust will not use derivatives that may subject the Trust to counterparty and credit risks. The Trust will process creations and redemptions in cash. The Trust's only recurring ordinary expense is expected to be the Sponsor's unitary management fee (the ''Sponsor Fee''), which will accrue daily and will be payable in bitcoin and ether monthly in arrears. The Administrator will calculate the Sponsor Fee on a daily basis by applying an annualized rate to the Trust's total bitcoin and ether holdings, and the amount of bitcoin and ether payable in respect of each daily accrual shall be determined by reference to the Pricing Benchmarks. Financial institutions authorized to create and redeem Shares (each, an ''Authorized Participant'') will deliver, or cause to be delivered, cash in exchange for Shares of the Trust, and the Trust will deliver cash to Authorized Participants when those Authorized Participants redeem Shares of the Trust.

Custody of the Trust's Bitcoin and Ether

The Trust's Bitcoin and Ether Custodian will maintain custody of all of the Trust's bitcoin and ether, other than that which is maintained in a trading account (the ''Trading Balance'') with Coinbase, Inc. (the ''Prime Execution Agent,'' which is an affiliate of the Bitcoin and Ether Custodian). The Bitcoin and Ether Custodian will maintain an account that holds the Trust's bitcoin (the ''Trust Bitcoin Account'') and an account that holds the Trust's ether (the ''Trust Ether Account,'' and together with the Trust Bitcoin Account, the ''Trust Digital Asset Accounts''), and will facilitate the transfer of bitcoin and ether required for the operation of the Trust. The Trading Balance will only be used in the limited circumstances in which the Trust is using the Agent Execution Model (as defined below) to effectuate the purchases and sales of bitcoin or ether. The Bitcoin and Ether Custodian provides safekeeping of bitcoin and ether using a multi-layer cold storage security platform designed to provide offline security of the bitcoin and ether held by the Bitcoin and Ether Custodian.

Valuation of the Trust's Bitcoin and Ether

The net assets of the Trust and its Shares are valued on a daily basis with reference to the Pricing Benchmarks, which are standardized reference rates published by the Benchmark Provider designed to reflect the performance of bitcoin and ether in U.S. dollars. The Bitcoin Pricing Benchmark and Ether Pricing Benchmark were created to facilitate financial products based on bitcoin and ether, respectively. The Bitcoin Pricing Benchmark serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), and the Ether Pricing Benchmark serves as a once-a-day benchmark rate of the U.S. dollar price of ether (USD/ETH), each calculated as of 4:00 p.m. E.T. The Bitcoin Pricing Benchmark aggregates the trade flow of several major bitcoin trading venues, and the Ether Pricing Benchmark aggregates the trade flow of several major ether trading venues, each during an observation window between 3:00 p.m. and 4:00 p.m. E.T. into the U.S. dollar price of one bitcoin or ether, as applicable, at 4:00 p.m. E.T.

The Bitcoin Pricing Benchmark uses the same methodology as the CME CF Bitcoin Reference Rate (''BRR''), which was designed by the CME Group and the Benchmark Provider to facilitate the cash settlement of bitcoin futures contracts traded on the Chicago Mercantile Exchange (''CME'').[14] The CME Group also publishes the CME CF Bitcoin Real Time Index (the ''CME Bitcoin Real Time Price''), which is a continuous measure of the U.S. dollar price of one bitcoin calculated once per second. Similarly, the Ether Pricing Benchmark uses the same methodology as the CME CF Ether-Dollar Reference Rate (''ERR''), which was designed by the CME Group and the Benchmark Provider to facilitate the cash settlement of ether futures contracts traded on the CME.[15] The CME Group also publishes the CME CF Ether Real Time Index (the ''CME Ether Real Time Price''), which is a continuous measure of the U.S. dollar price of one ether calculated once per second. Each of the Pricing Benchmarks, BRR, ERR, CME Bitcoin Real Time Price, and CME Ether Real Time Price are representative of the bitcoin or ether trading activity, as applicable, on the Constituent Platforms,[16] which include, as of the date of this filing, Bitstamp, Coinbase, Gemini, itBit, LMAX, and Kraken.

The Trust uses the Pricing Benchmarks to calculate its NAV, as described below in ''Net Asset Value.''

The Sponsor, in its sole discretion, may cause the Trust to price its portfolio based upon an index, benchmark, or standard other than the Pricing Benchmarks at any time, with prior notice to the shareholders, if investment conditions change or the Sponsor believes that another index, benchmark, or standard better aligns with the Trust's investment objective and strategy. The Sponsor may make this decision for a number of reasons, including, but not limited to, a determination that the Pricing Benchmarks price of bitcoin or ether differs materially from the global market price of bitcoin or ether and/or that third parties are able to purchase and sell bitcoin or ether on public or private markets not included among the Constituent Platforms, and such transactions may take place at prices materially higher or lower than the Pricing Benchmarks price. The Sponsor, however, is under no obligation whatsoever to make such changes in any circumstance. In the event that the Sponsor intends to establish the Trust's NAV by reference to an index, benchmark, or standard other than the Pricing Benchmarks, it will provide shareholders with notice in a prospectus supplement and/or through a current

immediate aftermath of its Registration Statement being declared effective. Lastly, the Trust may also sell bitcoin and ether and temporarily hold cash as part of a liquidation of the Trust or to pay certain extraordinary expenses not assumed by the Sponsor. Under the Trust Agreement, the Sponsor has agreed to assume the normal operating expenses of the Trust, subject to certain limitations. For example, the Trust will bear any indemnification or litigation liabilities as extraordinary expenses. In any event, in the ongoing course of business, the amounts of cash retained by the Trust are not expected to constitute a material portion of the Trust's holdings.

[13] The Trust may, from time to time, passively receive, by virtue of holding ether, certain additional digital assets (''IR Assets'') or rights to receive IR Assets (''Incidental Rights'') through a fork of the Bitcoin network or Ethereum network or an airdrop of assets. The Trust will not seek to acquire such IR Assets or Incidental Rights. Pursuant to the terms of the Trust Agreement, the Trust has disclaimed ownership in any such IR Assets and/or Incidental Rights to make clear that such assets are not and shall never be considered assets of the Trust and will not be taken into account for purposes of determining the Trust's NAV or NAV per Share. Neither the Trust, nor the Sponsor, nor the Bitcoin and Ether Custodian, nor any other person associated with the Trust will, directly or indirectly, engage in action where any portion of the Trust's ether becomes subject to the Ethereum proof-of-stake validation or is used to earn additional ether or generate income or other earnings.

[14] The only material difference between the Bitcoin Pricing Benchmark and the BRR is that the BRR measures the U.S. dollar price of one bitcoin as of 4:00 p.m. London time and the Bitcoin Pricing Benchmark measures the U.S. dollar price of one bitcoin as of 4:00 p.m. E.T.

[15] The only material difference between the Ether Pricing Benchmark and ERR is that the ERR measures the U.S. dollar price of one ether as of 4:00 p.m. London time, and the Pricing Index measures the U.S. dollar price of one ether as of 4:00 p.m. E.T.

[16] The ''Constituent Platforms'' are the bitcoin and ether trading venues included in the Pricing Benchmarks.

report on Form 8–K or in the Trust's annual or quarterly reports.[17]

Net Asset Value

The Trust's only assets will be bitcoin and ether and, under limited circumstances, cash. The Trust's NAV and NAV per Share will be determined by the Administrator once each Exchange trading day as of 4:00 p.m. E.T., or as soon thereafter as practicable. The Administrator will calculate the NAV by multiplying the number of bitcoin and ether held by the Trust by the Bitcoin Pricing Benchmark or Ether Pricing Benchmark, respectively, for such day, adding any additional receivables and subtracting the accrued but unpaid liabilities of the Trust. The NAV per Share is calculated by dividing the NAV by the number of Shares then outstanding. The Administrator will determine the price of the Trust's bitcoin and ether by reference to the Pricing Benchmarks, which are published and calculated as set forth above.

Intraday Trust Value

The Trust uses the CME Bitcoin Real Time Price and CME Ether Real Time Price to calculate an Indicative Trust Value (''ITV''). One or more major market data vendors will disseminate the ITV, updated every 15 seconds each trading day as calculated by the Exchange or a third-party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m., E.T.). The ITV will be calculated throughout the trading day by using the prior day's holdings at the close of business and the most recently reported price level of the CME Bitcoin Real Time Price and CME Ether Real Time Price. The ITV will be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session.

Creation and Redemption of Shares

The Trust creates and redeems Shares from time to time, but only in one or more Creation Units, which will initially consist of at least 10,000 Shares, but may be subject to change (''Creation Unit''). A Creation Unit is only made in exchange for delivery to the Trust or the distribution by the Trust of an amount of cash, equivalent to the value of ether represented by the Creation Unit being created or redeemed, the amount of which is representative of the combined NAV of the number of Shares included in the Creation Units being created or redeemed determined as of 4:00 p.m. E.T. on the day the order to create or redeem Creation Units is properly received. Except when aggregated in Creation Units or under extraordinary circumstances permitted under the Trust Agreement, the Shares are not redeemable securities.

Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions described below, and (2) Depository Trust Company (''DTC'') participants. To become an Authorized Participant, a person must enter into an Authorized Participant Agreement with the Trust and/or the Trust's marketing agent (the ''Marketing Agent'').

According to the Registration Statement, when purchasing or selling ether in response to the purchase of Creation Units or the redemption of Creation Units, which will be processed in cash, the Trust would do so pursuant to either (1) a ''Trust-Directed Trade Model,'' or (2) an ''Agent Execution Model,'' which are each described in more detail below.

The Trust intends to utilize the Trust-Directed Trade Model for all purchases and sales of bitcoin and ether and would only utilize the Agent Execution Model in the event that no digital asset trading counterparty approved by the Sponsor (a ''Digital Asset Trading Counterparty'')[18] is able to effectuate the Trust's purchase or sale of bitcoin or ether. Under the Trust-Directed Trade Model, in connection with receipt of a purchase order or redemption order, the Sponsor, on behalf of the Trust, would be responsible for acquiring bitcoin and ether from an approved Digital Asset Trading Counterparty in an amount equal to the Basket Amount. When seeking to purchase bitcoin and ether on behalf of the Trust, the Sponsor will seek to purchase bitcoin and ether at commercially reasonable prices and terms from any of the approved Digital Asset Trading Counterparties.[19] Once agreed upon, the transaction will generally occur on an ''over-the-counter'' basis.

Whether utilizing the Trust-Directed Trade Model or the Agent Execution Model, the Authorized Participants will deliver only cash to create shares and will receive only cash when redeeming Shares. Further, Authorized Participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin or ether as part of the creation or redemption process or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving bitcoin or ether as part of the creation or redemption process. Additionally, under either the Trust-Directed Trade Model or the Agent Execution Model, the Trust will create Shares by receiving bitcoin and ether from a third party that is not the Authorized Participant and is not affiliated with the Sponsor or the Trust, and the Trust—not the Authorized Participant—is responsible for selecting the third party to deliver the bitcoin and ether. The third party will not be acting as an agent of the Authorized Participant with respect to the delivery of the bitcoin and ether to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the bitcoin and ether to the Trust. Additionally, the Trust will redeem Shares by delivering bitcoin and ether to a third party that is not the Authorized Participant and is not affiliated with the Sponsor or the Trust, and the Trust—not the Authorized Participant—is responsible for selecting the third party to receive the bitcoin and ether. Finally, the third party will not be acting as an agent of the Authorized Participant with respect to the receipt of the bitcoin or ether from the Trust or acting at the direction of the Authorized Participant with respect to the receipt of the bitcoin or ether from the Trust.

Acquiring and Selling Ether Pursuant to Creation and Redemption of Shares Under the Trust-Directed Trade Model

Under the Trust-Directed Trade Model and as set forth in the Registration Statement, on any business day, an Authorized Participant may create Shares by placing an order to purchase one or more Creation Units with the Transfer Agent through the Marketing Agent. Such orders are subject to approval by the Marketing Agent and the Transfer Agent. For purposes of processing creation and redemption orders, a ''business day'' means any day other than a day when the Exchange is closed for regular

[17] The Sponsor will provide notice of any such changes in the Trust's periodic or current reports and, if the Sponsor makes such a change other than on an ad hoc or temporary basis, will file a proposed rule change with the Commission.

[18] The Digital Asset Trading Counterparties with which the Sponsor will engage in ether transactions are unaffiliated third parties that are not acting as agents of the Trust, the Sponsor or the Authorized Participant, and all transactions will be done on an arms-length basis. There is no contractual relationship between the Trust, the Sponsor or the Digital Asset Trading Counterparty.

[19] The Sponsor will maintain ownership and control of bitcoin and ether in a manner consistent with good delivery requirements for spot commodity transactions.

trading (''Business Day''). To be processed on the date submitted, creation orders must be placed before 4:00 p.m. E.T. or the close of regular trading on the Exchange, whichever is earlier, but may be required to be placed earlier at the discretion of the Sponsor. A purchase order will be effective on the date it is received by the Transfer Agent and approved by the Marketing Agent (''Purchase Order Date'').

Creation Units are processed in cash. By placing a purchase order, an Authorized Participant agrees to deposit, or cause to be deposited, an amount of cash equal to the quantity of bitcoin and ether attributable to each Share of the Trust (net of accrued but unpaid expenses and liabilities) multiplied by the number of Shares (10,000) comprising a Creation Unit (the ''Basket Amount''). The Sponsor will cause to be published each Business Day, prior to the commencement of trading on the Exchange, the Basket Amount relating to a Creation Unit applicable for such Business Day. That amount is derived by multiplying the Basket Amount by the value of bitcoin and ether ascribed by the Pricing Index. However, the Authorized Participant is also responsible for any additional cash required to account for the price at which the Trust agrees to purchase the requisite amount of bitcoin and ether from a Digital Asset Trading Counterparty to the extent it is greater than the Pricing Index price on each Purchase Order Date.

Prior to the delivery of Creation Units, the Authorized Participant must also have wired to the Transfer Agent the nonrefundable transaction fee due for the creation order. Authorized Participants may not withdraw a creation request. If an Authorized Participant fails to consummate the foregoing, the order may be cancelled.

Following the acceptance of a purchase order, the Authorized Participant must wire the cash amount described above to the Cash Custodian, and the Digital Asset Trading Counterparty must deposit the required amount of bitcoin and ether with the Bitcoin and Ether Custodian by the end of the day E.T. on the Business Day following the Purchase Order Date. The bitcoin and ether will be purchased from Digital Asset Trading Counterparties that are not acting as agents of the Trust or agents of the Authorized Participant. These transactions will be done on an arms-length basis, and there is no contractual relationship between the Trust, the Sponsor, or the Digital Asset Trading Counterparty to acquire such bitcoin and ether. Prior to any movement of cash from the Cash Custodian to the Digital Asset Trading Counterparty or movement of Shares from the Transfer Agent to the Authorized Participant's DTC account to settle the transaction, the bitcoin and ether must be deposited at the Bitcoin and Ether Custodian.

The Digital Asset Trading Counterparty must deposit the required amount of bitcoin and ether by end of day E.T. on the Business Day following the Purchase Order Date prior to any movement of cash from the Cash Custodian or Shares from the Transfer Agent. Upon receipt of the deposit amount of bitcoin and ether at the Bitcoin and Ether Custodian from the Digital Asset Trading Counterparty, the Bitcoin and Ether Custodian will notify the Sponsor that the bitcoin and ether have been received. The Sponsor will then notify the Transfer Agent that the bitcoin and ether have been received, and the Transfer Agent will direct DTC to credit the number of Shares ordered to the Authorized Participant's DTC account and will wire the cash previously sent by the Authorized Participant to the Digital Asset Trading Counterparty to complete settlement of the Purchase Order and the acquisition of the bitcoin and ether by the Trust, as described above.

As between the Trust and the Authorized Participant, the expense and risk of the difference between the value of bitcoin and ether calculated by the Administrator for daily valuation using the Pricing Benchmarks and the price at which the Trust acquires the bitcoin and ether will be borne solely by the Authorized Participant to the extent that the Trust pays more for bitcoin and ether than the price used by the Trust for daily valuation. Any such additional cash amount will be included in the amount of cash calculated by the Administrator on the Purchase Order Date, communicated to the Authorized Participant on the Purchase Order Date, and wired by the Authorized Participant to the Cash Custodian on the day following the Purchase Order Date. If the Digital Asset Trading Counterparty fails to deliver the bitcoin and ether to the Bitcoin and Ether Custodian, no cash is sent from the Cash Custodian to the Digital Asset Trading Counterparty, no Shares are transferred to the Authorized Participant's DTC account, the cash is returned to the Authorized Participant, and the Purchase Order is cancelled.

Under the Trust-Directed Trade Model and according to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the creation of Creation Units. On any Business Day, an Authorized Participant may place an order with the Transfer Agent through the Marketing Agent to redeem one or more Creation Units. To be processed on the date submitted, redemption orders must be placed before 4:00 p.m. E.T. or the close of regular trading on the Exchange, whichever is earlier, or earlier as determined by the Sponsor. A redemption order will be effective on the date it is received by the Transfer Agent and approved by the Marketing Agent (''Redemption Order Date''). The redemption procedures allow Authorized Participants to redeem Creation Units and do not entitle an individual shareholder to redeem any Shares in an amount less than a Creation Unit, or to redeem Creation Units other than through an Authorized Participant. In connection with receipt of a redemption order accepted by the Marketing Agent and Transfer Agent, the Sponsor, on behalf of the Trust, is responsible for selling the bitcoin and ether to an approved Digital Asset Trading Counterparty in an amount equal to the Basket Amount.

The redemption distribution from the Trust will consist of a transfer to the redeeming Authorized Participant, or its agent, of the amount of cash the Trust received in connection with a sale of the Basket Amount of bitcoin and ether to a Digital Asset Trading Counterparty made pursuant to the redemption order. The Sponsor will cause to be published each Business Day, prior to the commencement of trading on the Exchange, the redemption distribution amount relating to a Creation Unit applicable for such Business Day. The redemption distribution amount is derived by multiplying the Basket Amount by the value of bitcoin and ether ascribed by the Pricing Benchmarks. However, as between the Trust and the Authorized Participant, the expense and risk of the difference between the value of bitcoin and ether ascribed by the Pricing Benchmarks and the price at which the Trust sells the bitcoin and ether will be borne solely by the Authorized Participant to the extent that the Trust receives less for bitcoin and ether than the value ascribed by the Pricing Benchmarks. Prior to the delivery of Creation Units, the Authorized Participant must also have wired to the Transfer Agent the nonrefundable transaction fee due for the redemption order.

The redemption distribution due from the Trust will be delivered by the Transfer Agent to the Authorized Participant once the Cash Custodian has received the cash from the Digital Asset Trading Counterparty. The Bitcoin and

Ether Custodian will not send the Basket Amount of bitcoin and ether to the Digital Asset Trading Counterparty until the Cash Custodian has received the cash from the Digital Asset Trading Counterparty and is instructed by the Sponsor to make such transfer. Once the Digital Asset Trading Counterparty has sent the cash to the Cash Custodian in an agreed upon amount to settle the agreed upon sale of the Basket Amount of bitcoin and ether, the Transfer Agent will notify the Sponsor. The Sponsor will then notify the Bitcoin and Ether Custodian to transfer the bitcoin and ether to the Digital Asset Trading Counterparty, and the Transfer Agent will wire the cash proceeds to the Authorized Participant once the Trust's DTC account has been credited with the Shares represented by the Creation Unit from the redeeming Authorized Participant. Once the Authorized Participant has delivered the Shares represented by the Creation Unit to be redeemed to the Trust's DTC account, the Cash Custodian will wire the requisite amount of cash to the Authorized Participant. If the Trust's DTC account has not been credited with all of the Shares of the Creation Unit to be redeemed, the redemption distribution will be delayed until such time as the Transfer Agent confirms receipt of all such Shares. If the Digital Asset Trading Counterparty fails to deliver the cash to the Cash Custodian, the transaction will be cancelled, and no transfer of bitcoin or ether or Shares will occur.

Acquiring and Selling Ether Pursuant to Creation and Redemption of Shares Under the Agent Execution Model

Under the Agent Execution Model, the Prime Execution Agent, acting in an agency capacity, would conduct bitcoin and ether purchases and sales on behalf of the Trust with third parties through its Coinbase Prime service pursuant to the Prime Execution Agent Agreement. To utilize the Agent Execution Model, the Trust may maintain some bitcoin, ether, or cash in the Trading Balance with the Prime Execution Agent. The Prime Execution Agent Agreement provides that the Trust does not have an identifiable claim to any particular bitcoin or ether (and cash); rather, the Trust's Trading Balance represents an entitlement to a pro rata share of the bitcoin or ether (and cash) the Prime Execution Agent holds on behalf of customers who hold similar entitlements against the Prime Execution Agent. In this way, the Trust's Trading Balance represents an omnibus claim on the Prime Execution Agent's bitcoin or ether (and cash) held on behalf of the Prime Execution Agent's customers.

To avoid having to pre-fund purchases or sales of bitcoin or ether in connection with cash creations and redemptions and sales of bitcoin or ether to pay Trust expenses not assumed by the Sponsor, to the extent applicable, the Trust may borrow bitcoin, ether, or cash as trade credit (''Trade Credit'') from Coinbase Credit, Inc. (the ''Trade Credit Lender'') on a short-term basis pursuant to the Coinbase Credit Committed Trade Financing Agreement (the ''Trade Financing Agreement'').

On the day of the Purchase Order Date, the Trust would enter into a transaction to buy bitcoin and ether through the Prime Execution Agent for cash. Because the Trust's Trading Balance may not be funded with cash on the Purchase Order Date for the purchase of bitcoin and ether in connection with the Purchase Order under the Agent Execution Model, the Trust may borrow Trade Credits in the form of cash from the Trade Credit Lender pursuant to the Trade Financing Agreement or may require the Authorized Participant to deliver the required cash for the Purchase Order on the Purchase Order Date. The extension of Trade Credits on the Purchase Order Date allows the Trust to purchase bitcoin and ether through the Prime Execution Agent on the Purchase Order Date, with such bitcoin and ether being deposited in the Trust's Trading Balance.

On the day following the Purchase Order Date (the ''Purchase Order Settlement Date''), the Trust would deliver Shares to the Authorized Participant in exchange for cash received from the Authorized Participant. Where applicable, the Trust would use the cash to repay the Trade Credits borrowed from the Trade Credit Lender. On the Purchase Order Settlement Date for a Purchase Order utilizing the Agent Execution Model, the bitcoin and ether associated with the Purchase Order and purchased on the Purchase Order Date is swept from the Trust's Trading Balance with the Prime Execution Agent to the Trust Digital Asset Account with the Bitcoin and Ether Custodian pursuant to a regular end-of-day sweep process. Transfers of bitcoin and ether into the Trust's Trading Balance are off-chain transactions and transfers from the Trust's Trading Balance to the Trust Digital Asset Account are ''on-chain'' transactions represented on the bitcoin and ether blockchains, as applicable. Any financing fee owed to the Trade Credit Lender is deemed part of trade execution costs and embedded in the trade price for each transaction.

For a Redemption Order utilizing the Agent Execution Model, on the day of the Redemption Order Date the Trust would enter into a transaction to sell bitcoin and ether through the Prime Execution Agent for cash. The Trust's Trading Balance with the Prime Execution Agent may not be funded with bitcoin and ether on trade date for the sale of bitcoin and ether in connection with the redemption order under the Agent Execution Model, when bitcoin and ether remains in the Trust Digital Asset Account with the Bitcoin and Ether Custodian at the point of intended execution of a sale of bitcoin and ether. In those circumstances the Trust may borrow Trade Credits in the form of bitcoin and ether from the Trade Credit Lender, which allows the Trust to sell bitcoin and ether through the Prime Execution Agent on the Redemption Order Date, and the cash proceeds are deposited in the Trust's Trading Balance with the Prime Execution Agent. On the business day following the Redemption Order Date (the ''Redemption Order Settlement Date'') for a redemption order utilizing the Agent Execution Model where Trade Credits were utilized, the Trust delivers cash to the Authorized Participant in exchange for Shares received from the Authorized Participant. In the event Trade Credits were used, the Trust will use the bitcoin and ether that is moved from the Trust Digital Asset Account with the Bitcoin and Ether Custodian to the Trading Balance with the Prime Execution Agent to repay the Trade Credits borrowed from the Trade Credit Lender.

For a redemption of Creation Units utilizing the Agent Execution Model, the Sponsor would instruct the Bitcoin and Ether Custodian to prepare to transfer the bitcoin and ether associated with the redemption order from the Trust Digital Asset Account with the Bitcoin and Ether Custodian to the Trust's Trading Balance with the Prime Execution Agent. On the Redemption Order Settlement Date, the Trust would enter into a transaction to sell bitcoin and ether through the Prime Execution Agent for cash, and the Prime Execution Agent credits the Trust's Trading Balance with the cash. On the same day, the Authorized Participant would deliver the necessary Shares to the Trust and the Trust delivers cash to the Authorized Participant.

Background on Bitcoin

Bitcoin is the digital asset that is native to, and created and transmitted through the operations of, the peer-to-peer ''Bitcoin network,'' a decentralized

network of computers that operates on cryptographic protocols. No single entity owns or operates the Bitcoin network, the infrastructure of which is collectively maintained by a decentralized user base. The Bitcoin network allows people to exchange tokens of value, called bitcoin, which are recorded on a public transaction ledger known as the ''Bitcoin blockchain.'' Bitcoin can be used to pay for goods and services, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on digital asset trading platforms or in individual end-user-to-end-user transactions under a barter system. Although nascent in use, bitcoin may be used as a medium of exchange, unit of account or store of value.

The Bitcoin network is decentralized and does not require governmental authorities or financial institution intermediaries to create, transmit or determine the value of bitcoin. In addition, no party may easily censor transactions on the Bitcoin network. As a result, the Bitcoin network is often referred to as decentralized and censorship resistant.

The value of bitcoin is determined by the supply of and demand for bitcoin. New bitcoin are created and rewarded to the parties providing the Bitcoin network's infrastructure (''miners'') in exchange for their expending computational power to verifying transactions and add them to the Bitcoin blockchain. The Bitcoin blockchain is effectively a decentralized database that includes all blocks that have been solved by miners and it is updated to include new blocks as they are solved. Each bitcoin transaction is broadcast to the Bitcoin network and, when included in a block, recorded in the Bitcoin blockchain. As each new block records outstanding bitcoin transactions, and outstanding transactions are settled and validated through such recording, the Bitcoin blockchain represents a complete, transparent and unbroken history of all transactions of the Bitcoin network.

The CME Bitcoin Futures Market

The CME Group announced the planned launch of bitcoin futures on October 31, 2017. Trading began on December 17, 2017.[20] Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate. The contracts trade and settle like other cash settled commodity futures contracts.

Nearly every measurable metric related to bitcoin futures has trended up since launch. For example, there were 348,635 bitcoin futures contracts traded in September 2024 (approximately $110.6 billion) compared to 192,620 ($26.0 billion) contracts, 279,859 contracts ($27.3 billion), 159,803 contracts ($34.8 billion), and 201,893 contracts ($10.8 billion) traded in September 2023, September 2022, September 2021, and September 2020, respectively.[21]

Open interest was 39,590 bitcoin futures contracts in September 2024 (approximately $12.6 billion) compared to 15,014 contracts ($2.0 billion), 14,867 contracts ($1.4 billion), 7,276 contracts ($1.6 billion), and 7,487 contracts ($0.4 billion) traded in September 2023, September 2022, September 2021, and September 2020, respectively.[22]

The number of large open interest holders[23] has increased as well, even in the face of heightened bitcoin price volatility, as demonstrated in the figure that follows.[24]

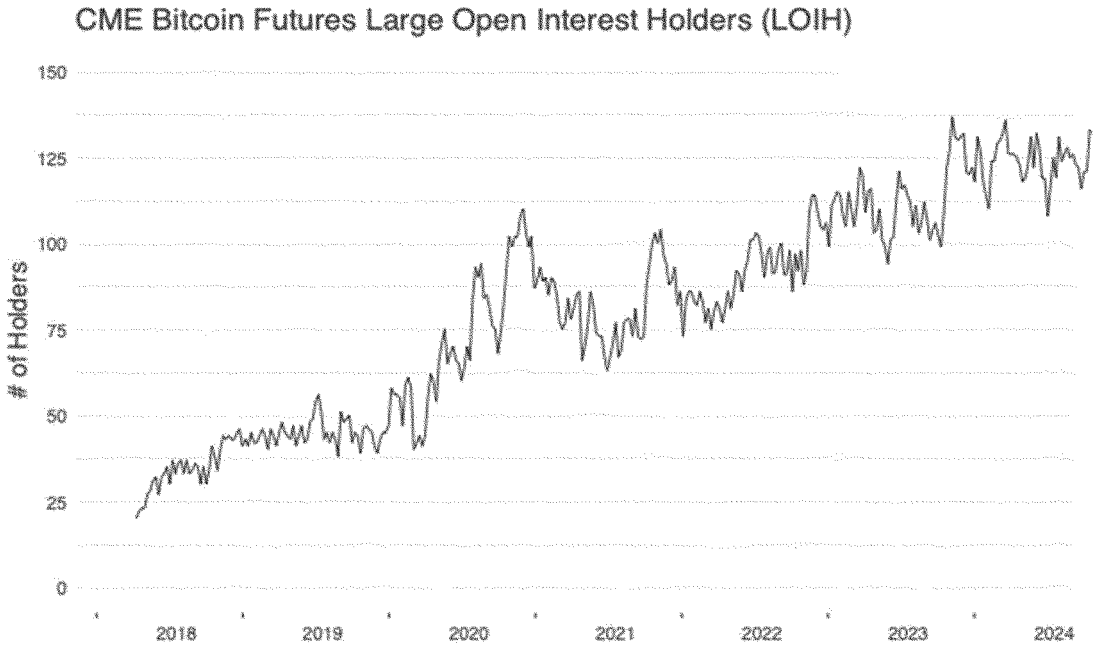
[20] *See* ''CME Group Announces Launch of Bitcoin Futures,'' October 31, 2017, available at *https://www.cmegroup.com/media-room/press-releases/2017/10/31/cme_group_announceslaunchofbitcoinfutures.html.* At the same time as the launch of the CME Market, the Cboe Futures Exchange, LLC announced and subsequently launched Cboe bitcoin futures. See ''CFE to Commence Trading in Cboe Bitcoin (USD) Futures Soon,'' December 01, 2017, available at *cdn.cboe.com/resources/release_notes/2017/Cboe-Bitcoin-USD-Futures-Launch-Notification.pdf.* Each future was cash settled, with the CME Market tracking the CME UK Reference Rate and the Cboe bitcoin futures tracking a bitcoin trading platform daily auction price. The Cboe Futures Exchange, LLC subsequently discontinued its bitcoin futures market effective June 2019. ''Cboe put the brakes on bitcoin futures,'' March 15, 2019, available at *https://www.reuters.com/article/us-cboe-bitcoin/cboe-puts-the-brakes-on-bitcoin-futures-idUSKCN1QW261.* The Trust uses the CME US Reference Rate to calculate its NAV.

[21] Data from CME Volume and Average Daily Volume Reports, available at *https://www.cmegroup.com/market-data/volume-open-interest.htmlvolumeTotals.*

[22] Data from CME Open Interest Reports, available at *https://www.cmegroup.com/market-data/volume-open-interest.html#openInterestTools.*

[23] A large open interest holder in bitcoin futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $64,300.87 per bitcoin on 9/24/2024, more than 115 firms had outstanding positions of greater than $8.04 million in bitcoin futures. Data from The Block, available at *https://www.theblock.co/data/crypto-markets/cme-cots/large-open-interest-holders-of-cme-bitcoin-futures.*

[24] Data from 4/10/2018 to 10/22/24, from The Block.



The Commodity Futures Trading Commission (''CFTC'') regulates the CME bitcoin futures market, and both the Exchange and CME are members of the Intermarket Surveillance Group (''ISG'').[25]

Background on Ethereum

Ethereum is free software that is hosted on computers distributed throughout the globe. Ethereum employs an array of computer code-based logic, called a protocol, to create a unified understanding of ownership, commercial activity, and economic logic. This allows users to engage in commerce without the need to trust any of its participants or counterparties. Ethereum code creates verifiable and unambiguous rules that assign clear, strong property rights to create a platform for unrestrained business formation and free exchange. No single intermediary or entity operates or controls the Ethereum network, the transaction validation and recordkeeping infrastructure of which is collectively maintained by a disparate user base. The Ethereum network allows people to exchange tokens of value, or ether, which are recorded on a distributed, public recordkeeping system or ledger known as a blockchain, and which can be used to pay for goods and services, including computational power on the Ethereum network, or converted to fiat currencies, such as the U.S. dollar, at rates determined on spot trading platforms or in individual peer-to-peer transactions. By combining the recordkeeping system of the Ethereum blockchain with a flexible scripting language that can be used to implement a wide variety of instructions, the Ethereum network is intended to act as a public computational layer on top of which users can build their own public software programs, as an alternative to centralized web services. On the Ethereum network, ether is the unit of account that users pay for the computational resources consumed by running programs of their choice.

CME Ether Futures Market

CME began offering trading in ether futures on February 8, 2021.[26] Each contract represents fifty ether and is based on the ERR. The contracts trade and settle like other cash settled commodity futures contracts.

Most measurable metrics related to CME ether futures have trended up since launch. For example, there were 95,261 CME ether futures contracts traded in September 2024 (approximately $12.4 billion) compared to 78,571 contracts ($6.6 billion), 163,114 contracts ($10.9 billion), and 130,546 contracts ($19.5 billion) traded in September 2023, September 2022, and September 2021, respectively. In the first month of trading, there were 11,637 billion contracts ($0.8 billion) traded.[27]

Open interest was 6,746 CME ether futures contracts in September 2024 (approximately $875.1 million) compared to 4,577 contracts ($384.3 million), 5,035 contracts ($336.8 million), and 4,388 contracts ($656.8 million) in September 2023, September 2022, and September 2021, respectively.[28]

The number of large open interest holders[29] has increased as well, as demonstrated in the figure that follows.[30]

[25] For a list of the current members and affiliate members of ISG, see *https://www.isgportal.com/*.

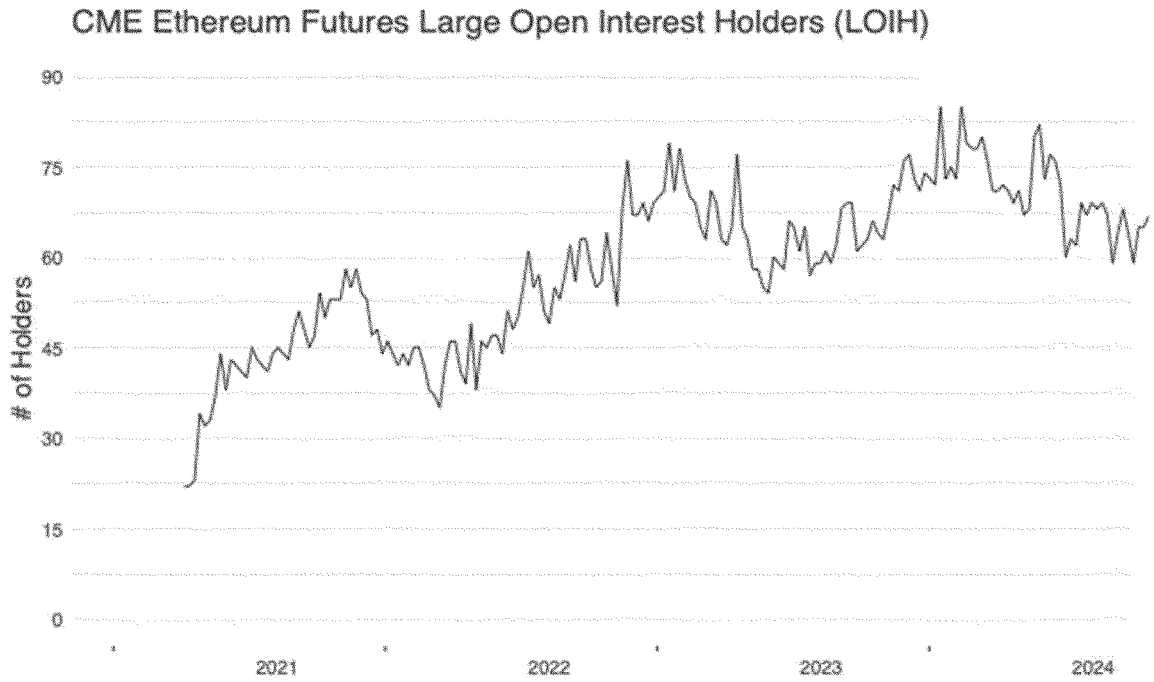
[26] *See* ''CME Group Announces Launch of Ether Futures,'' February 8, 2021, available at *https://www.cmegroup.com/media-room/press-releases/2021/2/08/cme_group_announceslaunchofetherfutures.html.*

[27] Data from CME Volume and Average Daily Volume Reports, available at *https://www.cmegroup.com/market-data/volume-open-interest.html volumeTotals.*

[28] Data from CME Open Interest Reports, available at *https://www.cmegroup.com/market-data/volume-openinterest.html#openInterestTools.*

[29] A large open interest holder in ether futures is an entity that holds at least 25 contracts, which is the equivalent of 1250 ether. Data from The Block, available at *https://www.theblock.co/data/crypto-markets/cme-cots/large-open-interest-holders-of-cme-ether-futures.*

[30] Data from 4/10/2018 to 10/22/2024, from The Block.



The CFTC regulates the CME ether futures market, and both the Exchange and CME are members of the ISG.

Applicable Standard

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot, Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[31] However, the Commission recently approved the listing and trading of shares of spot bitcoin exchange-traded products (''Spot Bitcoin ETPs'') and spot ether exchange-traded products (''Spot Ether ETPs''), finding that there were sufficient ''other means'' of preventing fraud and manipulation sufficient to satisfy the requirements of Section 6(b)(5) of the Exchange Act.[32] In each of the Spot Bitcoin ETP Approval Order and Spot Ether Approval Order, the Commission concluded, through a robust correlation analysis, that fraud or manipulation that impacts prices in spot bitcoin markets or spot ether markets would likely similarly impact CME bitcoin futures prices and CME ether futures prices, respectively.[33] The Commission further found that, because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices and CME ether futures prices, a listing exchange's comprehensive surveillance sharing agreement (''CSSA'') with the CME can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the context of the Spot Bitcoin ETPs and Spot Ether ETPs.[34]

The Trust is structured and will operate in a manner materially the same as the Spot Bitcoin ETPs and Spot Ether ETPs.[35] The Sponsor believes that the Exchange's ability to obtain information regarding trading in bitcoin futures and ether futures from the CME, which, like the Exchange, is a member of the ISG, would assist the Exchange in detecting potential fraud or manipulation with respect to trading in the Shares. The Sponsor thus believes that, for reasons similar to those set forth in the Spot Bitcoin ETP Approval Order and Spot Ether ETP Approval Order, listing and trading Shares of the Fund would be consistent with the requirements of the Act.

Availability of Information

The NAV per Share will be calculated and disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The ITV will be calculated every 15 seconds throughout the Core Trading Session each trading day.

[31] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (SR–BatsBZX–2016–30) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to List and Trade Shares of the Winklevoss Bitcoin Trust) (''Winklevoss Order''). In the Winklevoss Order, the Commission set forth both the importance and definition of a surveilled, regulated market of significant size, explaining that, for approved commodity-trust ETPs, ''there has been in every case at least one significant, regulated market for trading futures on the underlying commodity-whether gold, silver, platinum, palladium, or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group membership in common with, that market.'' Winklevoss Order, 83 FR at 37594.

[32] *See* Securities Exchange Act Release No. 34–99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (SR–NYSEARCA–2021–90; SR–NYSEARCA–2023–44; SRNYSEARCA–2023–58; SR–NASDAQ–2023–016; SR–NASDAQ–2023–019; SR–CboeBZX–2023028; SR–CboeBZX–2023–038; SR–CboeBZX–2023–040; SR–CboeBZX–2023–042; SRCboeBZX–2023–044; SR–CboeBZX–2023–072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the ''Spot Bitcoin ETP Approval Order''); Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR–NYSEARCA–2023–70; SR–NYSEARCA–2024–31; SR–NASDAQ–2023–045; SR–CboeBZX–2023–069; SR–CboeBZX–2023–070; SR–CboeBZX–2023–087; SR–CboeBZX–2023–095; SR–CboeBZX–2024–018) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products) (the ''Spot Ether ETP Approval Order'').

[33] *See* Spot Bitcoin ETP Approval Order, 89 FR at 3010; Spot Ether ETP Approval Order, 89 FR at 46938.

[34] *See* Spot Bitcoin ETP Approval Order, 89 FR at 3010; Spot Ether ETP Approval Order, 89 FR at 46938–39.

[35] The Sponsor is also the sponsor of the Bitwise Bitcoin ETF and the Bitwise Ethereum ETF, which were approved pursuant to the Spot Bitcoin ETP Approval Order and Spot Ether ETP Approval, respectively, and which are both currently listed and traded on NYSE Arca.

The Sponsor will cause information about the Shares to be posted to the Trust's website (*https://www.bitwiseinvestments.com/*): (1) the NAV and NAV per Share for each Exchange trading day, posted at end of day; (2) the daily holdings of the Trust, before 9:30 a.m. E.T. on each Exchange trading day; (3) the Trust's effective prospectus, in a form available for download; and (4) the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. For example, the Trust's website will include (1) the prior Business Day's trading volume, the prior Business Day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (''Bid/Ask Price'') against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

Investors may obtain on a 24-hour basis ether pricing information based on the Pricing Benchmarks, BRR, ERR, CME Bitcoin Real Time Price, CME Ether Real Time Price, spot bitcoin market prices, bitcoin futures prices, spot ether market prices, and ether futures prices from various financial information service providers. Current bitcoin spot market prices and ether spot market prices are also available with bid/ask spreads from bitcoin and ether trading platforms, including the Constituent Platforms of the Pricing Benchmarks.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Trust.[36] Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the ITV, CME Bitcoin Real Time Price, CME Ether Real Time Price, or Pricing Benchmarks (if the Exchange becomes aware that the Pricing Benchmarks are not being published) occurs.[37] If the interruption to the dissemination of the ITV, CME Bitcoin Real Time Price, CME Ether Real Time Price, or Pricing Benchmarks persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the Core Trading Session following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201–E. The trading of the Shares will be subject to NYSE Arca Rule 8.201–E(g), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance.[38] The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A–3 under the Act,[39] as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[40] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, bitcoin derivatives, and ether derivatives from

[36] *See* NYSE Arca Rule 7.12–E.

[37] A limit up/limit down condition in the futures market would not be considered an interruption requiring the Trust to be halted.

[38] Under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its accounts for trading in the underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

[39] 17 CFR 240.10A–3. *See* note 8, *supra*.

[40] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, bitcoin derivatives, and ether derivatives from markets and other entities or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares and any underlying bitcoin, bitcoin derivatives, ether, or ether derivatives in connection with ETP Holders' proprietary trades or customer trades effected through ETP Holders on any relevant market. Under NYSE Arca Rule 8.201–E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its accounts for trading in any underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3–E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts and that subsidiary or affiliate is a member of another regulatory organization, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations to the extent the Exchange has such an agreement with an organization of which the subsidiary or affiliate is a member.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the index, portfolio, or reference asset of the Trust, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an ''Information Bulletin'' of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for creations of Shares in Creation Units; (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) information regarding how the value of the ITV and NAV is disseminated; (4) the possibility that trading spreads and the resulting premium or discount on the Shares may widen during the Opening and Late Trading Sessions, when an updated ITV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction and (6) trading information.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as described in the annual report. The Information Bulletin will disclose that information about the Shares of the Trust is publicly available on the Trust's website.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[41] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E. The Exchange has in place surveillance procedures that are adequate to properly monitor Exchange trading in the Shares in all trading sessions and to deter and detect attempted manipulation of the Shares or other violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, bitcoin derivatives, and ether derivatives with other markets that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, bitcoin derivatives, and ether derivatives from such markets. In addition, the Exchange may obtain information regarding trading in the Shares, bitcoin derivatives, and ether derivatives from markets that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares and any underlying bitcoin, bitcoin derivatives, ether, or ether derivatives through ETP Holders, in connection with such ETP Holders' proprietary trades or customer trades effected through ETP Holders on any relevant market.

The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices because the Trust is structured similarly to and will operate in materially the same manner as the Spot Bitcoin ETPs and Spot Ether ETPs previously approved by the Commission. The Exchange further believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because, as noted by the Commission in the Bitcoin ETP Approval Order and Ether ETP Approval Order, the Exchange's ability to obtain information regarding trading in the Shares and futures from other markets that are members of the ISG (including the CME) would assist the Exchange in detecting and deterring misconduct. In particular, the CME bitcoin futures market and CME ether futures market are large, surveilled, and regulated markets that are closely connected with the spot markets for bitcoin and ether, respectively, through which the

[41] 15 U.S.C. 78f(b)(5).

Exchange could obtain information to assist in detecting and deterring potential fraud or manipulation.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (1) daily trading volume, the prior Business Day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the Bid/Ask Price against the NAV; and (ii) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of a new type of exchange-traded product based on the price of bitcoin and ether that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a new type of Commodity-Based Trust Share based on the price of bitcoin and ether that would enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2024–104 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–NYSEARCA–2024–104. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–104 and should be submitted on or before January 6, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29469 Filed 12–13–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–232, OMB Control No. 3235–0225]

Proposed Collection; Comment Request; Extension: Rule 17f–4

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

(44 U.S.C. 350l–3520) (the ''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 17(f) (15 U.S.C. 80a–17(f)) under the Investment Company Act of 1940 (the ''Act'') [1] permits registered management investment companies and their custodians to deposit the securities they own in a system for the central handling of securities (''securities

[42] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 80a.

depositories''), subject to rules adopted by the Commission.

Rule 17f–4 (17 CFR 270.17f–4) under the Act specifies the conditions for the use of securities depositories by funds [2] and their custodians.

The Commission staff estimates that 639 respondents (including an estimated 611 active funds that may deal directly with a securities depository, an estimated 15 custodians and sub-custodians (comprising 7 custodians and 8 sub-custodians), and 13 possible securities depositories) [3] are subject to the requirements in rule 17f–4. To the extent that Rule 17f–4(c)(4) provides that a sub-custodian can be qualified as a custodian for purposes of Rule 17f–4, sub-custodians are included as ''custodians'' in the estimates of burden hours and costs. While the rule is elective, most, if not all, funds use depository custody arrangements.[4]

Rule 17f–4 contains two general conditions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets. If the fund deals directly with a depository, the depository's contract or written rules for its participants must provide that the depository will meet similar obligations. All funds that deal directly with securities depositories in reliance on rule 17f–4 should have either modified their contracts with the relevant securities depository, or negotiated a modification in the securities depository's written rules when the rule was amended. Therefore, we estimate there is no ongoing burden associated with this collection of information.[5]

Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian. If a fund deals directly with a depository, the depository's contract with or written rules for its participants must provide that the depository will provide similar financial reports. Custodians and depositories usually transmit financial reports to funds twice each year.[6] The Commission staff estimates that 15 custodians spend approximately 3,005 hours (by support staff) annually in transmitting such reports to funds.[7] In addition, approximately 611 funds deal directly with a securities depository and may request periodic reports from their depository. Commission staff estimates that depositories spend approximately 179 hours (by support staff) annually transmitting reports to the 611 funds.[8] The total annual burden estimate for compliance with rule 17f–4's reporting requirement is therefore 3,148 hours.[9]

If a fund deals directly with a securities depository, rule 17f–4 requires that the fund implement internal control systems reasonably designed to prevent an unauthorized officer's instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officers' instructions). All funds that seek to rely on rule 17f–4 should have already implemented these internal control systems when the rule was amended. Therefore, there is no ongoing burden associated with this collection of information requirement.[10]

Based on the foregoing, the Commission staff estimates that the total annual hour burden of the rule's collection of information requirements is 3,148 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. This estimate is not derived from a comprehensive or even representative survey or study of the costs of Commission rules.

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 control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by February 14, 2025.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: December 11, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29578 Filed 12–13–24; 8:45 am]

BILLING CODE 8011–01–P

[2] As amended in 2003, rule 17f–4 permits any registered investment company, including a unit investment trust or a face-amount certificate company, to use a security depository. *See* Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) (68 FR 8438 (Feb. 20, 2003)). The terms ''fund'' or ''fund series'' are used in this Notice to mean a registered investment company.

[3] The estimates regarding the number of funds that deal directly with a securities depository, and the number of custodians and sub-custodians, are derived from Form N–CEN filings received through September 30, 2024. In addition, the Commission staff estimates the number of possible securities depositories by adding the 12 Federal Reserve Banks and one active registered clearing agency. The Commission staff recognizes that not all these entities may currently be acting as a securities depository for fund securities.

[4] Based on the Commission staff's historical experience, most, if not all funds use depository custody arrangements. For purposes of estimating the burden of the rule, we assume a fund's custodian or sub-custodian will deal with a securities depository in those cases where a fund does not deal directly with a securities depository itself.

[5] The Commission staff assumes that new funds relying on 17f–4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus, new funds would not be subject to this condition.

[6] Based on Form N–CEN data received as of September 30, 2024, the Commission staff estimates that there are 13,498 funds, 611 of which deal directly with a securities depository. Accordingly, the estimated 15 custodians would handle requests for reports from 12,887 funds (approximately 859 fund clients per custodian) and the depositories from the remaining 611 funds that choose to deal directly with a depository. It is our understanding based on staff conversations with industry representatives that custodians and depositories transmit these reports to clients in the normal course of their activities as a good business practice regardless of whether they are requested. Therefore, for purposes of this PRA estimate, the Commission staff assumes that custodians transmit the reports to all fund clients.

[7] (12,887 fund clients × 2 reports/year) = 25,754 transmissions per year. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 3,005 hours (7 minutes × 25,754 transmissions/60 minutes/hour.)

[8] 611 funds who may deal directly with a securities depository × 2 reports) = 222 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 143 hours (7 minutes × 222 transmissions).

[9] 3,005 hours for custodians and 143 hours for securities depositories.

[10] The Commission staff assumes that new funds relying on 17f–4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101871; File No. SR–ICC–2024–005]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to ICC's Treasury Operations Policies and Procedures

December 10, 2024

I. Introduction

On August 22, 2024, ICE Clear Credit LLC (''ICC''), 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 revise the ICC Treasury Operations Policies and Procedures (''Treasury Policy'') (''Proposed Rule Change''). The Proposed Rule Change was published for comment in the **Federal Register** on September 11, 2024.[3]

On October 25, 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 December 10, 2024.[5] The Commission has not received any comments on the Proposed Rule Change. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

II. Description of the Proposed Rule Change

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts.[6] Its Treasury Policy contains policies and procedures used to support the ICC Treasury Department (''Treasury Department''). The Treasury Department manages ICC's margin and guaranty fund assets posted by Clearing Participants as collateral.[7]

The Proposed Rule Change would make a number of changes to the Treasury Policy that fit into seven categories: (i) additions to the minimum criteria for ICC's settlement banks; (ii) alterations to the investment guidelines contained in the Treasury Policy; (iii) clarifications that add detail to the Treasury Policy; (iv) increases to the breadth of certain Treasury Policy provisions; (v) various corrections to the Treasury Policy; (vi) deletion of unnecessary language from the Treasury Policy; and (vii) certain changes to make the Treasury Policy more consistent with federal and ICC rules.[8]

1. Minimum Criteria for Settlement Banks

ICC maintains relationships with various settlement banks to facilitate the holding and movement of Margin and Clearing Fund cash and collateral between ICC and its Clearing Participants.[9] The current Treasury Policy includes standards and criteria that settlement banks must meet in order to be considered for such a relationship with ICC, including capitalization, operational capability, and regulatory supervision.[10] To aid in ICC's management of liquidity risk arising from settlement arrangements with these banks, the Proposed Rule Change would add a requirement that a settlement bank provide ICC with specific liquidity information.[11] An example of liquidity information that ICC requires from settlement banks is the banks' Liquidity Coverage Ratio. In the event that a bank does not report LCR, the Proposed Rule Change would specify that ICC will consider other criteria to assess the liquidity of the bank. These other criteria may include a description of the bank's liquidity risk management policy or the liquidity coverage ratio of the settlement bank's affiliated reporting entity within the bank's group.

2. Investment Guidelines

The Treasury Policy governs ICC's investment strategy for its own operating capital and for the Margin and Guaranty Fund cash collateral that it holds. That strategy is designed to provide yield with reduced credit and market risk while preserving liquidity and principal.[12]

With respect to ICC's operating capital, currently, the Treasury Policy requires ICC to invest operating capital in either bank deposits or in U.S. Treasury/Agency reverse repurchase agreements (''repos''). However, in the event that bank deposits or reverse repos are unavailable or not feasible, ICC may make direct investments in U.S. Treasury securities with a maturity of no greater than 98 days.[13]

With respect to reverse repos, the current Treasury Policy requires that the value of treasury collateral received by ICC must be between 100.5 percent and 102 percent of the invested U.S. Dollar amount. The Proposed Rule Change would eliminate this range and instead require that the value of the treasury collateral received by ICC be 102 percent of the invested U.S. Dollar amount. ICC believes this change would reflect current market practice and provide greater protection to ICC.[14]

In addition, to provide ICC with greater flexibility to implement its investment strategy while still maintaining the quality of its investments,[15] the Proposed Rule Change would eliminate the current limitation on the Treasury Department's ability to invest operating capital in U.S. Treasury securities only if bank deposits or reverse repos are unavailable or infeasible and instead allow ICC's Treasury Department the discretion to invest operating capital in bank deposits, reverse repos, or U.S. Treasury securities with a final maturity of no greater than 98 days. The Proposed Rule Change also would specify that ICC would primarily directly invest in U.S. Treasury securities with respect to stable balances, for example, restricted cash held for regulatory capital purposes.[16]

3. Additions of Clarifying Details

The Proposed Rule Change would add clarifying details to the Treasury Policy. In a discussion of the Treasury Department's responsibilities, the Proposed Rule Change would add a sentence explaining that ICC's capacity to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which ICC is responsible, and to safeguard securities and funds in ICC's custody or control for which it is responsible, is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 100935 (Sept. 5, 2024), 89 FR 73734 (Sept. 11, 2024) (File No. SR–ICC–2024–005) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 101440 (Oct. 25, 2024), 89 FR 86867 (Oct. 31, 2024) (File No. SR–ICC–2024–005).

[6] Capitalized terms not otherwise defined herein have the meanings assigned to them in ICC's Clearing Rules or the Treasury Policy, as applicable.

[7] Notice, 89 FR at 73734.

[8] ICC also proposes several non-substantive changes to the Treasury Policy. For example, the current Treasury Policy notes that ''Treasury reconciles daily and previous day cash and collateral balances.'' This language would be modified to read ''Treasury reconciles daily: current and previous day cash and non-cash collateral balances.''

[9] Notice, 89 FR at 73736.

[10] *Id.*

[11] *Id.*

[12] ICE Clear Credit LLC Treasury Operations Policies and Procedures.

[13] Notice, 89 FR at 73737.

[14] *Id.* These changes also would apply where ICC invests Guaranty Fund and Margin cash in reverse repos. As explained below, in certain circumstances, ICC may invest in reverse repos USD cash posted by Clearing Participants to satisfy Guaranty Fund and Margin requirements. See *infra* Section II.3.

[15] Notice, 89 FR at 73737.

[16] *Id.*

aided by the Treasury Department. ICC also proposes clarifying that references to the Guaranty Fund in the Treasury Policy are to the General Guaranty Fund as defined in ICC Rule 102.[17] The Proposed Rule Change would modify certain current references to ''cash and collateral'' and ''cash or collateral'' to ''cash and non-cash collateral'' and ''cash and/or non-cash collateral,'' respectively.[18] It also would modify the current description of the Treasury Department as being responsible for managing postings by ICC Clearing Participants to a statement that the Treasury Department is responsible for managing Guaranty Fund *collateral* postings by ICC Clearing Participants.[19] In the Treasury Department Organizational Structure and Governance subsection of the Treasury Policy, ICC also proposes adding text to clarify that the Treasury Director oversees the Treasury Department and reports to the ICC Chief Operating Officer.[20]

Where ICC describes the types of funds it manages, ICC proposes specifying that the definition for Margin is in Rule 102 of ICC's Clearing Rules and that the Treasury Policy would refer to Initial Margin and Mark-to-Market Margin collectively as Margin.[21] Similarly, the Proposed Rule Change would highlight the location of definitions for House Margin, Client-Related Positions, and Client-Related Margin; clarify that the Treasury Policy would use the term Client Positions in place of Client-Related Positions; [22] and give a definition of House Margin and Client-Related Margin.[23]

ICC also proposes adding clarifying language to a subsection of the Treasury Policy discussing ICC's investment of US Dollar cash.[24] This language would identify the Federal Reserve Bank (''FRB'') of Chicago as a central bank. The amendments would also clarify that if ICC is unable to deposit all or a portion of its Guaranty Fund and Margin that was posted as USD cash at its FRB accounts, ICC's Treasury Department may invest such cash in *US* Treasury/Agency reverse repurchase agreements rather than Treasury/Agency reverse repurchase agreements. Similarly, in a subsection of the Treasury Policy addressing liquidity protection, ICC proposes specifying that it would call additional Initial Margin, rather that additional margin, if a Clearing Participant does not meet certain liquidity requirements.[25]

The Proposed Rule Change would also add detail to the Cash Settlement section of the Treasury Policy. ICC proposes adding options premia and interest on Mark-to-Market Margin to a list of Transaction Payments in order to reflect current ICC practice.[26] In a discussion of ICC's direct settlement model, ICC also proposes adding detail to clarify its settlement operations.[27] Specifically, ICC would add text indicating that in the direct settlement model, Clearing Participants must establish settlement bank arrangements and make all requested payments to ICC within the required timeframe. The Treasury Policy would be further updated to note that, under the direct settlement model, ICC does not maintain accounts at each of the Clearing Participant settlement banks. Instead, ICC maintains direct debit authority over the Clearing Participant settlement bank accounts as such authority is granted by each Clearing Participant.

ICC's proposal would also add detail to the discussion of Clearing Participant requirements for direct settlement. Specifically, ICC proposes clarifying that, under the direct settlement model, Clearing Participants are responsible for ensuring that ICC has timely received all requested payments. If timely payment is not received, the Clearing Participant may be declared to be in default of its obligations to ICC. This proposed addition is meant to clarify ICC's existing practices.[28]

In relation to the description of ICC's daily settlement process in the Treasury Policy, ICC proposes additions that would describe current practice.[29] To that end, the Treasury Policy would be updated to explain that ICC's daily settlement process occurs with each Clearing Participant every business day as applicable, and that settlement is final and irrevocable at the earlier of the time when (i) ICC receives the relevant payment or (ii) a financial institution used by ICC sends a confirmation message to ICC confirming that the relevant payment has been made.

ICC's amendments would also add detail to the Custodial Assets section of the Treasury Policy. ICC proposes clarifying that its policies regarding acceptable forms of cash and non-cash collateral for Initial Margin and Guaranty Fund and their associated ''haircuts'' are designed to provide protection for market risk management in addition to liquidity risk management. Additionally, ICC's proposed changes to the excess collateral sub-section would require that Clearing Participant requests to transfer excess collateral be completed prior to 9 a.m. ET for GBP denominated collateral in addition to EUR denominated collateral in order to receive the assets on the same day. ICC proposes this change because currently the sub-section does not contain the applicable GBP deadline for the transfer of excess GBP denominated collateral.[30]

In the treasury reconciliations section, the Proposed Rule Change would clarify that ICC's Treasury Department conducts a daily reconciliation process with respect to its cash and non-cash collateral accounts in accordance with its internal procedures.[31] ICC also proposes clarifying that ''cite checks'' involve the manual review of transaction activity rather than the manual review of the ISG requests. In ICC's view, this would be a clarifying change because the term ''ISG requests'' is vague and undefined.[32]

4. Proposed Changes That Broaden Certain Provisions

The Proposed Rule Change also increases certain provisions' breadth. In the section of the Treasury Policy covering the Treasury Department's responsibilities, the current term ''settlement issues'' would be replaced with the term ''treasury management related issues.'' As a result of this proposed change, the Treasury Policy

[17] Notice, 89 FR at 73734.

[18] *Id.* For example, ICC proposes that a description of one of the Treasury Department's responsibilities should indicate that it works with Clearing Participants to assist with other cash and non-cash collateral related requests rather than cash and collateral related requests. Similar changes are also made in the introduction to the Treasury Department section and the Funds Management, Types of Funds section of the Treasury Policy.

[19] Notice, 89 FR at 73734.

[20] *Id.* at 73735.

[21] *Id.* ICC's proposal would incorporate Margin and other related defined terms throughout the Treasury Policy.

[22] Unlike the term Client Positions, Client-Related Positions is a term defined in ICC Rule 102.

[23] *Id.* at 73735. The Proposed Rule Change would indicate that Initial Margin collateral is maintained and managed separately for Clearing Participant House Positions (''House Margin'') and clearing activities associated with indirect participant or client positions (*i.e.,* Client-Related Margin referred to in the Treasury Policy as ''Client Margin''). The definitions for House Position, Client-Related Positions, and Client Related Margin (Client-Related Initial Margin) are in Rule 102 of the ICC Rule Book.

[24] Notice, 89 FR at 73735.

[25] *Id.*

[26] *Id.* ICC also proposes replacing Trade Payments with transaction payments in this provision.

[27] *Id.* at 73736.

[28] *Id.*

[29] *Id.*

[30] *Id.* at 73737.

[31] *Id.* These procedures include cite checks for validating the status of margin payments; a check of prior-day cash balances, withdrawals, and/or deposits; and a comparison of current and expected balances.

[32] *Id.* at 73737.

would specify that the Treasury Department is responsible for maintaining relationships and contacts with Clearing Participants to efficiently and effectively identify, validate, escalate and correct ''treasury management related issues'' rather than ''settlement issues.'' ICC also proposes replacing the phrase ''substitute collateral for cash'' with the phrase ''perform collateral substitutions'' in another provision in the same section. As a result of this change, the Treasury Policy would describe the Treasury Department as being responsible for managing the process whereby Clearing Participants ''perform collateral substitutions'' instead of the process whereby Clearing Participants ''substitute collateral for cash.'' ICC proposes these changes to provide a more complete picture of its current payment practices.[33] Additionally, the Proposed Rule Change would replace the word cash with the word collateral in a separate provision. As a result of this proposed change, the Treasury Department would be required to work to develop ''investment and collateral'' management strategies rather than ''investment and cash'' management strategies. In ICC's view, this change would more fully describe the scope of ICC's current practice and be consistent with the rest of the Treasury Policy.[34]

The Proposed Rule Change would also broaden the Funds Management section of the Treasury Policy. In this section's discussion of investment of Guaranty Fund and Margin requirements posted in US Dollar cash, ICC proposes adding that bilateral reverse repo transactions may be settled through alternative counterparties that may be added to the Treasury Policy in the future. The policy already notes that these repos are settled through a specific bank or additional counterparties that may be added in the future. This proposed addition aims to encompass potential future changes in ICC's financial service provider relationships.[35]

In the Treasury Policy's Cash Settlement section, ICC proposes changing how it describes its settlement banking relationships. Currently, ICC provides the names of its backup settlement banks in a subsection of the Treasury Policy addressing its banking relationships. Instead of naming specific backup settlement banks in one provision, ICC proposes that the provision indicate that ICC maintains appropriate backup settlement banking relationships. In the same subsection, ICC also proposes conforming changes related to this proposed change. Similarly, when addressing bank to bank and credit SWIFT messages, ICC's proposal would remove a reference to ICC's specific settlement banks and instead refer to ''applicable ICC settlement banks.'' These changes would help ICC avoid amending the Treasury Policy if its specific settlement banks it uses change.[36] ICC's amendments would also add text to a subsection discussing when settlement banks fail to perform. This text currently lists specific banks that ICC's Treasury Department would instruct Clearing Participants to wire funds to directly if they do not pay because a settlement bank failed to perform. The Proposed Rule Change would add a new bank to the current list. It would also provide that if a settlement bank does not perform, ICC's Treasury Department would instruct the Clearing Participant to wire funds directly to ICC's accounts at alternative or additional settlement banks. These changes would broaden the list of settlement banks that ICC may designate.[37]

ICC also proposes replacing references to specific types of SWIFT messages with more general descriptions. Making this change would account for potential changes to specific types of SWIFT messages.[38]

ICC proposes broadening provisions in the Custodial Assets section of the Treasury Policy as well. Currently, the Treasury Policy provides that ICC accounts for the risk associated with changes in the value of US Treasuries and non-USD currencies by applying ''haircuts.'' [39] The amendments would instead provide that ICC accounts for the risk associated with fluctuations in the value of cash and non-cash collateral by applying ''haircuts.'' ICC proposes this change because ICC accepts more than just U.S. Treasuries and non-USD currencies as collateral.[40]

5. Proposed Corrections to the Treasury Policy

ICC also proposes to make various corrections to the Treasury Policy. In the Treasury Department Responsibilities section of the Treasury Policy, ICC proposes replacing a reference to margin requirements with a more general reference to requirements, a reference to margin deficit payments with a reference to payments, a reference to margin accounts with a reference to accounts, and a reference to the daily margin process with a reference to the daily clearing process. These proposed changes would improve the accuracy of the Treasury Policy because, in practice, the references to requirements, payments, accounts, and processes are not limited solely to margin.[41] The Proposed Rule Change would also indicate that ICC, rather than ICC's Risk Department, generates daily requirements for all Clearing Participants (including requirements for indirect participants, *i.e.,* Client-Related requirements). ICC's entity-wide clearing systems automatically create these requirements, not the ICC Risk Department.[42] The Proposed Rule Change would also modify the description of these requirements to indicate that they would be based on ''cleared positions'' rather than ''cleared trades.'' In ICC's view, the word ''positions'' better describes Clearing Participants' cleared activity at ICC.[43] ICC also proposes correcting text related to receipt of payments under the Treasury Policy.[44] Currently, the Treasury Policy notes that Treasury ensures that payments are received and honored by Clearing Participant's CDS related banking relationships. Because ICC does not base its settlement of transactions on whether a Clearing Participant's bank honors a payment direction, ICC proposes correcting this text to note that Treasury ensures that payments are received from Clearing Participants.[45] ICC also proposes removing text reading, ''within the Risk Management framework of the clearing house'' from a provision that currently reads ''working within the Risk Management framework of the clearing house to develop investment and cash management strategies.'' The proposed rule change would require the Treasury Department to work to develop investment and collateral management strategies.[46] ICC proposes removing the Risk Management Framework language from this provision because the relevant investment and collateral management policies are now housed in the Treasury Policy instead of the Risk Management Framework.[47] In the Treasury Department Organizational Structure and Governance section of the Treasury

[33] *Id.* at 73735.

[34] *Id.*

[35] *Id.*

[36] *Id.* at 73736.

[37] *Id.*

[38] *Id.* at 73736. Similar changes are made throughout the Treasury Policy.

[39] ICE Clear Credit LLC Treasury Operations Policies and Procedures.

[40] Notice, 89 FR at 73737.

[41] *Id.* at 73734.

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] ICC's proposed replacement of cash management strategies with collateral management strategies is described above in Section 4.

[47] Notice, 89 FR at 73735.

Policy, ICC proposes removing text indicating that the Treasury Department is part of ICC's Operations Department. The Treasury Department is not and has never been a part of the Operations Department.[48]

ICC also proposes corrections to the Funds Management section of the Treasury Policy. Specifically, ICC would replace certain current references to the Treasury Director making investments with statements that the Treasury Department makes these investments. ICC proposes these changes because it is ICC's practice for Treasury Department personnel to make these investments under the Treasury Director's supervision.[49]

In the Funds Management section's discussion of investment of US Dollar cash posted as Margin or to the Guaranty Fund, ICC proposes a change to reflect that ICC has multiple FRB accounts rather than a single FRB account.[50] ICC also proposes changing the description of the minimum cash it is required to invest in a bilateral reverse repo under certain circumstances. The current description states that the minimum cash requirement is equal to 45% of the top two Clearing Participant's ''risk margin,'' plus any excess margin not released, plus 45% of the total Guaranty Fund. The revised description would state that the minimum cash requirement is equal to 45% of the top two Clearing Participant's ''Margin requirement,'' plus any excess margin not released, plus 45% of the total Guaranty Fund. ICC believes this change better reflects ICC's current practices because it is more detailed and accurate. ICC believes the term ''Margin requirement'' specifically includes both initial and mark-to-market margin requirements whereas the term ''risk margin'' is less specific.[51] Where the Funds Management section discusses outside investment management of Guaranty Fund and Margin cash, ICC proposes using the plural term ''investment managers'' instead of the singular ''investment manager'' because, in practice, ICC uses more than one outside investment manager to help it invest Guaranty Fund and Margin cash.[52] In a discussion of liquidity protection, ICC's proposal would describe a requirement for Clearing Participants to maintain ''tiers of collateral'' rather than ''tiers of assets.'' This is because ICC believes the term ''collateral'' is more accurate in this instance because it is a more precise description.[53]

ICC proposes corrections to the cash settlement section of the Treasury Policy as well. In relation to routine settlement procedures, the Treasury Policy currently indicates that, during the process of monitoring whether a Clearing Participant has made timely payment, if a Clearing Participant's payment is late ICC's Treasury Department contacts the Clearing Participant and/or the agent bank. Because ICC contacts the Clearing Participant directly if a payment is late and does not contact the agent bank, ICC proposes removing the reference to the agent bank.[54] With respect to settlement procedures during a SWIFT outage, the current Treasury Policy indicates that in the event that ICC is unable to send SWIFT messages to its direct settlement banks, the following back-up procedures would be used. ICC proposes changes to this provision so that it indicates that in the event that ICC is unable to send SWIFT messages to ''Clearing Participant settlement banks,'' rather than ''direct settlement banks,'' it would use certain back-up procedures. This proposal corrects an incorrect reference to ''direct settlement banks'' in the current Treasury Policy.[55] For the same reason, ICC proposes replacing the term ''direct settlement banks'' with ''Clearing Participants'' in revisions to procedures for communicating directly with a Clearing Participant when there is a SWIFT outage.[56] Specifically, ICC proposes changes to the Treasury Policy noting that when there is a SWIFT message disruption, it may become necessary to send a report directly to ''ICC's Clearing Participants'' rather than ''ICC's direct settlement banks.'' As noted above, under the direct settlement model, ICC does not maintain accounts at each of the Clearing Participant settlement banks. Instead, ICC maintains direct debit authority over the Clearing Participant settlement bank accounts as such authority is granted by each Clearing Participant. Thus, it is more accurate to describe the settlement banks as they relate to ICC's Clearing Participants, rather than being ICC's direct settlement banks.

ICC also proposes correcting language in the Treasury Policy related to its FRB accounts. Currently, a subsection of the Treasury Policy addressing ICC's FRB accounts addresses the possibility that ICC would have only one FRB account. Due to certain requirements that ICC segregate funds, ICC currently has separate FRB accounts for house and client margin. To reflect this, ICC would refer to ''accounts'' instead of an ''account'' or ''account(s)'' and remove outdated language focused on the possibility that ICC would have a single FRB account. ICC would also add text defining the terms House Account and Client Account,[57] replace text to utilize those terms,[58] and note that ICC maintains separate margin accounts for each Clearing Participant's House Positions and Client Positions.

The Proposed Rule Change would also correct portions of the Custodial Assets section of the Treasury Policy and update reporting requirements for ICC's custodial banks. Instead of indicating that custodial banks are required annually to submit a specific report, the updated Treasury Policy would explain that custodial banks are subject to ongoing monitoring pursuant to ICC's Counterparty Monitoring Procedures, and the current requirement that custodial banks must submit the specific report to ICC would be removed.[59] With respect to its collateral haircut methodology, ICC's proposed changes would require ICC's Treasury Department to provide a report containing current ''haircuts'' to the ICC Risk Department at least once a month rather than only once a month and, further, this requirement would no longer depend on whether the haircuts changed. Relatedly, ICC proposes changes to reflect its current practice of making its haircuts publicly available and notifying Clearing Participants of any changes to those haircuts.[60] The current Treasury Policy notes only that ICC will establish and publish the haircuts to Clearing Participants monthly.

In the Bank Monitoring section of the Treasury Policy, ICC proposes updating the current reference to the CDS Clearing Counterparty Monitoring Procedures to reflect that these procedures are now called the Counterparty Monitoring Procedures.[61]

6. Proposed Deletions of Obsolete and Unnecessary Text

ICC's proposal would delete unnecessary and obsolete language

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.* at 73736.

[55] *Id.*

[56] *Id.*

[57] ICC's proposal would also refer to the Client Account as a Cleared Swaps Customer Account. The Proposed Rule Change would incorporate these definitions throughout the Treasury Policy.

[58] Specifically, ICC proposes replacing FRB House cash account with FRB House Account and FRB Client cash account with FRB Client Account.

[59] Notice, 89 FR at 73736.

[60] *Id.* at 73737.

[61] *Id.*

throughout the Treasury Policy. In the description of the funds and requirements that ICC's Treasury Department manages, the Proposed Rule Change would remove a footnote identifying where to find the definition of Guaranty Fund because, under ICC's proposal, the location of this definition is now found in the Treasury Department Responsibilities section of the Treasury Policy.[62]

ICC proposes changing the description of ICC's investment of US Dollar Cash posted as Margin or in the Guaranty Fund to remove language it deems unnecessary. Currently, a provision in this section indicates that, to facilitate reverse repo transactions, ICC has arrangements in place to settle reverse repo transactions, either by tri-party or bilateral, and that both arrangements settle delivery vs. payment. The proposed provision would instead note that, to facilitate reverse repo transactions, ICC has arrangements in place to settle reverse repo transactions delivery vs. payment. This section of the Treasury Policy also currently requires that when a security must be substituted, ICC will ensure the replacement security is eligible and is valued correctly by reviewing the replacement ticket issued by the counterparty. ICC proposes deleting this requirement in its entirety. In each case, ICC proposes the deletions because it does not believe that the Treasury Policy needs to discuss these matters at the current level of detail.[63]

The Proposed Rule Change would delete unnecessary provisions in the Cash Settlement section of the Treasury Policy as well. With respect to non-routine settlement procedures, the Treasury Policy current explains that if ICC must process a cash payment from a Clearing Participant outside of the normal daily process, an ICC authorized person will work with the Clearing Participant to confirm the particulars of the non-routine settlement. The Treasury Policy currently further explains that ICC sends SWIFT MT–204(USD)\MT–202(EUR) settlement instructions to the designated bank via the SWIFT network. The proposed rule change would maintain the substance of this provision—ICC would work with the Clearing Participant to confirm settlement outside of the daily process—but it would delete the reference to the specific SWIFT message. ICC maintains that reference the specific SWIFT message is unnecessary because ICC and the Clearing Participant in question would be expected to separately confirm the particulars of the settlement, and further the type of SWIFT message could change in the future.[64]

In the Treasury Policy's discussion of settlement procedures in the event of a SWIFT outage, the Proposed Rule Change would also remove the requirement that Margin Deficit Call Reports would be sent using a password protected email. The Treasury Policy currently explains that, in the event of a SWIFT outage, it may become necessary for ICC to manually send these reports,[65] as needed to satisfy margin debit calls. The Treasury Policy currently explains that these Margin Deficit Call Reports would be sent using a password protected email. The Proposed Rule Change would remove the requirement that the email be password protected. Because ICC does not believe that email security measures need to be addressed in the Treasury Policy, the Proposed Rule Change would instead require Margin Deficit Call Reports to be sent via email.[66] Thus, ICC would still send the Margin Deficit Call Reports via email, as needed, but the Treasury Policy would not contain a requirement that this email be password protected.[67]

Currently, the Treasury Policy explains that, when a bank rejects a SWIFT debit message because of a technical defect, the Treasury Department will manually update the SWIFT Transaction Summary Report and will manually initiate and send a SWIFT MT202 (bank to bank) and/or MT204 (direct debit) message to reverse and/or correct previous message(s) to the bank. ICC would amend this text to indicate that the Treasury Department will correct the previous message(s) and/or re-issue a corrected SWIFT message to the bank. Thus, rather than referring to the specific type of SWIFT message (*i.e.* MT202), the revised Treasury Policy would refer to SWIFT messages generally. This change would remove what ICC views as unnecessary detail regarding reissuing and correcting the SWIFT message and the specific type of SWIFT message that will be sent, and further helps ensure that the Treasury Policy remains accurate if the numbers of SWIFT messages are updated or otherwise changed.[68]

ICC would also remove unnecessary text from the Treasury Policy's Custodial Assets section and Treasury Management for Client Business section. Specifically, ICC would remove outdated language contemplating a scenario where ICC only has one FRB securities account.[69] ICC has multiple FRB securities accounts.[70] Further, when discussing when client margin is due, ICC proposes removing text highlighting that ICC's deadlines are in keeping with daily payment processes. ICC states that it views this text as unnecessary.[71] The remaining text would still note when payments related to client business are due to ICC.

In Appendix 2 of the Treasury Policy, ICC would remove information related to its key contacts at a number of specific banks. Specifically, ICC proposes removing the names of banks for which it maintains a list of key contacts. ICC does not believe it needs to list this level of detail in the Treasury Policy because the specific banks are likely to change.[72]

7. Proposed Changes for Consistency Purposes

Finally, some of ICC's proposed changes are designed to ensure that the Treasury Policy is internally consistent with itself, other ICC rules and procedures, and external regulatory requirements. In the Funds Management Section of the Treasury Policy, ICC proposes to add the word ''requirements'' in multiple places to ensure that Margin and Guaranty Fund requirements are referred to consistently throughout the document.[73] To ensure the Treasury Policy is consistent with other ICC rules and procedures, ICC proposes adding language to the Treasury Policy indicating that it maintains and manages House Margin and Client Margin separately.[74] To ensure the Treasury Policy is consistent with certain regulatory requirements applicable to ICC, the Proposed Rule Change would require that Initial Margin and Guaranty Fund requirements are held in a manner

[62] Notice, 89 FR at 73735.

[63] *Id.*

[64] *Id.* at 73736.

[65] As described in Section II.5, ICC proposes changes to the Treasury Policy to send these reports to ICC's Clearing Participants rather than ICC's direct settlement banks. See *infra* Section II.5.

[66] Notice, 89 FR at 73736.

[67] Nevertheless, per other ICC policies, such as the ICE Corporate Information and Security Policy, the Commission expects this information would be sent in a secure manner.

[68] Notice, 89 FR at 73736.

[69] *Id.*

[70] *Id.*

[71] *Id.* at 73737.

[72] *Id.*

[73] Notice, 89 FR at 73735. For example, ICC would add the word requirements to the introductory paragraph of the Funds Management section so that it notes that Treasury is responsible for developing investment strategies and managing each of the types of funds and requirements in accordance with their respective restrictions and ICC's Investment Policy. In another example, ICC proposes clarifying that the Treasury Department is responsible for cash and non-cash collateral originating from Initial Margin requirements posted by Clearing Participants.

[74] *Id.*

which minimizes the risk of loss or delay in ICC's access to collateral, which mirrors the language used in the relevant regulatory requirements.[75] This would be a change from the current language, which indicates that Margin and Guaranty Fund requirements must be held in highly liquid and short term investments.

The text and titles in and around several tables in the Funds Management section of the Treasury Policy would also be changed to ensure they are consistent with other sections of the Treasury Policy.[76] Specifically, in these tables ICC proposes using the terms ''USD cash'' instead of ''US Dollar Cash'' and ''US Cash,'' ''US Treasury Securities'' instead of ''US Treasuries,'' and ''EUR cash'' instead of ''Euro Cash'' to mirror the terms used in the rest of the revised Treasury Policy.[77] ICC also proposes using defined terms throughout the Treasury Policy, such as House Margin.

ICC proposes changes to the Participants' Withdrawal subsection of the Funds Management section as well. Specifically, ICC would add text indicating that Guaranty Fund deposits are not eligible to be returned to a withdrawing Clearing Participant until after all of the open positions of such withdrawing Clearing Participant are closed out and all obligations of such withdrawing Clearing Participant to ICC have been satisfied. ICC proposes this change to make this provision consistent with Rule 807 of the ICC Rulebook. Similarly, a current provision in the Participants' Withdrawal subsection indicates that, if a Clearing Participant provides notice of withdrawal less than 60 days from the end of the quarter, the Clearing Participant's withdrawal will be effective at the end of the subsequent calendar quarter. However, because this is not consistent with or required under ICC's rules, the Proposed Rule Change would delete this provision from the Treasury Policy.[78]

Finally, in the section of the Treasury Policy discussing ICC's use of committed repo facilities, ICC proposes modifying certain text describing how expenses are attributed. Currently, the Treasury Policy indicates that interest expenses incurred through such facilities are attributed to the account of the defaulting Clearing Participant. ICC's proposal would indicate that all expenses incurred through such facilities, including interest expenses, are attributed to the account of the defaulting Clearing Participant. ICC indicates that this proposed change is consistent with the approach for allocation of close-out costs to a defaulter under ICC's Rulebook.[79]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[80] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[81] and Rule 17Ad–22(e)(7)[82] and (e)(16).[83]

A. Consistency With Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, ICC's rules, among other things, must be ''designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions'' and ''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.''[84] Based on a review of the record, and for the reasons discussed below, ICC's proposed rule change is consistent with Section 17A(b)(3)(F).

Among other things, the Proposed Rule Change updates the Treasury Policy by adding additional detail to various provisions and making various clarifications.[85] For example, the Proposed Rule Change would better explain what the Treasury Department does; define specific terms, such as Margin, and use those terms consistently throughout the Treasury Policy; and align the language and descriptions used in the Treasury Policy with ICC's current practices, such as assigning responsibility for ICC's timely receipt of requested payments to the Clearing Participants under the direct settlement model.

The Proposed Rule Change also updates the Treasury Policy by correcting certain inaccuracies within the policy, deleting unnecessary language, and making various conforming changes to ensure that the Treasury Policy is internally consistent with itself, consistent with other ICC policies and rules, and consistent with external rules. For example, because relevant investment and collateral management policies are now housed in the Treasury Policy instead of the Risk Management Framework, ICC would remove language indicating that developing investment and collateral management strategies could only be performed within ICC's Risk Management Framework. As a result, ICC's Treasury Department will be required to work to develop investment and collateral management strategies irrespective of whether it does so within ICC's Risk Management Framework. The Treasury Policy would also be updated to correctly identify the parties responsible for investing certain funds, correctly identify certain procedures referenced within the Treasury Policy, and make changes reflecting that ICC has more than one FRB account and more than one investment manager. ICC would also remove what it believes are unnecessary details from certain provisions of the Treasury Policy, such as information identifying specific types of repo transactions and specific information regarding email security. To help ensure the Treasury Policy is both internally and externally consistent, the Proposed Rule Change would revise the Treasury Policy to indicate that ICC manages House Margin and Client Margin separately—consistent with other ICC policies and procedures—and modify certain terms used in the Treasury Policy to mirror the terms used elsewhere in the Treasury Policy and in other ICC rules. These changes also improve the clarity of the Treasury Policy and decrease the possibility for error in using and applying the Treasury Policy. Moreover, eliminating unnecessary details and provisions from the Treasury Policy helps ensure both that it will need to be amended less frequently in the event those details change and that, in the event revisions are necessary, that such revisions are less prone to error. Avoiding errors in the amendment process also improves their clarity as a whole and decreases the possibility for error in applying them.

The Proposed Rule Change would also expand certain provisions in the Treasury Policy by replacing specific terms in the Treasury Policy with more general terms and adding broadening language to existing text. For example, in certain instances, ICC would refer to collateral generally instead of more specific forms of collateral. ICC would

[75] *Id.*

[76] *Id.*

[77] Similar changes are made throughout the Treasury Policy.

[78] *Id.* at 73735.

[79] *Id.*

[80] 15 U.S.C. 78s(b)(2)(C).

[81] 15 U.S.C. 78q–1(b)(3)(F).

[82] 17 CFR 240Ad–22(e)(7).

[83] 17 CFR 240Ad–22(e)(16).

[84] 15 U.S.C. 78q–1(b)(3)(F).

[85] Notice, 89 FR at 73734.

also account for potential changes in banking relationships and SWIFT messages by referring to these relationships and messages more generally. Taken together, the use of these broader, more general terms would immediately improve the accuracy of the Treasury Policy and help ensure that it remains accurate in the event there are non-substantive changes to ICC's banking relationships and the specific types of SWIFT messages that ICC uses.

By adding additional details and clarifications, correcting inaccuracies, deleting unnecessary language, making conforming changes to ensure internal and external consistency, and replace unnecessarily specific terms with broader, more general terms, the Proposed Rule Change helps ensure that the Treasury Policy is and will remain clear, consistent, and current, which in turn decreases the likelihood that the Treasury Policy and its provisions will be applied erroneously or inconsistently. This decreases the likelihood of ICC's mismanagement of collateral, which facilitates the prompt and accurate clearance and settlement of transactions and assures the safeguarding of securities and funds within ICC's custody or control.

ICC also proposes adding additional criteria for settlement banks. Because settlement banks ultimately custody the funds that Clearing Participants will use to satisfy their obligations to ICC, ICC needs visibility into a settlement bank's liquidity. To ensure that ICC has such visibility, the Proposed Rule Change would update the Treasury Policy to require that settlement banks provide specific liquidity information to ICC. An example of the liquidity information that ICC requires from settlement banks is the banks' Liquidity Coverage Ratio. In the event that the bank does not report LCR, the Proposed Rule Change would specify that ICC will consider other criteria to assess the liquidity of the bank. These other criteria may include a description of the bank's liquidity risk management policy or the liquidity coverage ratio of the settlement bank's affiliated reporting entity within the bank's group. Ensuring that ICC has this information will help ICC avoid a relationship with a settlement bank that is unable to satisfy obligations on a Clearing Participant's behalf, despite the Clearing Participant being financially sound. Preventing relationships with illiquid settlement banks would help facilitate the prompt and accurate clearance and settlement of transactions and assure the safeguarding of securities and funds within ICC's custody or control.

Finally, ICC proposes changes to its investment guidelines. Specifically, ICC proposes eliminating the restriction that it may only invest in certain U.S. Treasury Securities when bank deposits or Treasury/Agency reverse repos become unavailable or are not feasible. The Proposed Rule Change would specify that ICC would primarily directly invest in U.S. Treasury securities with respect to stable balances, for example, restricted cash held for regulatory purposes. ICC proposes this change because it believes the change would give it greater flexibility while preserving the quality of investments. ICC also proposes requiring the value of collateral in the case of a reverse repo to be fixed at 102 percent instead of ranging between 100.5 percent to 102 percent. Given the safety of these investments, ICC's proposal to potentially invest cash held for regulatory purposes in U.S. Treasury securities is consistent with the safeguarding of securities and funds within ICC's custody or control.[86] Further, ICC's proposal to ensure that the value of collateral will always be 102 percent in a reverse repo provides ICC with greater protection in the event that it provides cash to an entity in exchange for the entity's promise to repurchase a security from ICC at a higher price because it helps to ensure that ICC will receive a larger amount if an entity is unable to purchase securities back at the agreed upon price. This protects ICC as it invests its cash balances and therefore is consistent with the safeguarding of securities and funds within ICC's control.

Accordingly, the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[87]

B. Consistency With Rule 17Ad–22(e)(7)

Rule 17Ad–22(e)(7) requires ICC to ''establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . effectively measure, monitor, and manage the liquidity risk that arises or is borne by the covered clearing agency . . . by at a minimum . . . undertaking due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has . . . the capacity to perform as required under its commitments to provide liquidity to the covered clearing agency.'' [88] Based on a review of the record, and for the reasons discussed below, ICC's proposed rule change is consistent with Rule 17Ad–22(e)(7).

The Proposed Rule Change would add to ICC's minimum criteria for settlement banks by requiring that a settlement bank provide specific liquidity information such as the Liquidity Coverage Ratio. Obtaining this information can help ensure that ICC is able to determine whether a settlement bank with which it has a relationship is facing liquidity issues. Performing such diligence is consistent with the requirements of Rule 17Ad–22(e)(7) because a settlement bank's liquidity issues may prevent an otherwise liquid Clearing Participant from satisfying its obligations.

Accordingly, that the proposed rule change is consistent with the requirements of Rule 17Ad–22(e)(7).[89]

C. Consistency With Rule 17Ad–22(e)(16)

Rule 17Ad–22(e)(16) requires ICC to ''establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . safeguard the covered clearing agency's own and its participants' assets, minimize the risk of loss and delay in these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.'' [90] Based on a review of the record, and for the reasons discussed below, ICC's proposed rule change is consistent with Rule 17Ad–22(e)(16).

As noted above, ICC proposes eliminating the restriction that it may only invest its operating capital in certain U.S. Treasury Securities when bank deposits or Treasury/Agency reverse repos become unavailable or are not feasible. While ICC is not required to invest its own or its Participants' assets, if it does so, it generally should seek to minimize the risk of loss or delay in access to the invested assets by investing in highly liquid assets.[91] The Commission has previously stated that U.S. Treasury securities are highly liquid.[92] ICC's proposal to invest its assets in U.S. treasury securities is therefore consistent with Rule 17Ad–22(e)(16).

Accordingly, the Proposed Rule Change is consistent with the requirements of Rule 17Ad–22(e)(16).[93]

[86] Certain maturity limitations will still apply to the U.S. Treasuries in which ICC is allowed to invest. *Id.* at 73738.

[87] 15 U.S.C. 78q–1(b)(3)(F).

[88] 17 CFR 240.17Ad–22(e)(7).

[89] 17 CFR 240.17Ad–22(e)(7).

[90] 17 CFR 240.17Ad–22(e)(16).

[91] Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70837 (Oct. 13, 2016) (File No. S7–03–14).

[92] *Id.*

[93] 17 CFR 240.17Ad–22(e)(16).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act[94] and Rule 17Ad–22(e)(7)[95] and (e)(16) thereunder.[96]

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–ICC–2024–005) be, and hereby is, approved.[97]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[98]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29474 Filed 12–13–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101870; File No. SR–CBOE–2024–047]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Its Rules Regarding the Types of Complex Orders Available for Flexible Exchange Options (''FLEX'') Trading at the Exchange

December 10, 2024.

On October 11, 2024, Cboe Exchange, Inc. (''Cboe Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules to govern new types of complex orders available for FLEX trading. The proposed rule change was published for comment in the **Federal Register** on October 30, 2024.[3]

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days 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 December 14, 2024. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates January 28, 2025, 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–CBOE–2024–047).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29473 Filed 12–13–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, December 18, 2024, at 10:00 a.m. (ET).

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov.*

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to approve the 2025 Final Budget and Accounting Support Fee for the Public Company Accounting Oversight Board

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(*Authority:* 5 U.S.C. 552b.)

Dated: December 11, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–29635 Filed 12–12–24; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–514, OMB Control No. 3235–0572]

Proposed Collection; Comment Request; Reinstatement Without Change: Reports of Evidence of Material Violations

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 (PRA) of 1995, 44 U.S.C. 3501–3520, the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for reinstatement without change.

On February 6, 2003, the Commission published final rules, effective August 5, 2003, entitled ''Standards of Professional Conduct for Attorneys Appearing and Practicing Before the Commission in the Representation of an Issuer'' (17 CFR 205.1–205.7). The information collection embedded in the rules is necessary to implement the Standards of Professional Conduct for Attorneys prescribed by the rule and required by Section 307 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7245). The rules impose an ''up-the-ladder'' reporting requirement when attorneys appearing and practicing before the Commission become aware of evidence of a material violation by the issuer or any officer, director, employee, or agent of the issuer. An issuer may choose to establish a qualified legal compliance committee (''QLCC'') as an alternative procedure for reporting evidence of a material violation. In the rare cases in which a majority of a QLCC has concluded that an issuer did not act appropriately, the information may be communicated to the Commission. The collection of information is, therefore, an important component of the Commission's program to discourage violations of the federal securities laws and promote ethical behavior of attorneys appearing and practicing before the Commission.

[94] 15 U.S.C. 78q–1(b)(3)(F).

[95] 17 CFR 240.17Ad–22(e)(7).

[96] 17 CFR 240.17Ad–22(e)(16).

[97] In approving the proposed rule change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[98] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 101428 (October 24, 2024), 89 FR 86393.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

This information collection requirement was previously approved by OMB, but the approval expired on November 30, 2021. Accordingly, the Commission will request a reinstatement without change of OMB's approval.

The respondents to this collection of information are attorneys who appear and practice before the Commission and, in certain cases, the issuer, and/or officers, directors and committees of the issuer. We believe that, in providing quality representation to issuers, attorneys report evidence of violations to others within the issuer, including the Chief Legal Officer, the Chief Executive Officer, and, where necessary, the directors. In addition, officers and directors investigate evidence of violations and report within the issuer the results of the investigation and the remedial steps they have taken or sanctions they have imposed. Except as discussed below, we therefore believe that the reporting requirements imposed by the rule are ''usual and customary'' activities that do not add to the burden that would be imposed by the collection of information.

Certain aspects of the collection of information, however, may impose a burden. For an issuer to establish a QLCC, the QLCC must adopt written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation. We estimate for purposes of the PRA that there are approximately 11,484 issuers that are subject to the rules.[1] Of these, we estimate that approximately 346, which is approximately 3 percent, have established or will establish a QLCC.[2] Establishing the written procedures required by the rule should not impose a significant burden. We assume that an issuer would incur a greater burden in the year that it first establishes the procedures than in subsequent years, in which the burden would be incurred in updating, reviewing, or modifying the procedures. For purposes of the PRA, we assume that an issuer would spend 6 hours every three-year period on the procedures. This would result in an average burden of 2 hours per year. Thus, we estimate for purposes of the PRA that the total annual burden imposed by the collection of information would be 692 hours. Assuming half of the burden hours will be incurred by outside counsel at a rate of $700 per hour, the resulting cost would be $242,200.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. 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.

Written comments are requested on: (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden[s] of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing by February 14, 2025.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 10, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29477 Filed 12–13–24; 8:45 am]

BILLING CODE 8011–01–P

[1] This figure is based on the estimated 8,230 operating companies that filed annual reports on Form 10–K, Form 20–F, or Form 40–F during the 2023 calendar year, and the estimated 3,254 investment companies that filed periodic reports on Form N–CEN during that same period.

[2] This estimate is based on issuer-filings made with the Commission between January 1, 2021, and September 30, 2024, that include a reference to the issuer's QLCC.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101866; File No. SR–NYSEAMER–2024–63]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE American Options Fee Schedule Concerning the Options Regulatory Fee (ORF)

December 10, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 25, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (''Fee Schedule'') regarding the Options Regulatory Fee (''ORF''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) temporarily waive the ORF for the period December 1, 2024 through December 31, 2024 (the ''Waiver Period''), and (2) delete outdated language relating to a prior ORF waiver and superseded ORF rate.

Background

As a general matter, the Exchange may only use regulatory funds such as the ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[4] More specifically, the ORF

[4] The Exchange considers surveillance operations part of regulatory operations. The limitation on the use of regulatory funds also provides that they shall not be distributed. *See* Thirteenth Amended and Restated Operating Agreement of NYSE American LLC, Article IV, Section 4.05 and Securities Exchange Act Release No. 87993 (January 16, 2020),

is designed to recover a material portion, but not all, of the Exchange's costs for the supervision and regulation of ATP Holders, including the Exchange's regulatory program and legal expenses associated with options regulation, such as the costs related to in-house staff, third-party service providers, and technology that facilitate regulatory functions such as surveillance, investigation, examinations, and enforcement (collectively, the ''ORF Costs''). ORF funds may also be used for indirect expenses such as human resources and other administrative costs. The Exchange monitors the amount of revenue collected from the ORF to ensure that this revenue, in combination with other regulatory fees and fines, does not exceed regulatory costs.

The ORF is assessed on ATP Holders for options transactions that are cleared by the ATP Holder through the Options Clearing Corporation (''OCC'') in the Customer range regardless of the exchange on which the transaction occurs and is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American.[5] All options transactions must clear via a clearing firm and such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. The Exchange notes that the costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs.[6] As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* ATP Holder proprietary transactions) of its regulatory program.

Because the ORF is based on options transactions volume, the amount of ORF collected is variable. For example, if options transactions reported to OCC in a given month increase, the ORF collected from ATP Holders will likely increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from ATP Holders will likely decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed [sic] the ORF Costs. If the Exchange determines the amount of ORF collected exceeds [sic] or may exceed [sic] ORF Costs, the Exchange will, as appropriate, adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the ''Commission''). Exchange rules establish that market participants must be notified of any change in the ORF via Trader Update at least 30 calendar days prior to the effective date of the change.[7]

Proposed Rule Change

Based on the Exchange's recent review of regulatory costs, ORF collections, and options transaction volume, the Exchange proposes to waive the ORF from December 1 through December 31, 2024 in order to help ensure that the amount collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange proposes to resume assessing the ORF on January 1, 2025 at the current rate of $0.0038 per contract. The Exchange notified ATP Holders of the proposed change to the ORF via Trader Update on October 30, 2024[8] (which was at least 30 calendar days prior to the proposed operative date of the waiver, December 1, 2024) so that market participants have sufficient opportunity to configure their systems to account properly for the waiver of the ORF.

The proposed waiver is based on the Exchange's analysis of recent options volumes and its regulatory costs. The Exchange believes that, if the ORF is not adjusted, the ORF revenue to the Exchange year over year could exceed a material portion of the Exchange's ORF Costs. The options industry has continued to experience very high options trading volumes and volatility, and although the Exchange recently reduced the ORF as of January 1, 2024,[9] the persisting increased options volumes have impacted the Exchange's ORF collection.

The options industry has continued to experience high options trading volumes, as illustrated in the table below reflecting industry data from OCC for 2022, 2023, and 2024:[10]

	2022	2023	2024
Customer ADV	34,091,409	35,957,560	38,412,142
Total ADV	76,488,459	81,483,685	86,706,482

Both total average daily volume and customer average daily volume in 2024 increased over the already elevated levels in 2022 and 2023. In addition, the below industry data from OCC demonstrates the high options trading

85 FR 4050 (January 23, 2020) (SR–NYSEAMER–2020–04).

[5] *See* Fee Schedule, Section VII.A., Options Regulatory Fee (''ORF''). The Exchange uses reports from OCC when assessing and collecting the ORF. The ORF is not assessed on outbound linkage trades. An ATP Holder is not assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE American. *See id.*

[6] The Exchange notes that many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running, and contrary exercise advice violations/expiring exercise declarations. The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. *See, e.g.,* Securities Exchange Act Release No. 85097 (February 11, 2019), 84 FR 4871 (February 19, 2019).

[7] *See* Fee Schedule, *supra* note 5.

[8] *See https://www.nyse.com/trader-update/history#110000945374.*

[9] *See* Securities Exchange Act Release No. 98678 (October 3, 2023), 88 FR 69973 (October 10, 2023) (SR–NYSEAMER–2023–48) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE American Options Fee Schedule To Modify the Options Regulatory Fee). The Exchange also previously filed to waive the ORF from October 1, 2023 through December 31, 2023. *See id.*

[10] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.* The volume discussed in this filing is based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, in contract sides.

volumes and volatility that the industry has continued to experience in 2024:

	May 2024	June 2024	July 2024	August 2024	September 2024	October 2024
Customer ADV	36,231,012	39,784,756	40,657,739	38,558,587	39,214,407	39,920,560
Total ADV	72,462,024	79,569,512	81,315,478	77,117,174	78,428,814	79,841,120

Because of the sustained impact of the trading volumes that have persisted through 2024, along with the difficulty of predicting if and when volumes may return to historical levels, the Exchange proposes to waive the ORF from December 1 through December 31, 2024 to help ensure that ORF collection will not exceed [sic] ORF Costs for 2024. The Exchange cannot predict whether options volumes will remain at these levels going forward and projections for future regulatory costs are estimated, preliminary, and may change. However, the Exchange believes that the proposed waiver of the ORF would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs without the need to account for any ORF collection during the Waiver Period.

Based on the Exchange's estimated projections for its regulatory costs, balanced with the observed increase in options volumes, the Exchange proposes to resume assessing the current ORF rate of $0.0038 per contract as of January 1, 2025. As noted above, although the options industry has experienced high options trading volumes in recent years, the Exchange cannot predict with certainty whether options volumes will remain at these levels going forward. The Exchange believes that maintaining the current rate when ORF collection resumes following the Waiver Period would allow the Exchange to continue assessing an ORF designed to recover a material portion, but not all, of the Exchange's ORF Costs, based on current projections that the Exchange's ORF Costs will increase in 2025. The Exchange will continue monitoring ORF Costs in advance of the resumption of the ORF and when it resumes assessing ORF on January 1, 2025, and, if the Exchange determines that, in light of projected volumes and ORF Costs, the ORF rate should be modified to help ensure that ORF collections would not exceed a material portion of ORF Costs, adjust the ORF by submitting a proposed rule change and notifying ATP Holders of such change by Trader Update.

The Exchange also proposes to delete language in the Fee Schedule pertaining to the ORF waiver that was in effect from October 1, 2023 to December 31, 2023, as well as the old ORF rate of $0.0058 per contract, which was superseded by the current ORF rate of $0.0038 as of January 1, 2024. The Exchange believes this change would improve the clarity of the Fee Schedule by removing obsolete language.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[11] of the Act, in general, and Section 6(b)(4) and (5)[12] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange believes the proposed temporary waiver of the ORF is reasonable because it would help ensure that collections from the ORF do not exceed a material portion of the Exchange's ORF Costs. As noted above, the ORF is designed to recover a material portion, but not all, of the Exchange's ORF Costs.

Although there can be no assurance that the Exchange's final costs for 2024 will not differ materially from its expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at current or similar levels going forward, the Exchange believes that the amount collected based on the current ORF rate, when combined with regulatory fees and fines, may result in collections in excess of the estimated ORF Costs for the year. Particularly, as noted above, the options market has continued to experience elevated volumes and volatility in 2024, thereby resulting in higher ORF collections than projected despite the reduced ORF rate in effect as of January 1, 2024. The Exchange therefore believes that it would be reasonable to waive ORF from December 1 through December 31, 2024 to help ensure that ORF collection does not exceed [sic] the ORF Costs for 2024. Particularly, the Exchange believes that waiving the ORF from December 1 through December 31, 2024 and taking into account all of the Exchange's other regulatory fees and fines would allow the Exchange to continue covering a material portion of ORF Costs, while lessening the potential for generating excess funds that may otherwise occur using the current rate. The Exchange proposes to resume assessing its current ORF ($0.0038 per contract) following the Waiver Period. The Exchange believes that resumption of the ORF at the current rate on January 1, 2025 (unless the Exchange determines it necessary to adjust the ORF rate to help ensure that ORF collections do not exceed [sic] ORF Costs) is reasonable because it would permit the Exchange to resume collecting an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange's proposal to resume ORF collection following the Waiver Period at the current ORF rate is based on the Exchange's estimated projections for its regulatory costs, which are currently projected to increase in 2025, balanced with the increase in options volumes that has persisted into 2024 and that may continue into 2025. The Exchange will continue monitoring ORF Costs in advance of the resumption of the ORF and when it resumes assessing ORF on January 1, 2025, and, if the Exchange determines that, in light of projected volumes and ORF Costs, the ORF rate should be modified to help ensure that ORF collections would not exceed a material portion of ORF Costs, adjust the ORF by submitting a proposed rule change and notifying ATP Holders of such change by Trader Update.

The Exchange also believes that the proposed deletion of language relating to an ORF waiver period that has now elapsed and a superseded ORF rate is reasonable because it would remove obsolete language and thus improve the clarity of the Fee Schedule.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed waiver would not place certain market participants at an unfair disadvantage because it would apply equally to all ATP Holders on all their transactions that clear in the Customer range at the OCC and would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs. The Exchange also believes that recommencing the ORF on January 1, 2025 at the current rate, unless the Exchange determines it necessary to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs, is equitable because the ORF would resume applying equally to all ATP Holders on options transactions in the Customer range, at a rate designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, based on current projections that such costs will increase in 2025.

The proposed change to remove language relating to an ORF waiver period that has now elapsed and a superseded ORF rate is also equitable because it would eliminate language from the Fee Schedule that is no longer applicable to any ATP Holders.

The Proposed Fee Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the proposed waiver of the ORF would not place certain market participants at an unfair disadvantage because the change would apply to all ATP Holders subject to the ORF and would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs. The Exchange also has provided all such ATP Holders with 30 days' advance notice of the planned change to the ORF. The Exchange also believes that recommencing the ORF on January 1, 2025 at the current rate, unless the Exchange determines it necessary to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs, is not unfairly discriminatory because the Exchange would resume assessing an ORF designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, based on current projections that such costs will increase in 2025. In addition, the ORF would resume applying equally to all ATP Holders based on their transactions that clear in the Customer range at the OCC.

The proposed change to remove language relating to an ORF waiver period that has now elapsed and a superseded ORF rate is also not unfairly discriminatory because it would eliminate outdated language from the Fee Schedule that no longer impacts any ATP Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes the proposed change would not impose an undue burden on intramarket competition because the ORF is charged to all ATP Holders on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed temporary waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. The ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American and is assessed on all options transactions cleared at the OCC in the Customer range. The Exchange also believes recommencing the ORF on January 1, 2025 at the current rate (unless the Exchange determines it necessary at that time to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs) would not impose an undue burden on competition because it would permit the Exchange to resume assessing an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, based on current projections that such costs will increase in 2025. The ORF would, as currently, apply to all ATP Holders on their options transactions that clear in the Customer range at the OCC when ORF collection resumes on January 1, 2025. The Exchange also believes that the proposed change to eliminate language relating to an ORF waiver period that has now elapsed and a superseded ORF rate would not impact intramarket competition because it is intended only to add clarity to the Fee Schedule by removing obsolete text.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total collections from regulatory fees do not exceed [sic] total regulatory costs and to promote clarity in the Fee Schedule by deleting obsolete text.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [13] and Rule 19b–4(f)(2) [14] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2024–63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–63 and should be submitted on or before January 6, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29470 Filed 12–13–24; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 101869; File No. 4–844]

Self-Regulatory Organizations; MIAX Sapphire, LLC; Order Declaring Effective a Minor Rule Violation Plan

December 10, 2024.

On October 1, 2024, MIAX Sapphire, LLC (''Sapphire'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed minor rule violation plan (''MRVP'' or ''Plan'') pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19d–1(c)(2) thereunder.[2] The proposed MRVP was published for comment on October 15, 2024.[3] The Commission received no comments on the proposal. This order declares the Exchange's proposed MRVP effective.

The Exchange's MRVP specifies the rule violations that will be included in the Plan and will have sanctions not exceeding $2,500. Any violations resolved under the MRVP would not be subject to the provisions of Rule 19d–1(c)(1) of the Act,[4] which requires that a self-regulatory organization (''SRO'') promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[5] In accordance with Rule 19d–1(c)(2) under the Act,[6] the Exchange proposed to designate certain specified rule violations as minor rule violations and requested that it be relieved of the prompt reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.

The Exchange proposed to include in its MRVP the procedures and violations currently included in Exchange Rule 1014 (''Imposition of Fines for Minor Rule Violations'').[7] According to the Exchange's proposed MRVP, the Exchange may impose a fine (not to exceed $2,500) on any Member, or person associated with or employed by a Member, for any rule violation listed in Rule 1014(d).[8] The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules allegedly violated, the act or omission constituting each such violation, the fine imposed for each violation, and the date by which such determination becomes final or by which such fine must be paid or contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under the Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written answer, at which point the matter shall become a disciplinary proceeding.[9]

According to the Exchange, upon the Commission's declaration of effectiveness of the MRVP, the Exchange will provide to the Commission a quarterly report for any actions taken on minor rule violations under the MRVP.[10] The quarterly report will include: the disposition date, the name of the firm/individual, the Exchange's internal enforcement number, the review period, the nature of the violation type, the number of the rule that was violated, the number of instances the violation occurred, and the sanction imposed.[11]

The Exchange requested that the Commission deem any changes to the rules applicable to the Exchange's MRVP to be deemed modifications to the Exchange's MRVP.

The Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[12] because the MRVP will permit the Exchange to carry out its oversight and enforcement

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] *See* Securities Exchange Act Release No. 101283 (October 8, 2024), 89 FR 83067 (''Notice'').

[4] 17 CFR 240.19d–1(c)(1).

[5] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to a plan filed with and declared effective by the Commission is not considered ''final'' for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[6] 17 CFR 240.19d–1(c)(2).

[7] The Exchange received its grant of registration on July 15, 2024, which included approving the rules that govern the Exchange. *See* Securities Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10–240). Under the proposed MRVP, violations of the following rules would be appropriate for disposition under the MRVP: Rule 307 (Position Limits); Rule 803 (Focus Reports); Rule 804 (Requests for Trade Data); Rule 520 (Order Entry); Rule 605 (Execution of Orders in Appointed Options); Rule 314 (Mandatory Systems Testing); Rule 700 (Exercise of Option Contracts); Rule 309 (Exercise Limits); Rule 310 (Reports Related to Position Limits); Rule 403 (Trading in Restricted Classes); Rule 605 (Market Maker Quotations); Rule 1904 (Failure to Timely File Amendments to Form U4, Form U5, and Form BD); and Rules 1701–1713 (Failure to Comply with the Consolidated Audit Trail Compliance Rule Under Chapter XVII). According to the Exchange, the Conduct and Decorum Policies under Rule 1014(d)(1) are excluded from the proposed MRVP. *See* Notice, *supra* note 3, at 83067.

[8] While Rule 1014 allows the Exchange to administer fines up to $5,000, the Exchange is only seeking relief from the reporting requirements of paragraph (c)(1) of Rule 19d–1 for fines administered under Rule 1014(d) that do not exceed $2,500.

[9] *See* Notice, *supra* note 3, at 83067.

[10] *See id.*

[11] *See id.*

[12] 17 CFR 240.19d–1(c)(2).

responsibilities as an SRO more efficiently in cases where formal disciplinary proceedings are not necessary due to the minor nature of the particular violation.

In declaring the Exchange's MRVP effective, the Commission does not minimize the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Exchange Rule 1014(d). Violation of an SRO's rules, as well as Commission rules, is a serious matter. However, Exchange Rule 1014(d) provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects the Exchange to continue to conduct surveillance and make determinations based on its findings, on a case-by-case basis, regarding whether a violation requires formal disciplinary action or whether a sanction under the MRVP is appropriate.

It is therefore ordered, pursuant to Rule 19d–1(c)(2) under the Act,[13] that the proposed MRVP for MIAX Sapphire, LLC, File No. 4–844 be, and hereby is, declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29472 Filed 12–13–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–603, OMB Control No. 3235–0658]

Proposed Collection; Comment Request; Extension: Rule 22e–3

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, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 22(e) of the Investment Company Act of 1940, as amended [15 U.S.C. 80a–22(e)] (''Act'') generally prohibits funds, including money market funds, from suspending the right of redemption, and from postponing the payment or satisfaction upon redemption of any redeemable security for more than seven days. The provision was designed to prevent funds and their investment advisers from interfering with the redemption rights of shareholders for improper purposes, such as the preservation of management fees. Although section 22(e) permits funds to postpone the date of payment or satisfaction upon redemption for up to seven days, it does not permit funds to suspend the right of redemption for any longer amount of time, absent certain specified circumstances or a Commission order.

Rule 22e–3 under the Act [17 CFR 270.22e–3] exempts money market funds from section 22(e) to permit them to suspend redemptions in order to facilitate an orderly liquidation of the fund. Specifically, rule 22e–3 permits a money market fund to suspend redemptions and postpone the payment of proceeds pending board-approved liquidation proceedings if: (i) the fund, at the end of a business day, has invested less than ten percent of its total assets in weekly liquid assets or, in the case of a fund that is a government money market fund or a retail money market fund, the fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, has deviated from the stable price established by the board of directors or the fund's board of directors, including a majority of directors who are not interested persons of the fund, determines that such a deviation is likely to occur; (ii) the fund's board of directors, including a majority of disinterested directors, irrevocably has approved the liquidation of the fund; and (iii) the fund, prior to suspending redemptions, notifies the Commission of its decision to liquidate and suspend redemptions. Rule 22e–3 also provides an exemption from section 22(e) for registered investment companies that own shares of a money market fund pursuant to section 12(d)(1)(E) of the Act (''conduit funds''), if the underlying money market fund has suspended redemptions pursuant to the rule. A conduit fund that suspends redemptions in reliance on the exemption provided by rule 22e–3 is required to provide prompt notice of the suspension of redemptions to the Commission. Notices required by the rule must be provided by electronic mail, directed to the attention of the Director of the Division of Investment Management or the Director's designee.[1] Compliance with the notification requirement is mandatory for money market funds and conduit funds that rely on rule 22e–3 to suspend redemptions and postpone payment of proceeds pending a liquidation, and are not kept confidential.

Commission staff estimates that, on average, one fund would be required to make the required notice every year.[2] Commission staff further estimates that a money market fund or conduit fund would spend approximately one hour of an in-house attorney's time to prepare and submit the notice required by the rule. Given these estimates, the total annual burden of the notification requirement of rule 22e–3 for all money market funds and conduit funds would be approximately one hour at a cost of $511. The estimated total annual burden hours associated with rule 22e–3 is 1 hour and external costs increased from $0 to $584. This change in external costs reflects revised estimates. These estimates are made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. 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 control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by February 14, 2025.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100

[13] *Id.*

[14] 17 CFR 200.30–3(a)(44).

[1] *See* rule 22e–3(a)(3) and 22e–3(b).

[2] The Commission has not received any notices invoking rule 22e–3 to halt redemptions. However, for administrative purposes, we are reporting one respondent and one annual response.

F Street, NE Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: December 11, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29579 Filed 12–13–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, December 19, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov*.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b.)

Dated: December 12, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–29677 Filed 12–12–24; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20768 and #20769; WEST VIRGINIA Disaster Number WV–20015]

Presidential Declaration of a Major Disaster for the State of West Virginia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4851–DR), dated December 9, 2024.

Incident: Post-Tropical Storm Helene.

DATES: Issued on December 9, 2024.

Incident Period: September 25, 2024 through September 28, 2024.

Physical Loan Application Deadline Date: February 7, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: September 9, 2025.

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 on December 9, 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 County (Physical Damage and Economic Injury Loans): Mercer.

Contiguous Counties (Economic Injury Loans Only):

West Virginia: McDowell, Monroe, Raleigh, Summers, Wyoming.

Virginia: Bland, Giles, Tazewell.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.625
Homeowners without Credit Available Elsewhere	2.813
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 207688 and for economic injury is 207690.

(Catalog of Federal Domestic Assistance Number 59008)

Alejandro Contreras,

Acting Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–29543 Filed 12–13–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Notice of Public Meeting

AGENCY: Small Business Administration, National Women's Business Council.

ACTION: Notice of open public meeting.

DATES: The public meeting will be held on Tuesday, January 7, 2025, from 10:00 a.m. to 4:00 p.m. EDT.

ADDRESSES: This meeting will be held at SBA Headquarters, at 409 3rd St. SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: For more information, please visit the NWBC website at *www.nwbc.gov,* email *info@nwbc.gov* or call Rhylee Jones (NWBC Public Affairs Associate) at (202) 735–4342.

The meeting is open to the public; however, advance notice of attendance is requested. To RSVP, please visit the NWBC website at *www.nwbc.gov.* The ''Public Meetings'' section under ''Events'' will feature a link to register on Eventbrite. Public questions and comments will be addressed and answered during the Q&A portion of the meeting.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, the National

Women's Business Council (NWBC) announces its first public meeting of Fiscal Year 2025. The 1988 Women's Business Ownership Act established NWBC to serve as an independent source of advice and policy recommendations to the President, Congress, and the Administrator of the U.S. Small Business Administration (SBA) on issues of importance to women entrepreneurs.

During this meeting the Council will present its 2024 policy recommendations and gather information to inform its exploration of topics to advance women's business ownership in 2025. The public will have the opportunity to ask questions and provide comments following the presentations. Accommodation for ASL will be provided. Please request translation services and other accommodations during registration.

Dated: December 11, 2024.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2024–29541 Filed 12–13–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 12607]

30-Day Notice of Proposed Information Collection: Affidavit of Relationship (AOR)

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to January 15, 2025.

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: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Daniel Carson—2025 E Street, NW Washington DC, 20520 who may be reached on (202) 227–6016 or at *carsondp@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Affidavit of Relationship (AOR).
- *OMB Control Number:* 1405–0206.
- *Type of Request:* Reinstatement of a previously approved collection.
- *Originating Office:* PRM/A.
- *Form Number:* DS–7656.
- *Respondents:* A respondent in the United States completes the AOR to: (a) establish that he or she was admitted to the United States as a refugee or granted asylum; (b) provide a list of qualifying family members (spouse, unmarried children under 21, and parents) who may wish to apply for refugee resettlement to the United States; and (c) establish that the family members are nationals of qualifying countries under the P–3 program.
- *Estimated Number of Respondents:* 300.
- *Estimated Number of Responses:* 300.
- *Average Time per Response:* Ninety Minutes.
- *Total Estimated Burden Time:* 450 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our time and cost burden estimate for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Affidavit of Relationship (AOR) is required by the Department of State to establish qualification for access to the Priority-3 (P–3) Family Reunification category of the United States Refugee Admissions Program (USRAP). The P–3 category, along with the other categories of cases that have access to USRAP, is outlined in the annual Report to Congress on Proposed Refugee Admissions, which is submitted on behalf of the President in fulfillment of the requirements of section 207(d) of the Immigration and Nationality Act (8 U.S.C. 1157) and authorized by the annual Presidential Determination on Refugee Admissions. The P–3 category is available to qualifying family members of U.S.-based residents (persons already admitted to the U.S. as refugees or who were granted asylum in the United States, including persons who may now be lawful permanent residents or U.S. citizens). Qualifying family members of U.S.-based residents include spouses, unmarried children under age 21, and parents. Eligible P–3 nationalities are determined on an annual basis by the President.

In order to access the USRAP through P–3, an applicant must have an Affidavit of Relationship (AOR) filed on his or her behalf by a U.S-based family member. The AOR also informs the U.S-based family member that DNA evidence of all claimed parent-child relationships between the U.S-based family member and parents and/or unmarried children under 21 is required as a condition of access to P–3 processing; it further informs the U.S-based family member that the costs of DNA testing will be borne by the U.S. government. DNA testing between the QFM and any derivative applicant(s) (unmarried child under the age of 21), to prove the existence of their claimed family relationship, will be at no expense to the U.S. government.

Methodology

This information collection currently involves the limited use of electronic techniques. An anchor may complete an AOR at any local office of a Resettlement Agency (RA) that has a cooperative agreement with the Department of State to assist refugees who have been resettled in the United States. In order to file an AOR, a U.S-based family member must be at least 18 years of age and have been admitted to the United States as a refugee or granted asylum in the United States no more than five years prior to the filing of the AOR. The AOR is available electronically, is completed electronically with the assistance of RA staff, and is submitted electronically by RA staff to a Department of State-contracted facility, where it is manually uploaded into the USRAP case management system. In addition, the RA

local office prints a copy for the respondent's ink signature, then submits the signed form to the RA headquarters.

Kelly A Gauger,

Deputy Director, PRM/A, Department of State.

[FR Doc. 2024–29538 Filed 12–13–24; 8:45 am]

BILLING CODE 4710–33–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Modification: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice of modification of actions.

SUMMARY: In a notice published on September 18, 2024, the U.S. Trade Representative proposed additional modifications to the actions taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. Specifically, the U.S. Trade Representative proposed increasing Section 301 tariff rates on five subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) covering certain tungsten products, wafers, and polysilicon. In a notice published on September 24, 2024, USTR announced the opening of an electronic portal for interested parties to submit comments on the proposed tariff increases. This notice announces the U.S. Trade Representative's determination to modify the actions being taken in this investigation by increasing tariff rates on the five subheadings.

DATES: January 1, 2025, at 12:01 a.m. EST: Tariff increases on the tariff subheadings set out in the Annex to this notice are applicable with respect to products that are entered for consumption, or withdrawn from warehouse for consumption, on or after January 1, 2025.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Philip Butler and Megan Grimball, Chairs of the Section 301 Committee at 202.395.5725. For specific questions on customs classification, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), and 83 FR 40823 (August 16, 2018).

On September 8, 2022, USTR announced that in accordance with Section 307(c)(3) of the Trade Act (19 U.S.C. 2417(c)(3)), the U.S. Trade Representative would conduct a review of the two actions taken, as modified, in this investigation. *See* 87 FR 55073. Based on information obtained during the review, USTR, in consultation with the Section 301 Committee, prepared a comprehensive report that included findings on the effectiveness of the actions taken in this investigation in achieving the objectives of the investigation, other actions that could be taken, and the effects of such actions on the United States economy, including consumers. The report, *Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation* (Report), was published on May 14, 2024, and is available on the USTR website.

On May 14, 2024, taking into consideration the U.S. Trade Representative's findings in the Report and recommendations, the President issued a Memorandum (President's Memorandum) that directed the U.S. Trade Representative to: ''maintain, as appropriate and consistent with this memorandum, the *ad valorem* rates of duty and lists of products subject to the [actions] taken under the Section 301 investigation'' and ''[t]o further encourage China to eliminate the acts, policies, and practices at issue, and to counteract the burden or restriction of these acts, policies, and practices, the Trade Representative shall modify the [actions taken in the investigation] to increase Section 301 *ad valorem* rates of duty'' for certain specified products of China. *See https://www.whitehouse.gov/briefing-room/presidential-actions/2024/05/14/memorandum-on-actions-by-the-united-states-related-to-the-statutory-4-year-review-of-the-section-301-investigation-of-chinas-acts-policies-and-practices-related-to-technology-transfer-intellectua/.* In particular, the President's Memorandum specified 14 categories of products for proposed tariff increases, tariff rates for those products, and year for tariff increases.

Consistent with the President's direction, USTR issued a **Federal Register** notice with proposed modifications, including proposed increases in Section 301 duties on 382 HTSUS subheadings and 5 statistical reporting numbers of the HTSUS, with an approximate annual trade value of $18 billion (2023). *See* 89 FR 46252 (May 28, 2024) (May 28 notice). In accordance with Section 307(a)(2) of the Trade Act (19 U.S.C. 2417(a)(2)), USTR invited comments from interested persons and opened a 30-day docket on May 29, 2024 (USTR–2024–0007). *See* May 28 notice.

On September 18, 2024, the U.S. Trade Representative announced modifications to the actions, including certain adjustments to the modifications proposed in the May 28 notice. *See* 89 FR 76581 (September 18, 2024) (September 18 notice). Additionally, and based on comments requesting that certain HTSUS subheadings be added to the 382 HTSUS subheadings proposed for tariff increases, the U.S. Trade Representative proposed increasing Section 301 duties on 5 additional HTSUS subheadings covering certain tungsten products, wafers, and polysilicon.

In accordance with Section 307(a)(2) of the Trade Act, USTR invited comments from interested persons and opened a 30-day docket on September 24, 2024 (USTR–2024–0016). *See* 89 FR 77958 (September 24, 2024) (September 24 notice).

B. Determination To Modify the Actions

Pursuant to Sections 307(c) and 307(a)(1) of the Trade Act (19 U.S.C. 2417(c), (a)(1)), the U.S. Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under Section 301 if the burden or restriction on U.S. commerce of the acts, policies, and practices that are the subject of such action has increased or decreased, or such action is being taken under Section 301(b) and no longer is appropriate.

As previously discussed, modification of the actions is warranted under Section 307(a)(1)(B) and Section 307(a)(1)(C). *See* 89 FR 76581 (September 18, 2024). The modifications to the actions are set out in the Annex to this notice. The U.S. Trade Representative's determination takes account of the public comments, the President's Memorandum and the policy rationale underlying the President's direction, as well as the advice of the interagency Section 301 committee and appropriate advisory committees.

Any product listed in the Annex to this notice, which is subject to the additional duties imposed by this determination, and that is admitted into a U.S. foreign trade zone, except any product that is eligible for admission under ''domestic status'' as defined in 19 CFR 146.43, only may be admitted as

''privileged foreign status,'' as defined in 19 CFR 146.41, effective as of the date that the additional duties are imposed. Products of China that are provided for in headings 9903.91.11 and listed in subdivision (j) of U.S. note 31 to subchapter III of chapter 99 of the HTSUS, which are admitted into a U.S. foreign trade zone on or after 12:01 a.m. eastern daylight time on January 1, 2025, only may be admitted as ''privileged foreign status.'' All such products will be subject upon entry for consumption to any *ad valorem* rates of duty or quantitative limitations related to the classification under the applicable HTSUS subheading.

C. USTR's Responses to Significant Comments

As discussed above, in light of comments requesting that certain HTSUS subheadings be added to the 382 HTSUS subheadings proposed for tariff increases, the U.S. Trade Representative proposed increasing Section 301 duties on 5 additional HTSUS subheadings falling under 2 of the 14 categories of products proposed for tariff increases. Specifically, the U.S. Trade Representative proposed increasing tariffs to 25 percent for 3 additional subheadings under ''other critical minerals'' covering certain tungsten products and proposed increasing tariffs to 50 percent for 2 additional subheadings under ''solar cells'' covering wafers and polysilicon. *See* 89 FR 76581.

Tungsten Subheadings: Consistent with the President's Memorandum to increase tariffs on other critical minerals to 25 percent, the U.S. Trade Representative proposed increasing tariffs to 25 percent on 3 additional subheadings covering certain tungsten products: 8101.94.00 (Tungsten, unwrought (including bars and rods obtained simply by sintering)); 8101.99.10 (Tungsten bars and rods (o/ than those obtained simply by sintering), profiles, plates, sheets, strip and foil); and 8101.99.80 (Tungsten, articles nesoi).

Comments supporting increases primarily assert that increasing tariffs on tungsten products is vital to the security and the resilience of domestic supply chains for critical U.S. industries, including aerospace, automotive, defense, medical, and the oil and gas industries. Some supporting comments recommend tariff rates as high as 75 percent to address China's efforts to dominate and undercut domestic production.

Comments opposing increases primarily assert limited availability of tungsten products outside of China, estimating that China accounts for approximately 80 percent of global tungsten reserves, and insufficient quantities available from third country sources. These comments express concerns that increased tariffs on tungsten will increase production costs, exacerbate inflation, harm U.S. competitiveness, and decrease U.S. market share. One comment encouraged USTR to take alternative actions to tariffs.

Considering the comments and the advice of the Section 301 Committee, and consistent with the President's direction to increase tariffs on other critical minerals to 25 percent, the U.S. Trade Representative has determined to increase tariffs on the 3 tungsten subheadings to 25 percent beginning in 2025. Continued reliance on China for tungsten products leaves U.S. supply chains vulnerable and puts U.S. national security at risk. Imports from China continue to undercut domestic production, and increasing tariffs will make domestic producers more competitive, which will increase leverage on China to eliminate its harmful acts, policies, and practices, and reduce vulnerability to those harmful acts, policies, and practices. Increasing duties on these products will support current investments, stimulate greater domestic production, and spur additional investments in domestic capacity.

Polysilicon and Wafer Subheadings: Consistent with the President's Memorandum to increase tariffs on solar cells to 50 percent, the U.S. Trade Representative proposed increasing tariffs to 50 percent on 2 subheadings covering polysilicon and wafers: 2804.61.00 (Silicon containing by weight not less than 99.99 percent of silicon); and 3818.00.00 (Chemical elements doped for use in electronics, in the form of discs, wafers etc., chemical compounds doped for electronic use).

Nearly all comments support increasing tariffs on polysilicon, noting the importance of the tariffs in helping to ensure the development and growth of the domestic industry producing polysilicon and downstream products and develop alternative supply chains outside of China. Specifically, the comments assert that the tariffs help to support recent investments by the domestic industry and increasing the tariffs to 50 percent will further support additional domestic production scheduled to come online in 2025. USTR received one comment opposing the tariff increase. The comment asserts that Section 301 tariffs have not resulted in changing China's behavior and increasing the tariff will only increase prices for domestic companies.

The majority of comments support increasing tariffs on wafers. The comments note that increasing tariffs will increase the effectiveness of the actions, provide additional support to the domestic industry, including recent investments, and help to strengthen alternative supply chains. Specifically, commenters note that higher tariffs will counteract China's unfair practices, which have allowed Chinese companies to dominate supply chains, and allow domestic producers to increase production, and continue to invest in additional capacity. To give domestic producers time to increase production, some of the comments supporting higher tariffs either suggest delaying the tariffs or allowing for certain exclusions. Other comments supporting higher tariffs suggest increasing tariffs immediately. Comments opposing the tariffs generally assert that the tariffs have not been effective and only negatively impacted the U.S. economy. One comment opposing the tariff increase suggests delaying the increase until domestic production has increased.

Considering the comments and the advice of the Section 301 Committee, and consistent with the President's direction to increase tariffs on solar cells to 50 percent, the U.S. Trade Representative has determined to increase tariffs on polysilicon and wafers to 50 percent in 2025. Increasing tariffs on polysilicon and wafers will complement recent investments, encourage diversification away from Chinese sources, provide additional leverage with China to eliminate the investigated acts, policies, and practices, and reduce vulnerability to those harmful acts, policies, and practices. While increasing tariffs may result in higher prices initially, the tariffs are necessary to allow domestic producers to compete against China's massive excess capacity, defend recent investments, and encourage more domestic manufacturing.

The U.S. Trade Representative will continue to consider the actions taken in this investigation. In the event that further modifications are appropriate, the U.S. Trade Representative intends to take into account the extensive public comments provided in response to the May 28 notice and the September 24 notice.

D. Technical Correction

In the September 18 notice, USTR announced that it had determined to increase the rate of additional duties on medical gloves of vulcanized rubber,

other than hard rubber, to 50 percent in 2025 and to 100 percent in 2026. The additional 100 percent duties that were to be effective on January 1, 2026, were provided for in HTSUS heading 9903.91.08. Due to a publishing error in the **Federal Register** notice, heading 9903.91.08 did not contain the additional duties in the Rates of Duty 1—General column. To correct this error, USTR is making a technical correction to heading 9903.91.08 in Annex B(4) to insert the additional 100 percent duties that are to be effective on January 1, 2026.

Annex A—Tariff Increases

HTSUS subheading	Product description	Rate (%)	Timing
8101.94.00	Tungsten, unwrought (including bars and rods obtained simply by sintering	25	2025
8101.99.10	Tungsten bars and rods (o/than those obtained simply by sintering), profiles, plates, sheets, strip and foil.	25	2025
8101.99.80	Tungsten, articles nesoi	25	2025
2804.61.00	Silicon containing by weight not less than 99.99 percent of silicon	50	2025
3818.00.00	Chemical elements doped for use in electronics, in the form of discs, wafers etc., chemical compounds doped for electronic use.	50	2025

Annex B—Changes to Harmonized Tariff Schedule of the United States

1. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on January 1, 2025, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

A. by inserting the following new heading 9903.91.11 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled ''Heading/Subheading'', ''Article Description'', ''Rates of Duty 1-General'', ''Rates of Duty 1-Special'' and ''Rates of Duty 2'', respectively:

Heading/ subheading	Article description	Rates of Duty		
		1		2
		General	Special	
''9903.91.11	Effective with respect to entries on or after January 1, 2025, articles the product of China, as provided for in subdivision (j) of U.S. note 31 to this subchapter.	The duty provided in the applicable subheading + 25%''.		

B. by inserting the following new subdivision (j) to note 31 to subchapter III of chapter 99 of the HTSUS:

''(j) Heading 9903.91.11 applies to products of China that are classified in the following 8-digit subheadings, effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on January 1, 2025:

(1) 8101.94.00
(2) 8101.99.10
(3) 8101.99.80''.

C. Subdivision (a) of note 31 to subchapter III of chapter 99 of the HTSUS is modified by deleting ''and 9903.91.08'' in six instances and inserting '', 9903.91.08 and 9903.91.11'' in lieu thereof in those six instances.

2. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on January 1, 2025, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

A. by deleting ''2804.61.00'' and ''3818.00.00'' from subdivision (f) of note 20 to subchapter III of chapter 99 of the HTSUS; and

B. subdivision (f) of note 31 to subchapter III of chapter 99 of the HTSUS is modified by inserting ''(1) 2804.61.00'' and ''(2) 3818.00.00'' in numerical order and by renumbering the remaining subheadings listed in subdivision (f) of note 31 in numerical order, beginning with ''(3) 4015.12.10''.

3. Effective on January 1, 2026, subdivision (f) of note 31 to subchapter III of chapter 99 of the HTSUS is modified by deleting ''(3) 4015.12.10''.

4. The Rates of Duty 1-General column of heading 9903.91.08 is modified by inserting ''The duty provided in the applicable subheading + 100%''.

Juan Millan,

Acting General Counsel, Office of the United States Trade Representative.

[FR Doc. 2024–29462 Filed 12–13–24; 8:45 am]

BILLING CODE 3390–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2024–0195; Summary Notice No. 2024–45]

Petition for Exemption; Summary of Petition Received; Wheels Up

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 6, 2025.

ADDRESSES: Send comments identified by docket number FAA–2024–0195 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kara White, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Dan Ngo,

Manager, Part 11 Petitions Branch, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2024–0195.

Petitioner: Wheels Up Private Jets LLC.

Section(s) of 14 CFR Affected: §§ 135.337(b), 135.339.

Description of Relief Sought: Wheels Up requests the check pilot qualification requirements of Section 135.337(b) and training requirements of 135.339, met by another certificate holder, be credited to Wheels Up to meet their regulatory obligations with respect to check pilot training and qualification due to merger and/or acquisition.

[FR Doc. 2024–29542 Filed 12–13–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT)

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, I–15/SR–74 Interchange Improvement in the County of Riverside, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 15, 2025. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Antonia Toledo, Branch Chief, 464 W. 4th Street, MS 820, San Bernardino, CA 92401. Office Hours: 8 a.m.–5 p.m., Pacific standard time, telephone (909) 501–5741 or email *Antonia.Toledo@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: improve traffic operations and reduce congestion at Interstate 15 (I–15)/State Route 74 (SR–74) interchange and local intersections. The improvements along I–15 are from Post Mile (PM) 21.6–23.5 and along SR–74 are from PM 16.0 to 17.8 in the City of Lake Elsinore in Riverside County. The improvements consist of Northbound (NB) Hook Ramps with NB Loop Off-Ramp to Westbound (WB) SR–74

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA)/Finding of No Significant Impact (FONSI) for the project, approved on October 4, 2024, and in other documents in the project records. The FEA, FONSI, and other project records are available by contacting Caltrans at the address provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act of 1969
2. Federal Highway Act of 1970, U.S.C. 772
3. Clean Air Act, 42 U.S.C. 7401–7671
4. Clean Water Act, 33 U.S.C. 1251–1387
5. Federal Water Pollution Control Act of 1972
6. Safe Drinking Water Act of 1944, as amended
7. Federal Endangered Species Act (FESA)
8. Executive Order 11990, Protection of Wetlands
9. Executive Order 13112, Invasive Species
10. Executive Order 12088, Federal Compliance with Pollution Control Standards
11. Executive Order 11988, Floodplain Management
12. Executive Order 14008, U.S. DOT Climate Action Plan
13. Fish and Wildlife Coordination Act of 1934, as amended
14. Migratory Bird Treaty Act
15. Title VI of the Civil Rights Act of 1964, as amended
16. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations
17. National Historic Preservation Act of 1966 (NHPA)
18. Historic Sites Act
19. Farmland Protection Policy Act

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Antonio Johnson,

Director of Planning Environmental and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2024–29492 Filed 12–13–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Availability of the Revised Record of Decision for the 1800 North (SR–37); 2000 West to I–15 Project in Utah and Final Federal Agency Actions

AGENCY: Utah Department of Transportation (UDOT), Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of Availability and Notice of Limitations on Claims for Judicial Review of Actions by UDOT and Other Federal Agencies.

SUMMARY: The FHWA, on behalf of UDOT, issuing this notice to announce the availability of the Revised Record of Decision (ROD) and actions taken by UDOT that are final. The actions relate to the proposed 1800 North (SR–37); 2000 West to I–15 project, in the cities of Clinton and Sunset, Davis County, Utah. Those actions grant licenses, permits, and/or approvals for the project.

DATES: This decision became operative on October 4, 2024. By this notice, FHWA, on behalf of UDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 15, 2025. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Naomi Kisen, Environmental Program Manager, UDOT Environmental Services, PO Box 148450, Salt Lake City, UT 84114; (801)-965–4005; email: *nkisen@utah.gov.* UDOT's normal business hours are 8 a.m. to 5 p.m. (Mountain Time Zone), Monday through Friday, except State and Federal holidays.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for this action are being, or have been, carried out by UDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding (MOU) dated May 26, 2022, and executed by FHWA and UDOT. Under the MOU, UDOT is responsible for conducting any additional environmental review that is required for projects that were approved by FHWA prior to execution of the MOU. The Revised ROD was processed in accordance with the MOU, and UDOT is the agency responsible for approving the Revised ROD. Actions taken by UDOT on FHWA's behalf pursuant to 23 U.S.C. 327 constitute Federal agency actions for purposes of Federal law. Notice is hereby given that UDOT has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and/or approvals for the 1800 North (SR–37); 2000 West to I–15 project in the State of Utah.

A Final Environmental Impact Statement (EIS) and section 4(f) Evaluation for 1800 North (SR–37); 2000 West to I–15 project was completed in December 2015 and approved through the issuance of a ROD on December 21, 2015, by the FHWA. Alternative F was identified as the Selected Alternative in the 2015 ROD. Alternative F included the widening of 1800 North to a five-lane cross-section; the grade-separation of 1800 North and the railroad at approximately 500 West; and an interchange that avoided the Army Rail Shop, a section 4(f) resource. Since the original ROD was issued, conditions in the project area have changed and UDOT completed a re-evaluation of the EIS in 2023. As a separate project, the Army Rail Shop and associated buildings protected by section 4(f) have been demolished and avoidance of these resources is no longer needed. As a result of the EIS Re-evaluation, UDOT has identified Alternative D as the new Selected Alternative.

The Project proposes to reduce congestion, improve mobility and access to I–15, and improve safety and operational characteristics on the 1800 North study corridor. Improvements will consist of a new interchange on I–15 at 1800 North; a grade-separated railroad crossing on 1800 North; and widening 1800 North between 2000 West and Main Street to a five-lane cross-section (two travel lanes in each direction with a two-way, left-turn lane) for most of the corridor. As 1800 North approaches 2000 West and Main Street, 1800 North would require additional lanes to accommodate turning movements. These improvements were identified in the EIS and EIS Re-evaluation prepared for the project by UDOT as Alternative D. The decision to approve Alternative D for the Project was based on UDOT's review of the entire record including the 2015 EIS and the 2023 EIS Re-evaluation as well as technical reports, correspondence, and other information developed as part of the environmental review process for the project.

The project is identified in UDOT's adopted 2025–2030 State Transportation Improvement Program as project identification number 15682 with funding identified for right-of-way, final design and construction. The project is also included in the adopted Wasatch Front Regional Council (WFRC) 2023–2050 Regional Transportation Plan approved in May 2024 (as amended in August 2024).

The actions by UDOT, and the laws under which such actions were taken, are described in the EIS Re-evaluation approved on October 16, 2023, and the Revised ROD approved on October 4, 2024, and other documents in the project records. The EIS Re-evaluation and Revised ROD are available for review by contacting UDOT at the address provided above. In addition, these documents can be viewed and downloaded from the project website at *https://udotinput.utah.gov/1800north.*

This notice applies to the EIS Re-evaluation, the Revised ROD, the section 4(f) determination, and all other UDOT and federal agency decisions and other actions with respect to the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to the following laws (including their implementing regulations):

1. General: National Environmental Policy Act [42 U.S.C. 4321–4370m–12]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; 23 U.S.C. 139.

2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544], Fish and Wildlife Coordination Act [16 U.S.C. 661–667d]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; Bald and Golden Eagle Protection Act [16 U.S.C. 668–668d].

5. Historic and Cultural Resources: National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101–307108]; Archaeological Resources Protection Act of 1979 [16 U.S.C. 470aa–470mm]; Archeological and Historic Preservation Act [54 U.S.C. 312501–312508]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

6. Social and Economic: Title VI of Civil Rights Act of 1964 [42 U.S.C.

2000d–2000d–7]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act [33 U.S.C. 1251–1389]; Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund Act [54 U.S.C. 200301–200310]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Appropriation Act of 1899, as amended [33 U.S.C. 401–418]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C. 9671–9675]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992k].

9. Noise: Noise Control Act of 1972 [42 U.S.C. 4901–4918].

10. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species; E.O. 13985 Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; E.O. 13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis; E.O. 14008 Tackling the Climate Crisis at Home and Abroad.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139 (*l*)(1))

Ivan Marrero,

Division Administrator, Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 2024–29582 Filed 12–13–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Project—Port Authority Bus Terminal Replacement Project, New York, New York

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) regarding the following project: Midtown Manhattan Bus Terminal Replacement Project, also known as the Port Authority Bus Terminal, in New York, New York. The purpose of this notice is to publicly announce FTA's environmental decisions on the subject project, and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: A claim seeking judicial review of FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before May 15, 2025.

FOR FURTHER INFORMATION CONTACT: Kathryn Loster, Assistant Chief Counsel, Office of Chief Counsel, (312) 705–1269, or Saadat Khan, Environmental Protection Specialist, Office of Environmental Policy and Programs, (202) 366–9647. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions subject to 23 U.S.C. 139(l) by issuing certain approvals for the public transportation project listed below. The actions on the project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project files for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *https://www.transit.dot.gov/about/regional-offices/regional-offices.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA (42 U.S.C. 4321–4375), Section 106 of the National Historic Preservation Act (54 U.S.C. 306108), Section 4(f) requirements (49 U.S.C. 303 and 23 U.S.C. 138), Endangered Species Act (16 U.S.C. 1531), Clean Water Act (33 U.S.C. 1251), the Uniform Relocation and Real Property Acquisition Policies Act (42 U.S.C. 4601), and the Clean Air Act (42 U.S.C. 7401–7671q). This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The project and actions that are the subject of this notice follow:

Project name and location: Port Authority Bus Terminal Replacement Project (Project), New York, New York.

Project sponsor: The Port Authority of New York and New Jersey.

Project description: The Project would replace the existing Port Authority Bus Terminal in Manhattan, New York, with a new Main Terminal, a Storage and Staging Facility, and associated ramp infrastructure, collectively called the 'Replacement Facility.' The Project involves a portion of West 41st Street to be permanently closed between Eighth and Ninth Avenue in order to accommodate the new Main Terminal. The project also includes construction of two decks over below-grade portions of Dyer Avenue and the Lincoln Tunnel Expressway to facilitate construction-period bus operations. These two decks, referred to as the ''Dyer Deck-Overs,'' would be converted to publicly accessible open space following completion of the Replacement Facility.

Final agency actions: Section 106 Programmatic Agreement, executed July 2, 2024; Section 4(f) individual use determination and Port Authority Bus Terminal Final Environmental Impact Statement, dated October 4, 2024. Port Authority Bus Terminal Record of Decision (ROD), dated December 4, 2024.

Supporting documentation: Port Authority Bus Terminal Final Environmental Impact Statement (FEIS), dated October 4, 2024. Port Authority Bus Terminal Draft Environmental Impact Statement (DEIS), dated February 2, 2024. The ROD, FEIS, DEIS and associated documents can be viewed and downloaded from: *https://www.panynj.gov/bus-terminals/en/port-authority/midtown-bus-terminal-replacement/resources.html.*

Authority: 23 U.S.C. 139(l)(1).

Megan Blum,

Deputy Associate Administrator for Planning and Environment.

[FR Doc. 2024–29588 Filed 12–13–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0158]

Request for Comments on the Renewal of a Previously Approved Collection: Application for Construction Reserve Fund and Annual Statements (CRF)

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0032 (Application for Construction Reserve Fund (CRF) and Annual Statements) is used to evaluate an applicant's eligibility for CRF program benefits. There was a reduction in the public burden since the last renewal. We are required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

ADDRESSES: Written comments and recommendations for the proposed information collections should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David M. Gilmore, Director, 202–366–5737, Office of Marine Financing, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, Email: *David.gilmore@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Construction Reserve Fund Program (CRF).

OMB Control Number: 2133–0032.

Type of Request: Extension of a previously approved collection.

Abstract: The Construction Reserve Fund Program (CRF), authorized by 46 U.S.C. chapter 533, is a financial assistance program which provides tax deferral benefits to U.S.-flag operators. Eligible parties can defer the gain attributable to the sale or loss of a vessel, provided the proceeds are used to expand or modernize the U.S. merchant fleet. The primary purpose of the CRF is to promote the construction, reconstruction, reconditioning, or acquisition of merchant vessels which are necessary for national defense and to the development of U.S. commerce.

Respondents: Citizens who own or operate vessels in the U.S. foreign or domestic commerce who desire tax benefits under the CRF must respond.

Affected Public: Owners or operators of vessels in the domestic or foreign commerce.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Estimated Hours per Response: 9.

Annual Estimated Total Annual Burden Hours: 90.

Frequency of Response: Once Annually.

A 60-day **Federal Register** Notice soliciting comments on this information collection was published on October 1, 2024 (89 FR 80011) in the **Federal Register** indicating comments should be submitted by December 2, 2024. No comments were received.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–29537 Filed 12–13–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No.: DOT–OST–2024–0129]

Notice of Proposed Waiver of Buy America Requirements for the Pacific Island Territories and the Freely Associated States

ACTION: Notice; request for comments.

SUMMARY: The Department of Transportation (DOT) is seeking comments on a proposed general applicability public interest waiver of the requirements of section 70914(a) of the Build America, Buy America Act (BABA) and related domestic preference statutes administered by DOT and its Operating Administrations (OAs) for Federal financial assistance awarded for infrastructure projects located in the Commonwealth of Northern Mariana Islands (CNMI), Guam, and American Samoa, collectively referred to as the Pacific Island territories. The proposed waiver would also apply to discretionary grant assistance provided by DOT to the Freely Associated States (the Republic of Palau, Republic of the Marshall Islands, and Federated States of Micronesia) in the Pacific that is subject to a domestic preference statute (which does not include BABA, as that statute only applies to the United States and its territories). The waiver will remain in effect for five years after the effective date of the final waiver.

DATES: Comments must be received by December 31, 2024.

ADDRESSES: Please submit your comments to the U.S. Government electronic docket site at *https://www.regulations.gov,* Docket: DOT–OST–2024–0129.

Note: All submissions received, including any personal information therein, will be posted without change or alteration to *https://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Elizabeth Fox, DOT Office of the Assistant Secretary for Transportation Policy, at *elizabeth.fox@dot.gov* or at 202–366–4540. For legal questions, please contact Jennifer Kirby-McLemore, DOT Office of the General Counsel, 405–446–6883, or via email at *jennifer.mclemore@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Buy America preferences set forth in section 70914(a) of BABA[1] require that all iron, steel, manufactured products, and construction materials used for infrastructure projects in the United States under Federal financial assistance awards be produced in the United States.

Under section 70914(b) and in accordance with the Office of Management and Budget (OMB)'s Guidance Memorandum M–24–02, Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, DOT may waive the application of BABA requirements in any case in which it finds that: (i) applying the domestic content procurement preference would be inconsistent with the public interest; (ii) types of iron, steel, manufactured products, or construction materials are not produced in the U.S. in sufficient and reasonably available quantities or of a satisfactory quality; or (iii) the inclusion of iron, steel, manufactured products, or construction materials produced in the U.S. will increase the cost of the overall project by more than 25 percent.

BABA also provides that the preferences under section 70914 apply

[1] The Build America, Buy America Act was included as title XI, subtitle A of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58).

only to the extent that a domestic content procurement preference as described in section 70914 does not already apply to iron, steel, manufactured products, and construction materials. IIJA section 70917(a)–(b). Federal financial assistance programs administered by DOT's Operating Administrations (OAs) [2] are subject to a variety of mode-specific statutes that apply particular Buy America [3] requirements to iron, steel, and manufactured products, including 49 U.S.C. 50101 (FAA); 23 U.S.C. 313 (FHWA); 49 U.S.C. 5323(j) (FTA); and 46 U.S.C. 54101(d)(2) (MARAD). Recent annual appropriations acts have also required DOT to apply the Buy American Act (41 U.S.C. chapter 83) to funds appropriated under those acts,[4] where a mode-specific statute is not in place. These statutes also allow for waivers of the Buy America requirements to be issued when the Department determines that doing so is in the public interest.

DOT and its OAs provide financial assistance to the three Pacific Island territories of Guam, American Samoa, and CNMI through both discretionary grants and allocated programs, including assistance programs for highways and bridges, public transportation, airports, and port facilities. The Freely Associated States (the Republic of Palau, Republic of the Marshall Islands, and Federated States of Micronesia) in the Pacific region are also eligible recipients of discretionary grants under FAA's Airport Improvement Program (AIP).

During FY 2024, DOT OAs provided more than $132.7 million in financial assistance for at least 20 capital projects in the Pacific Island territories under various programs where infrastructure is an eligible activity and may be subject to BABA or other DOT existing Buy America requirements. DOT also provided $47.6 million in AIP discretionary grants to the Freely Associated States in the Pacific region for 3 projects during that time.

On April 29, 2024, DOT issued a temporary general applicability waiver of the requirements of section 70914(a) of BABA and related domestic preference statutes administered by DOT and its OAs. The DOT waiver was part of an interagency effort, led by the OMB, to provide time for DOT and other infrastructure agencies to collect and analyze evidence to determine if a long-term waiver of these requirements is in the public interest and allow time for DOT and its OAs to offer technical assistance to potential assistance recipients in the remote communities in the Pacific Island territories and Freely Associated States. The temporary waiver expires on March 1, 2025.

During the temporary general applicability waiver period, DOT has worked with OMB's Made in America Office (MIAO) and with other infrastructure agencies to better understand the local manufacturing environment, consider how to best balance the equities for residents of the Pacific Island territories and domestic suppliers, and explore ways to potentially ease supply chain challenges for infrastructure projects in those territories. The Pacific Islands are over 5,000 miles from the mainland United States and must import products via air or sea. These economies have few local heavy manufacturers and largely rely on regional supply chains from east Asia, Australia, and New Zealand. Most goods, equipment, materials, and supplies are imported and rely on shipping with extended timelines and unpredictable shipping cost fluctuations. Moreover, materials sourced from the mainland U.S. lead to additional shipping fees and longer lead times, thus significantly extending construction activity schedules.

Along with other Federal agencies, DOT has reviewed the U.S. International Trade Commission's 2023 report ''U.S.-Pacific Islands Trade and Investment: Impediments and Opportunities'', which noted the geographic isolation, high costs of shipping, dependence on imports, regulatory barriers, limited economies of scale, and environmental challenges as persistent barriers that the Pacific Island territories face. Additionally, the lack of available land on the Pacific Island territories creates barriers for developing new manufacturing and assembly facilities. Those infrastructure products readily available and produced locally on the Pacific Islands, such as aggregates and cement products, are mostly statutorily exempt from BABA requirements. For these reasons, the DOT remains concerned that complying with the domestic sourcing requirements may increase already elevated project time and costs.

In considering this waiver, DOT consulted with the relevant Federal assistance programs in the respective OAs, including the regional offices in those agencies that directly administer DOT funding programs in the Pacific Island territories and Freely Associated States. DOT also relied on other communications that it has received from stakeholders in those territories. For example, CNMI and Guam have cited their isolated location in the Western Pacific and reliance on ocean freight as the only mode of transporting commodities to the island as creating significant challenges in obtaining materials from domestic sources, with impacts on both project costs and delivery schedules. The two territories have also indicated that shipping construction materials from the continental United States raises shipping costs by approximately 30 percent above the cost to ship directly to the islands from Asia.

In August 2024, the U.S. Department of the Interior (DOI) hosted the third Territorial Climate and Infrastructure Workshop in Honolulu, HI, which included many representatives from various territorial agencies and departments. During the workshop, DOI and DOT led a session on the Build America, Buy America Act, during which many participants described the structural challenges the territories face in complying with Buy America requirements and the desire for relief due to the significant cost increases and delays in project timelines that would ensue. In addition, in February 2023, DOI hosted the Interagency Group on Insular Areas, at which the governors of the Territories expressed concerns related to BABA implementation and potential project delays and requested that Federal agencies be flexible in these requirements, including consideration of waivers.

Additionally, representatives from American Samoa have indicated to the Federal Emergency Management Agency that ''As a containerized community, our territories depend on goods, equipment, materials, and supplies to be imported.'' They further stated that ''we can purchase equipment from foreign countries closer to American Samoa and with reasonable prices and shorter shipping time.'' American Samoa representatives also noted that availability of materials from nearby foreign countries such as New Zealand and Australia would result in a significant cost savings to the grantors.

[2] DOT OAs that provide or administer financial assistance covered under this proposed waiver include the Federal Aviation Administration (FAA); Federal Highway Administration (FHWA); Federal Transit Administration (FTA); and the Maritime Administration (MARAD).

[3] In this notice, references to ''Buy America'' include domestic preference laws referred to ''Buy American'' that apply to DOT financial assistance programs.

[4] For example, section 409 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2024 states that ''no funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 8301–8305, popularly known as the 'Buy American Act').''

Proposed Waiver and Request for Comments

DOT is proposing to use its authority under section 70914(b)(1) to waive the Act's Buy America preferences for iron and steel, manufactured products, and construction materials used in infrastructure projects located within the Pacific Island territories of CNMI, Guam, or American Samoa and funded under DOT-administered financial assistance programs, on the basis that doing so would be in the public interest. The proposed waiver would apply to all awards obligated after the effective date and, in the case of awards obligated prior to the effective date, the proposed waiver would apply to all expenditures for non-domestic iron, steel, manufactured products, and construction materials incurred after the effective date. The proposed waiver would not apply to the following products that have been identified by OMB as critical supply chains that warrant special consideration:

- Telecommunications infrastructure:
  - Telecommunications equipment used to transmit and receive digital signals across constructed networks (*e.g.,* vaults, cabinets, routers, switches, optical line terminals (OLTs), optical network terminals (ONTs), wi-fi capable customer equipment, and other electronic hardware used to connect the network). This includes:
    - Video surveillance equipment, including any equipment that is used in fixed and mobile networks that provides advanced communications service in the form of a video surveillance service, provided the equipment includes or uses electronic components. This encompasses any equipment that can be used in a fixed or mobile broadband network to enable users to originate and receive high quality voice, data, graphics, and video telecommunications using technology with connection speeds of at least 200 kbps in either direction.[5]
    - Broadcasting equipment, including radio frequency devices contained in electronic-electrical products that are capable of emitting radio frequency energy by radiation, conduction, or other means. These products have the potential to cause interference to radio services operating in the radio frequency range of 9 kHz to 3000 GHz.[6]
  - Broadband equipment (*e.g.,* fiber/coax cable, conduit, pedestals, handholes, tower structures, and other physical components used to connect to telecommunication equipment)
- Grid-connected utility-scale energy generation and stationary storage (>5MW)
- Cargo handling equipment, including cranes, that are manufactured by or contain any networks, operating systems, or software identified in U.S. Maritime Advisory 2024–0026 or successor advisories [7]

While these items would be excluded from this general waiver, DOT recognizes that purchases of these items from non-domestic sources as part of a federally-assisted project may be warranted in certain circumstances. For those individual projects, DOT and its OAs will consider requests for potential waivers of BABA or other Buy America requirements on a case-by-case basis, with special attention to any strategic security issues that may be associated with those purchases.

DOT specifically requests comment on the items that have been identified by OMB as critical supply chains that warrant special consideration and whether any of those items should be removed from the list, for example broadband equipment. If items are removed from this list following the public comment period, then those products would be included within the scope of the final waiver.

Because many DOT-administered financial assistance programs are also subject to program-specific domestic preference requirements, the waiver proposed in this notice would also apply to those requirements. Specifically, the waiver would also be an exercise of DOT's authority to issue public interest waivers under 23 U.S.C. 313(b)(1), 49 U.S.C. 5323(j), 46 U.S.C. 54101(d)(2)(B)(i)(I), 49 U.S.C. 50101(b)(1), and 41 U.S.C. chapter 83. Under those DOT authorities, the proposed waiver would also apply to projects in the Freely Associated States (the Republic of Palau, Republic of the Marshall Islands, and Federated States of Micronesia).[8]

The proposed duration of the waiver is five years after the effective date of the final waiver. The Department will periodically review this waiver to assess whether it remains necessary to the fulfillment of DOT's missions and goals and consistent with applicable legal authorities, such as the IIJA, Executive Order 14005, and OMB M–24–02. The Department may, based on the results of that review, terminate the waiver, or take action to develop a new waiver in consultation with the MIAO.

Without the waiver, DOT-assisted infrastructure projects located within the Pacific Island territories will experience challenges with product delivery, availability, reliability, and project scheduling. Infrastructure project schedules rely on readily available products delivered within reasonable timeframes. Due to the extreme distances that manufacturers for products produced in the mainland United States would have to ship products to the Pacific Island territories and due to the lack of existing local product supply networks for these products, manufacturers may not be able to assure on-time delivery of compliant products and associated projects. As a result, the Pacific Island territories could potentially face unreasonable scheduling uncertainty.

Under OMB Memorandum M–24–02, agencies are expected to assess ''whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products'' as appropriate before granting a public interest waiver. DOT's analysis has concluded that this assessment is not applicable to this waiver.

DOT will consider all comments received in the initial 15-day comment period during our consideration of the proposed waiver, as required by section 70914(c)(2) of IIJA. Comments received after this period, but before notice of our finding is published in the **Federal Register**, will be considered to the extent practicable. Pursuant to section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), if FHWA makes a finding that a waiver is appropriate under 23 U.S.C. 313(b), FHWA will also invite public comment on this finding for an additional 5 days following the date of publication of the finding.

[5] *https://www.fcc.gov/laboratory-division/equipment-authorization-approval-guide/equipment-authorization-system#step2.*

[6] *https://www.fcc.gov/oet/ea/rfdevice.*

[7] 2024–002–Worldwide-Foreign Adversarial Technological, Physical, and Cyber Influence *https://www.maritime.dot.gov/msci/2024-002-worldwide-foreign-adversarial-technological-physical-and-cyber-influence.*

[8] The proposed waiver under section 70914(b)(1) of BABA excludes projects in the Freely Associated States because the requirements under section 70914(a) are applicable only to infrastructure projects ''in the United States'' and, therefore, the BABA requirements to not apply to projects in the Freely Associated States. However, airports located in the Freely Associated States are eligible recipients under FAA's Airport Improvement Program, and the Buy American requirements specific to that program would thus also apply to the Freely Associated States.

Comments received during that period will be reviewed, but the finding will continue to remain valid. Those comments may influence DOT/FHWA's decision to terminate or modify a finding.

Issued in Washington, DC.

Polly E. Trottenberg,

Deputy Secretary.

[FR Doc. 2024–29489 Filed 12–13–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0674]

Agency Information Collection Activity: Notice of Disagreement: Appeal to the Board of Veterans' Appeals

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals (Board), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before February 14, 2025.

ADDRESSES: Comments must be submitted through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Program-Specific information: Sue Hamlin White, 202–632–5100, *Edna.HamlinWhite@va.gov.*

VA PRA information: Maribel Aponte, 202–461–8900, *vacopaperworkreduact@va.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Board invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information will have practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Notice of Disagreement (NOD)/ Appeal to the Board of Veterans' Appeals, VA Form 10182 and VA Form 9.

OMB Control Number: 2900–0674. *https://www.reginfo.gov/public/do/PRASearch* (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: Appellate review of the denial of VA benefits may only be initiated by the filing of a Notice of Disagreement with the Board. 38 U.S.C. 7105(a). A *VA Form 10182 Decision Review Request: Board Appeal (Notice of Disagreement)* is required to initiate Board review of an appeal in the modernized review system as implemented by the Veterans Appeals Improvement and Modernization Act of 2017 (AMA). The *VA Form 9 Appeal to the Board of Veterans' Appeals* may be used to complete a legacy appeal to the Board. The completed form becomes the ''substantive appeal'' (or ''formal appeal''), which is required by the pre-AMA version of 38 U.S.C. 7105(a) and (d)(3) to complete an appeal to the Board. Additionally, the proposed information collections allow for withdrawal of services by a representative, requests for changes in hearing dates and methods under 38 U.S.C. 7107, and motions for reconsideration pursuant to 38 CFR 7103(a).

The Board is requesting to revise the currently approved OMB Control No. 2900–0674 as there has been a decrease in the estimated number of respondents and annual burden. There has been a decrease in the use of the *VA Form 9 Appeal to the Board of Veterans' Appeals,* as the *VA Form 10182 Decision Review Request: Board Appeal (Notice of Disagreement)* is required to initiate Board review of decisions issued on or after February 19, 2019. Consequently, the majority of incoming appeals at the Board are governed by the AMA; therefore, the estimated number of respondents who utilize the *VA Form 10182 Decision Review Request: Board Appeal (Notice of Disagreement)* has been adjusted accordingly.

Affected Public: Individuals and households.

Estimated Annual Burden: 60,305 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 119,800.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–29521 Filed 12–13–24; 8:45 am]

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Part II

Department of Commerce

International Trade Administration

19 CFR Part 351

Regulations Enhancing the Administration of the Antidumping and Countervailing Duty Trade Remedy Laws; Final Rule

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 241206–0317]

RIN 0625–AB25

Regulations Enhancing the Administration of the Antidumping and Countervailing Duty Trade Remedy Laws

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: Pursuant to Title VII of the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is amending its trade remedy regulations to enhance the administration of the antidumping duty (AD) and countervailing duty (CVD) laws. Specifically, Commerce is codifying existing procedures and methodologies and creating or revising regulatory provisions relating to several matters including the collection of cash deposits, indicators used in surrogate country selection, application of antidumping rates in nonmarket economy proceedings, calculation of an all-others' rate, selection of examined respondents, and attribution of subsidies received by cross-owned input producers and utility providers to producers of subject merchandise.

DATES: These amendments are effective January 15, 2025.

FOR FURTHER INFORMATION CONTACT: Scott D. McBride, Associate Deputy Chief Counsel for Trade Enforcement and Compliance, at (202) 482–6292, Jesus Saenz, Senior Attorney, at (202) 482–1823, Ashlande Gelin, Attorney, at (202) 306–7302, or John Van Dyke, Import Policy Analyst, at *john.vandyke@trade.gov*.

SUPPLEMENTARY INFORMATION:

General Background

On July 12, 2024, Commerce proposed amendments to its existing regulations, 19 CFR part 351, to enhance the administration of the AD and CVD trade remedy laws, in ''Regulations Enhancing the Administration of the Antidumping and Countervailing Duty Trade Remedy Laws,'' published at 89 FR 57286 (July 12, 2024) (*Proposed Rule*). This final rule concerns the AD/CVD statutory and regulatory provisions in general, as well as those provisions pertaining to filing requirements; the application of cash deposits; the determination of separate rates for nonmarket economy entities; the calculation of rates for unexamined exporters and producers, including the all others rate; the selection of voluntary respondents; the assessment of AD and CVD rates on a per-unit basis; the submission of surrogate value, benchmark, and rebuttal information; the selection of facts otherwise available; the sharing with U.S. Customs and Border Protection (USCBP) of proprietary data for use in negligence and gross negligence investigations, in addition to investigations involving fraud; the collapsing of affiliated producers and non-producers, the application of the special rule for multinational corporations, the calculation of amounts for selling expenses and for profit for constructed value: and a series of CVD-specific provisions, which Commerce summarizes below.

Title VII of the Act vests Commerce with authority to administer the AD/CVD trade remedy laws. Section 731 of the Act directs Commerce to impose an AD order on merchandise entering the United States when it determines that a producer or exporter is selling a class or kind of foreign merchandise into the United States at less than fair value (*i.e.,* dumping), and material injury or threat of material injury to that industry in the United States is found by the U.S. International Trade Commission (ITC).

In addition, section 701 of the Act directs Commerce to impose a CVD order when it determines that a government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise that is imported into the United States, and material injury or threat of material injury to that industry in the United States is found by the ITC.

Section 771(5)(B) of the Act defines a countervailable subsidy as existing when ''a government or any public entity within the territory of a country provides a financial contribution; provides any form of income or price support; or makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments; and a benefit is thereby conferred.'' To be countervailable, a subsidy must be ''specific'' within the meaning of section 771(5A) of the Act.

The Act provides numerous disciplines which Commerce must follow in conducting AD and CVD proceedings. For example, sections 703(d)(1)(B), 705(d), 733(d)(1)(B), 735(c), and 751 of the Act direct Commerce to order USCBP to collect cash deposits as security pursuant to affirmative determinations in its proceedings until Commerce orders the assessment of AD or CVD duties. Likewise, sections 705(c)(1)(B), 705(c)(5), 735(c)(1)(B)(i), and 735(c)(5) of the Act set forth the means by which Commerce determines the AD margin or countervailable subsidy rate to be applied to imported subject merchandise exported or produced by entities not selected in an investigation for individual examination. In addition, sections 777A(c)(2) and 777A(e)(2)(A) of the Act allow Commerce to limit the number of exporters or producers to be individually examined, while section 782(a) allows Commerce to select voluntary respondents.

In accordance with these and other statutory provisions, this final rule codifies and enhances the procedures and practices applied by Commerce in administering and enforcing the AD and CVD laws.

As Commerce explained throughout the preamble to the *Proposed Rule,* the purpose of these amendments is to help enhance and facilitate the administration of the AD and CVD regulations found at part 351.[1] The codification of Commerce practice in this final rule, as well as updates to certain regulatory provisions to reflect modifications made by Congress to the Act in 2015, will provide greater clarity and transparency to Commerce's procedures and calculations. In addition, Commerce has revised its methodology in nonmarket economy investigations and reviews to more effectively address situations in which a state-owned entity has less than majority state ownership but the state continues to control an entity through veto power or ''golden shares.'' It has furthermore updated the means by

[1] This final rule codifies several distinct procedures and practices under various sections of the Act. As such, Commerce generally intends the rule's provisions to be severable and to operate independently from each other. Commerce's intent that the rule's provisions be severable is demonstrated by the number of distinct regulatory provisions addressed in this rulemaking and the structure of the preamble in addressing them independently and supporting each, respectively, with Commerce's statutory interpretation, agency practice, and court precedent. Accordingly, Commerce intends each portion of this rule to be severable from each other but has included all the proposed provisions in one rulemaking for purposes of enhancing Commerce's trade remedy regulations.

which it selects economically comparable countries for purposes of determining normal value in nonmarket economy proceedings. Furthermore, Commerce has updated many of its CVD regulations to provide both clarity and transparency to Commerce's CVD methodology and to codify long-standing CVD policies. Finally, for the first time, Commerce has promulgated CVD regulations to address the government purchase of goods for more than adequate remuneration (MTAR) and the provision of rebates or exemptions of indirect taxes and import charges to exporters that purchase capital goods and equipment.

Explanation of Modifications From the Proposed Rule to the Final Rule and Responses to Comments

In the *Proposed Rule,* Commerce invited the public to submit comments.[2] Commerce received 27 submissions from interested parties providing comments, including domestic producers, exporters, importers, foreign governments, and foreign entities. The majority of commenters supported Commerce's proposed regulations and indicated that the new and revised regulations would increase transparency and enhance and improve the administration and enforcement of the AD and CVD laws. Some of the comments provided suggestions to further improve the regulations at issue, and Commerce considered the merits of each submission and analyzed the legal and policy arguments considering both past practice and Commerce's mandate to enhance and improve the administration of our AD and CVD laws. Pursuant to that analysis, Commerce has made certain modifications to the *Proposed Rule* in response to those submissions.

The preamble to the *Proposed Rule* provided background, analysis, and explanations which are relevant to these regulations. With some modifications, as noted, this final rule would codify regulations proposed on July 12, 2024. Accordingly, to the extent that parties wish to have a greater understanding of these regulations, Commerce encourages not only consideration of the preamble of these final regulations but also a review of the analysis and explanation in the preamble to the *Proposed Rule*.

In drafting this final rule, Commerce carefully considered each of the comments received and the following sections address the comments received. Each section contains a brief discussion of the regulatory provision(s), a summary of the comments Commerce received, and Commerce's response to those comments, including an explanation when Commerce modified its proposed regulations in response to those comments.

1. Commerce Has Made Small Modifications to Proposed § 351.104(a)(7), Which Addresses the Citation of Certain New Factual Information on the Record

On March 25, 2024, Commerce issued a final rule which provided clarity and procedures for interested parties submitting documentation to the agency, explaining which documents from other segments and proceedings may be cited without placing such documents on the record and which documents must be placed on the record to be considered by Commerce in its analysis and determinations (*RISE Final Rule*).[3] Those modifications added § 351.104(a)(7), which states that interested parties citing public versions of documents issued by Commerce in other segments or proceedings before the implementation of Commerce's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS) (or that otherwise have no assigned ACCESS barcode number) must submit copies of those documents on the record.

In the *Proposed Rule,* Commerce stated that it was reconsidering the scope of public documents to which § 351.104(a)(7) applies and proposed that public preliminary and final issues and decision memoranda issued in investigations and administrative reviews pursuant to §§ 351.205, 351.210, and 351.213 with no assigned ACCESS barcode number need not be subject to the requirements of that provision.[4] Commerce explained that citations to these memoranda, like all such citations relied upon by interested parties in submissions to Commerce, would still be required to be cited in full (albeit without an ACCESS barcode number).[5] Commerce also stated that, as set forth in § 351.104(a)(6), if Commerce determined that a citation was not provided in full, Commerce could decline to consider and analyze the cited decision memoranda in its preliminary and final determinations.[6]

Commerce received five comments in response to the *Proposed Rule.* No commenter opposed allowing interested parties to cite preliminary and final issues and decision memoranda from other investigations and administrative reviews without ACCESS barcode numbers without also submitting those documents on the record of a segment of the proceeding. Accordingly, this final rule continues to allow parties to cite public documents that meet that description without submitting them on the record.

Two commenters suggested that Commerce modify the proposed regulation language to clarify that the exception being proposed under § 351.104(a)(7) applies to all investigation and administrative review preliminary and final issues and decision memoranda without an associated ACCESS barcode number and not just those which were issued ''before the implementation of ACCESS.'' Those commenters noted an inconsistency between the first and second sentences of the paragraph as proposed in that regard.

One commenter suggested that all investigation and administrative review preliminary and final determinations from other segments or proceedings are not ''new factual information,'' and therefore, the Secretary should state in the regulation that such memoranda are not subject to the timing and filing restrictions of the factual information regulation, § 351.301. The commenter stated that just because an ACCESS barcode number is missing does not mean that it should be treated as new factual information under § 351.301.

Other commenters took issue, fundamentally, with both § 351.104(a)(6) and (7), stating that Commerce should expand the list of documents that need not be submitted on the record, or need not include an ACCESS barcode number, to be cited without submitting them on the record. They stated that Commerce's allowance of an exception for just preliminary and final decision memoranda in investigations and administrative reviews and not similar decision memoranda in other segments of a proceeding is arbitrary and that there is no reason for Commerce to treat investigation and administrative review documents differently. Furthermore, they stated that by requiring that certain public Commerce documents, but not others, be submitted onto administrative records, Commerce would be prejudicing interested parties by preventing them from citing relevant Commerce practice and policies, especially once the time for the submission of new factual information on the administrative record has passed. Therefore, they advocated that

[2] *See Proposed Rule,* 89 FR at 57286.

[3] *See Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws, Final Rule,* 89 FR 20766, 20768–20773 (March 25, 2024) (*RISE Final Rule*).

[4] *Id.*

[5] *Id.*

[6] *Id.*

Commerce should either allow all public documents originating with Commerce from other segments or other proceedings to be cited without submitting them on the record, or that Commerce at minimum expand the list of documents which may be cited without submitting them on the record in § 351.104(a)(6).

Finally, two commenters stated that if Commerce continues to require that public Commerce documents listed in § 351.104(a)(6) or public Commerce documents without associated ACCESS barcode numbers be submitted on the record, Commerce should take into consideration that interested parties frequently wish to cite certain Commerce public documents from other segments or proceedings in response to Commerce's preliminary determinations, which are issued after the time for the submission of new factual information has passed. They stated that if the time for new factual information closes before Commerce issues its preliminary determination, there is no means by which those interested parties can adequately defend their interests by arguing in a brief or rebuttal brief that Commerce acted inconsistently in the preliminary determination from past cases. They stated that under that scenario, parties may not have been aware that a particular Commerce decision memorandum from another segment or proceeding was relevant until after the preliminary determination was issued. Those commenters, therefore, suggested that Commerce allow parties to submit documents listed in § 351.104(a)(6) or those without associated ACCESS barcode numbers as attachments in an appendix to case briefs and rebuttal briefs.

Response

Commerce has made two revisions to § 351.104(a)(7), as proposed. First, for purposes of § 351.104(a), when Commerce is describing documents issued by all agency employees, Commerce uses the general term ''the Department'' to describe the overall originator of those documents. This is true for § 351.104(a)(3) through (6) and should equally be used in § 351.104(a)(7). The term ''Commerce'' appeared in the proposed regulation language, but should say ''the Department,'' and Commerce has corrected for that error.

The second revision is in response to those commenters who pointed out that Commerce's first and second sentences in the provision were inconsistent. Section 351.104(a)(7) applies to all documents originating with Commerce with no associated ACCESS barcode numbers and not just those issued before the implementation of ACCESS. Accordingly, Commerce has revised the second sentence to make that sentence consistent with the first sentence, as requested by those commenters.

In response to the statements that Commerce's various decision memoranda are not factual information and should not be subject to the requirements of § 351.301, Commerce addressed this claim in the *RISE Final Rule,*[7] explaining that collapsing determinations under § 351.401(f), for example, and calculation memoranda, are highly dependent on the case-specific facts that Commerce analyzes.[8] Commerce explained that although it agreed that ''each collapsing and calculation memoranda is a legal analysis and decision by the agency, each of these memoranda also reflect conclusions based on the facts unique to the segment of the proceeding in which they were issued.'' [9] Accordingly, each such document ''contains factual information being introduced on the record of the ongoing segment or proceeding for the first time.'' [10] Thus, Commerce disagrees with the statement that Commerce should state that the filing requirements of § 351.301 do not apply to Commerce-authored public decision memoranda from other segments or proceedings because such information is not allegedly new factual information on the record. In fact, such memoranda are unquestionably new factual information in the context of a separate segment or proceeding, and Commerce has not adopted that proposed change.

As Commerce also explained in the *RISE Final Rule,* ''the conduct of an administrative proceeding is a time-intensive, resource-intensive, and fact-intensive endeavor.'' [11] Commerce implemented the ACCESS barcode requirement to make it easier, in part, for Commerce to retrieve the documents and consider them in reaching conclusions for preliminary and final determinations.[12] Therefore, allowing parties to cite documents in their submissions without those ACCESS barcode numbers present defeats the purpose of the requirement.

However, Commerce also recognizes that interested parties have cited preliminary and final issues and decision memoranda in investigations and administrative reviews without including ACCESS barcode numbers for many years, and those four types of documents are by far the public Commerce decision documents most frequently cited by interested parties in their case briefs and rebuttal briefs. In addition, those documents are relatively less difficult for Commerce to find in legal resource services than many other types of documents listed in § 351.104(a)(6). Accordingly, Commerce has determined that despite the additional burden on the agency case teams to retrieve the cited documents, it is both fair and reasonable to allow interested parties to cite those four types of public documents from other segments or proceedings in submissions before the agency; especially those submissions issued when no ACCESS barcode was associated with those documents. Commerce has made no such determination with respect to other documents listed under § 351.104(a)(6) and therefore has not codified such a filing exception for those additional Commerce-authored documents.

With respect to the suggestion that Commerce should permit parties to submit documents listed in § 351.104(a)(6) for the first time on the record as appendices to case briefs and rebuttal briefs, for the reasons described below, Commerce does not agree that such a change to the agency's procedures and regulations is warranted or that failing to allow the submission of such documents late in a proceeding after the time for new factual information has passed unduly prejudices interested parties. These types of documents, such as collapsing memoranda and calculation memoranda, typically contain extensive case-specific business proprietary information. In the public versions of such memoranda, the business proprietary information can be redacted such that the detailed basis of Commerce's decision resulting from the underlying business proprietary data may not even be publicly discernable. Furthermore, to the extent that Commerce's analysis is discernable in the public version of the memorandum, that same public analysis should be reflected in a second location—Commerce's preliminary and final issues and decision memoranda. Commerce normally includes a public summary of its collapsing and calculation methodologies, for example, in its preliminary decision memoranda accompanying preliminary determinations or preliminary results published in the **Federal Register**. In

[7] *See RISE Final Rule,* 89 FR at 20772.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.,* 89 FR at 20771.

those memoranda, Commerce publicly describes its collapsing determinations and other major calculation issues raised by interested parties in their case and rebuttal briefs in all final decision memoranda accompanying final determinations or final results. It is in these public issues and decision memoranda that Commerce's methodologies can be clearly discerned in a public manner, without relying on case-specific business proprietary information attached to briefs or rebuttal briefs for the first time on the record, long after the time for submitting new factual information on the record has expired.

Under § 351.104(a)(6) and (7) as modified in this final rule, because interested parties can cite these public issues and decision memoranda from other segments or proceedings, including such memoranda without an associated ACCESS barcode number, to support their arguments in their case and rebuttal briefs, Commerce disagrees that the regulations, as amended, unduly prejudice interested parties as claimed by certain commenters. Instead, Commerce finds that § 351.104(a) reflects a reasonable balance that allows parties to defend their interests, while also allowing Commerce officials the ability to analyze and consider information on the record without forcing the officials to also assume the additional burden of (1) independently researching the records of other past segments and proceedings, (2) analyzing as part of that exercise the unique facts that were present in those segments or proceedings that resulted in the application of a particular methodology, analysis or calculation, and then (3) placing additional information derived from those segments or proceedings. on the record of the case before the agency. These regulations allow interested parties to cite many different documents and sources, including over 20 types of Commerce's public decision documents, without placing those documents on the record, but also make clear that interested parties have a responsibility to make certain that the public versions of the factual information which support their arguments from other segments or proceedings and not listed in the relevant provisions of the regulation must be timely submitted on the record to be considered by Commerce in making its determinations. Accordingly, Commerce has determined to make no further modifications to § 351.104(a)(7), other than the changes explained above.

2. Commerce Has Modified Proposed § 351.107 and Proposed § 351.212(b)(1), Which Cover Cash Deposits and Assessment of Duties, To Remove the Examples of Units Upon Which Cash Deposits and Assessment Rates May Be Applied

Commerce significantly revised and updated its cash deposit regulation in proposed § 351.107 to more accurately and holistically reflect Commerce's establishment and application of cash deposit rates.[13] Specifically, the revised regulation: (1) explains that while Commerce normally calculates cash deposit rates on an *ad valorem* basis, Commerce may calculate cash deposit rates on a per-unit basis; (2) describes situations in which Commerce applies cash deposit rates in a producer/exporter combination and the process by which a producer/exporter combination may be excluded from provisional measures and an AD or CVD order as a result of a calculated *de minimis* cash deposit rate following an investigation; (3) sets forth an AD cash deposit hierarchy for imports from market economies, an AD cash deposit hierarchy for imports from nonmarket economies, and a CVD cash deposit hierarchy; and (4) describes the effective date for cash deposit rates following the correction of ministerial errors in investigations and administrative reviews.

In addition, Commerce also revised its assessment regulation covering AD determinations, § 351.212(b)(1), by dividing it into two sections—one providing for the assessment of entries on an *ad valorem* basis and another providing that if the information normally used to calculate an *ad valorem* assessment rate is not available or the use of an *ad valorem* rate is otherwise not appropriate, Commerce may instruct USCBP to assess duties on a per-unit basis.[14]

Commerce received several comments supporting the proposed changes to § 351.107. One commenter supported the proposed rule as a welcome clarification to Commerce's cash deposit procedures and recognition of its authority to establish and tailor cash deposit rates to properly effectuate the AD/CVD law. That commenter specifically identified Commerce's proposed regulation as effectively codifying its authority to use combination producer/exporter cash deposit rates to address circumstances such as middleman dumping.

Another commenter specifically expressed support for proposed § 351.107(c)(1), which would codify an exception to Commerce's normal *ad valorem* practice where the calculation of cash deposits on a per-unit basis might be appropriate if the information normally used to calculate an *ad valorem* cash deposit rate is not available or the use of an *ad valorem* cash deposit rate is otherwise not appropriate. The commenter further noted that Commerce's practice of using such alternate methodologies to calculate cash deposit rates results in more accurate duty calculations and codifying that practice would provide clear notice of this practice to interested parties.

A third commenter expressed support for the proposed regulation and suggested additional modifications to § 351.107(c)(1) and § 351.107 generally. Regarding § 351.107(c)(1), the commenter proposed that, given the often technical nature of the products subject to review, as well as scope and data issues related to the underlying calculations and entries, Commerce should clarify that draft instructions be accompanied by an explanation of (1) the basis for Commerce's conclusion that the relevant information to calculate an *ad valorem* rate is ''not available'' or the reason an *ad valorem* rate ''is otherwise not appropriate'' and (2) a detailed description as to how the per-unit basis is to be calculated, particularly in view of an AD/CVD order's scope. The commenter noted that such an explanation would allow parties to comment on any errors and Commerce to make any appropriate modifications before final instructions are issued.

Regarding the § 351.107 cash deposit regulation generally, the commenter proposed that Commerce explicitly require draft Customs instructions concerning cash deposit and assessment rates be placed on the record for comment at or near the time of the publication of the preliminary results to allow parties an opportunity to comment on the proposed calculations and rates as part of their administrative case briefs or, where Commerce is unable to issue draft instructions sufficiently in advance of the deadline for case briefs, Commerce establish an alternative process for submitting such comments. The commenter emphasized that Commerce should require that draft instructions be placed on the record for comment sufficiently in advance of the final results so parties may comment on those instructions and Commerce may address or respond to such comments as part of the final issues and decision memorandum or notice of final results.

[13] *See Proposed Rule,* 89 FR at 57290–93.

[14] *Id.,* 89 FR at 57301.

One commenter expressed that while the proposed rule generally codifies Commerce's existing practice, Commerce should clarify its intent behind certain provisions. Regarding the proposed § 351.107(c)(4), which would provide that USCBP may, upon receiving instructions from Commerce, apply a cash deposit requirement that reflects the record information and effectuates the administration and purpose of a certification, the commenter noted that it appeared Commerce intended to codify only its current practice of instructing USCBP to collect cash deposits based on the implementation of a certification requirement pursuant to a circumvention determination and expressed that Commerce should confirm the scope of this provision.

That commenter also requested clarification regarding proposed § 351.107(d) and (e), which identify the hierarchies Commerce utilizes to determine the appropriate cash deposit rate for entries subject to AD/CVD investigations and orders. The commenter pointed out that the regulation states that Commerce may instruct USCBP to use an alternative methodology in applying cash deposit rates if Commerce determines that a cash deposit rate other than that resulting from the CVD cash deposit hierarchy should be applied based on the unique facts in the underlying proceeding. The commenter suggested that, if Commerce adopts the regulation as proposed, it should provide further information and examples of the types of unique circumstances that would warrant a different approach and the alternative approaches that could be used. The commenter further suggested that Commerce confirm that in such a circumstance, interested parties would be provided an opportunity to comment on any such instructions.

Commerce received only one comment on the proposed modifications to § 351.212(b)(1). The same commenter that proposed that Commerce should clarify that draft cash deposit instructions be accompanied by an explanation of: (1) the basis for Commerce's conclusion that the relevant information to calculate an *ad valorem* rate is ''not available'' or why an *ad valorem* rate ''is otherwise not appropriate''; and (2) a detailed description as to how the per-unit basis is to be calculated, particularly in view of an AD/CVD order's scope, made the same request for assessment instructions. The commenter noted that just as such an explanation would allow parties to comment on any errors in Commerce's cash deposit instructions, so too could parties comment on any errors in Commerce's draft assessment instructions and allow Commerce to make any appropriate modifications before the final assessment instructions are issued.

Response

As noted above, all of the commenters on the revised § 351.107 approved of the significant modifications which Commerce made to the provision. Commerce agrees with the commenters that the new version of the regulation will provide substantially more guidance to the public on Commerce's application of cash deposit rates in the normal course of its proceedings.

With respect to additional suggestions, one commenter suggested that Commerce place draft cash deposit instructions to USCBP on the record at or near the time of the publication of the preliminary results on the record to allow interested parties an opportunity to comment on those draft instructions. Commerce has determined not to place this additional requirement in the regulation. However, Commerce agrees that it is Commerce's normal practice to share draft Customs instructions with interested parties and provide an opportunity to comment on them in most cases. In accordance with that practice, when appropriate, Commerce places draft Customs instructions on the record prior to issuance of the final results of a given segment of a proceeding with sufficient time for the parties to have an opportunity to comment on those instructions. However, there is no statutory obligation for Commerce to place draft Customs instructions on the record immediately after a preliminary agency decision has been issued, and sometimes, based on the facts on the record, it is either unnecessary for Commerce to issue draft instructions, or Commerce may be unable to issue draft instructions for a month's time or more after the agency's preliminary decision has been issued. Accordingly, Commerce has determined not to codify the commenter's suggestion into the regulation.

Nonetheless, Commerce acknowledges the importance of interested parties having the ability in most cases to consider draft Customs instructions and to identify any potential inaccuracies in a submission to Commerce before the final agency decision has been issued. Thus, Commerce recommends and encourages that if interested parties in a proceeding find that draft Customs instructions have not been placed on the record for a significant period of time after Commerce has issued its preliminary decision, those interested parties should request in writing that the agency place draft Customs instructions on the record while there is still sufficient time for parties to comment on them when they submit their case and rebuttal briefs on the record to Commerce in accordance with § 351.309(c) and (d).

Relatedly, with respect to the commenter's suggestion that Commerce provide an explanation and calculation when Commerce applies a cash deposit rate on a per-unit basis under proposed § 351.107(c)(1), as well as that same commenter's suggestion that Commerce provide the same explanation and calculation when Commerce determines an assessment rate on a per-unit basis under proposed § 351.212(b)(1)(ii), it is Commerce's practice to provide interested parties with an opportunity to comment on the calculation of cash deposit and assessment rates in disclosure packages uploaded to the record, and Commerce normally explains its cash deposit requirements in its **Federal Register** notices. However, the Act does not require that Commerce issue such a detailed disclosure in every case, and in fact there may be situations in which the issuance of such a disclosure is simply not necessary. Accordingly, Commerce has determined that it will not modify § 351.107(c)(1) or § 351.212(b)(1)(ii) to codify the issuance of disclosure packages regarding per-unit cash deposits in every case.

Commerce has, however, determined to modify those provisions as set forth in the *Proposed Rule* to remove the examples of units ''to which a cash deposit rate may be applied'' and ''on which duties may be assessed.'' [15] Commerce proposed those examples to provide greater clarity to the issue, but has determined that those examples may have instead been the source of some confusion. Accordingly, Commerce will continue to determine the appropriate units on which to apply cash deposits or assessment rates on a case-by-case basis and will forgo listing examples in the regulation.

In response to the comment that Commerce provide further information and examples of the types of unique circumstances that would warrant a different approach and the alternative approaches that could be used under the AD and CVD cash deposit hierarchies set forth in § 351.107(d) and (e), in the regulation, Commerce must emphasize that these exceptions to the cash deposit hierarchies will be highly dependent on the unique circumstances and facts of a

[15] *Id.,* 89 FR at 57323 and 57328.

particular segment of a proceeding. Thus, it would be inappropriate for Commerce to provide examples in the regulation. However, if such a situation arises and Commerce is considering application of an alternative to the cash deposit hierarchy in a segment of the proceeding, consistent with its practice, Commerce anticipates that it would inform the interested parties of that possibility and provide interested parties with an opportunity to provide commentary on such an alternative approach.

Finally, Commerce does not agree with the comment that Commerce intended for proposed § 351.107(c)(4) to apply only to certifications issued pursuant to circumvention determinations under section 781 of the Act. Certifications issued under § 351.228 may be applied pursuant to circumvention determinations, of course, but Commerce may also instruct USCBP to use certifications, for example, in enforcing certain scope rulings, under § 351.225, and there are other situations in which Commerce may instruct USCBP to collect cash deposits in accordance with an importer or interested party certification. Accordingly, the language of proposed § 351.107(c)(4) is appropriately broad enough to cover all situations in which Commerce instructs USCBP to collect cash deposits in accordance with a certification issued under § 351.228 to effectively administer and enforce the AD and CVD laws.

3. Commerce Has Revised Proposed § 351.108, the Separate Rate Regulation, To Clarify Various Provisions and To Address Third Country Exporters of Subject Merchandise From Nonmarket Economies

In the *Proposed Rule,* Commerce proposed to codify its longstanding practice of granting a separate rate to exporters of merchandise from nonmarket economies in new § 351.108.[16] Commerce explained that its practice was in accordance with section 771(18)(A) of the Act, which defines a nonmarket economy country as a foreign country which Commerce determines ''does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.'' [17] Accordingly, as Commerce explained in the *Proposed Rule,* for over three decades, in antidumping proceedings involving nonmarket economy countries, Commerce has repeatedly determined that legally distinct entities are in a sufficiently close relationship to the government to be considered part of a single entity (*i.e.,* the government controlled entity). In this regard, current § 351.107(d) explicitly provides that in an ''antidumping proceeding involving imports from a nonmarket economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers.''

Commerce explained in the *Proposed Rule* that it applies a separate rate test in antidumping proceedings involving a nonmarket economy. Under this test, Commerce considers whether an entity can demonstrate that the foreign nonmarket economy government does not have either legal (*de jure*) control or control in fact (*de facto*) over the entity's export activities.[18] Commerce explained that over the past decade, Commerce has modified its practice to conclude that when a government holds a majority ownership share, either directly or indirectly, in a respondent exporting entity located in a nonmarket economy, the majority holding in and of itself demonstrates that the government exercises, or has the potential to exercise, control over the entity's operations generally.[19] Commerce further explained that it was also proposing to strengthen its separate rate practice to address additional real-world factors through which a foreign government can control or influence production decisions, pricing and sales decisions, and export behavior.[20] Commerce's practice in this regard has been affirmed in multiple cases by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit).[21]

Commerce received several comments on proposed § 351.108. Numerous commenters indicated their approval for Commerce's separate rate practice and its codification of that practice in its regulations, including its modification of that practice to deny the application of a separate rate when a nonmarket economy government has less than a majority ownership in a company but other indicia exist in conjunction with that (minority) ownership to indicate that the government controls or can control relevant decisions of the company.

Certain commenters identified concerns involving certain aspects of the proposed separate rate regulation. In particular, several commenters expressed concerns that the regulation did not address situations in which a company owned in whole or in part by the nonmarket economy government but located in a market economy other than the United States, exports merchandise from the non-market economy to the United States. One commenter stated that if the final regulations did not address situations in which a company incorporated in a market economy country exports merchandise from a nonmarket economy to the United States, the lack of such guidance could have a negative impact on U.S. import businesses seeking to comply with U.S. trade laws. That commenter stated that by remaining silent on those scenarios, Commerce's proposed regulations discourage the filing of separate rate applications in the first place by third-country exporters of merchandise from nonmarket economies. That commenter also suggested that Commerce should additionally consider addressing Commerce's practice when merchandise is substantially transformed in a third country before exportation to the United States, as well as other situations which might arise in a complex supply chain in the third country with regard to merchandise from the nonmarket economy.

Another commenter recommended that Commerce clarify that the separate rate test applies to all exporters, whether the exporter is located in the nonmarket economy or a market economy other than the United States, because the focus of the statute is on the merchandise produced or exported from the nonmarket economy and not the geographic location of the exporter. That commenter stated that regardless of whether exporters are located in Hong Kong, Toronto, or Shanghai, if the merchandise is exported from a nonmarket economy to the United States, there is no reason to treat any of those exporters differently with regard to the application of the separate rate test, especially if the nonmarket economy government has any ownership interest in those exporters. That commenter stated that under Commerce's proposed regulation there is a significant risk that entities affiliated with the nonmarket economy government exporting merchandise from the nonmarket economy and sold to the United States could be treated differently solely because of whether the entities are physically located within or outside of the nonmarket economy.

[16] *Id.,* 89 FR at 57293.

[17] *Id.*

[18] *Id.,* 89 FR at 57293.

[19] *Id.*

[20] *Id.*

[21] *See., e.g., Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1405 (Fed. Cir. 1997) (*Sigma* v. *United States*); *Transcom, Inc.* v. *United States,* 182 F. 3d 876, 882 (Fed. Cir. 1999) (*Transcom* v. *United States*); *Michaels Stores, Inc.* v. *United States,* 776 F.3d 1388, 1390 (Fed. Cir. 2014) (*Michaels* v. *United States*); and *Changzhou Wujin Fine Chem. Factory Co.* v. *United States,* 701 F.3d 1367, 1370 (Fed. Cir. 2012) (*Changzhou* v. *United States*).

Another commenter acknowledged that governments of certain nonmarket economies, including the People's Republic of China (China), have recently established corporate footholds and export platforms in third country market economies, resulting in a significant increase in circumvention and evasion inquiries conducted by Commerce and USCBP. The commenter stated that Commerce's proposed regulation ''contains a significant loophole'' in not addressing exporters of nonmarket economy merchandise that are located in third countries and stated that Commerce ''should not voluntarily limit its ability to remedy control over a firm's export activities exercised by the government of a nonmarket economy solely based on geography.'' Citing a separate rates policy bulletin issued by Commerce in 2005, the commenter explained that if a company physically located in a market economy country is owned or otherwise controlled by the nonmarket economy government, then that government could still be in a position to control the export activities of the company, which it asserted is the precise ''situation that the separate rate test is intended to address.'' [22]

In addition, a few commenters expressed concerns with Commerce's separate rate exception codified in proposed § 351.108(c) for entities wholly owned by market economy entities and incorporated and headquartered in a market economy. One commenter stated that Commerce failed to take into consideration in the proposed regulation that a nonmarket economy government might exercise control through various ownership interests or other means. That commenter advocated removing the exception from the proposed regulations altogether.

Similarly, another commenter identified concerns with the same language in proposed § 351.108(c), suggesting that Commerce should include an ''ultimate ownership'' analysis in the regulation looking beyond ''one level of corporate control'' to upstream shareholders and corporate owners to determine if the nonmarket economy government, including through the use of state-owned enterprises, might be situated in such a way as to evade Commerce's separate rate analysis.

A third commenter suggested that Commerce add language to the provision that would allow Commerce to deny the application of the exception if there was evidence on the record suggesting that the company is otherwise controlled by the nonmarket economy government.

A fourth commenter expressed concerns that the exception might allow for ''indirect'' ownership of an exporter of nonmarket economy merchandise, which ''could be exploited by government-controlled'' nonmarket economy entities ''attempting to obscure their status by routing ownership through one or more foreign holding companies with some operations in a market economy country.'' Therefore, that commenter recommended that Commerce add the terms ''directly and indirectly'' before the descriptor ''wholly owned'' in § 351.108(c).

Two commenters stated that they disagreed with Commerce's proposed requirement in § 351.108(d)(1), (2), and (3) that separate rate applications and certifications be filed no later than 14 days following publication in the **Federal Register** of a notice of initiation, stating that Commerce's current practice of 30 days was preferrable. In the *Proposed Rule,* Commerce explained that ''the thirty-day deadline delays Commerce from selecting respondents in its nonmarket economy proceedings because Commerce cannot select respondents for individual examination in its nonmarket economy proceedings until it first determines the pool of exporters who have satisfied the separate rate analysis.'' [23] One commenter stated that it disagreed with Commerce's conclusion, stating that the thirty-day requirement does not affect the selection of mandatory respondents because it claimed that Commerce's practice is to choose the largest exporters based on quantity and value questionnaires and that if a company is selected as a mandatory respondent, Commerce can gather the information it needs for a separate rate analysis from the mandatory respondent's section A questionnaire response. In addition, that commenter stated that gathering necessary information to complete a separate rate application, in particular, is a difficult task, because many exporters may have never participated in an antidumping proceeding before, many companies have intermediate shareholders who may be initially unwilling to report their ownership, and the proposed regulations suggest that new information might be requested of exporters in the future which might take even more time to collect, report, and support with documentation.

A second commenter that disagreed with the fourteen-day deadline focused on the hardship which that truncated deadline would have on United States small businesses and, in particular, importers. The commenter explained that many United States importers are caught by surprise in antidumping investigations and have less-sophisticated operations than larger importers, and it may take a lengthy amount of time after a petition in an investigation has been filed to identify smaller importers as interested parties. In addition, the commenter explained that once those smaller importers realize that they are interested parties, it can take some time for them to retain legal counsel, fully understand the impact of antidumping and countervailing duties on their business, identify relevant products covered by an investigation being imported, and identify their upstream producers and exporters that are ultimately responsible for completing the separate rate application. Even after they identify those producers and exporters, the commenter explained that communicating with those parties and inducing them to file a timely separate rate application also takes time. That commenter stated that this ''significant change'' would be ''likely to disproportionately and negatively impact small U.S. businesses.'' Therefore, considering the financial impact of such a change on U.S. importers and numerous steps which U.S. importers would have to take under the proposed fourteen-day deadline, that commenter stated that Commerce should retain the thirty-day deadline.

One commenter indicated its support for the fourteen-day deadline, stating that it should not create any hardship for companies wishing to submit a separate rate application or certification. That commenter stated that the applications and certifications are available on Commerce's website, and all importers, producers, and exporters should be aware after the petition is filed in investigations, (before initiation of the investigation), or after a review request is filed in reviews, that they are subject to an antidumping proceeding. That commenter agreed with Commerce that the new deadline would help prevent delays in nonmarket economy investigations or reviews because it allows Commerce to select respondents for individual examination earlier in the proceeding.

In addition, Commerce received several suggestions from commenters for smaller modifications to proposed

[22] Citing Policy Bulletin 05.1, *Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries* (April 5, 2005), available on Commerce's ACCESS website at *https://access.trade.gov/Resources/policy/bull04-1.html.*

[23] *See Proposed Rule,* 89 FR at 57296.

§ 351.108 to improve the regulations. One commenter recommended that Commerce make the following modifications: Remove the term ''the lack of'' in the header language for proposed § 351.108(b)(3) because the criteria listed in that section actually indicate *de facto* control; remove the word ''no'' in proposed § 351.108(b)(3)(vi) because, again, that provision speaks to evidence of *de facto* control or influence; remove the word ''must'' in § 351.108(b)(3)(i) and add the term ''or must maintain'' because the described situation covers both existing and required maintenance of certain government representatives in positions of control; include the term ''or managers'' following the term ''officers'' throughout the regulation because both officers and managers can influence corporate decisions; and when addressing situations in which representative of the governments may, in fact, be placed in positions of leadership or power in a company, Commerce should include the term ''or their family members,'' because Commerce has a long-standing practice of recognizing that family members and family groupings may share a common business interest and authority.[24]

Another commenter suggested that Commerce revise the regulation to better clarify that the agency, and not the separate rate applicants or certifiers, must be satisfied that the applications or certifiers have shown that the degree of government control or influence is not significant and to emphasize that the applicants or certifiers have the sole responsibility to provide proof of lack of government control or influence. That commenter also suggested that Commerce include ''government-appointed or controlled labor unions'' in the regulation as types of governing authorities through which the nonmarket economy government may exert control or influence, because Commerce has indicated in the past that such unions are under the ''control and direction of the All-China Federation of Trade Unions (ACFTU),'' which is affiliated with the Chinese government and an organ of the Communist Party of China.[25]

Finally, one commenter expressed concerns with proposed § 351.108(e), which states that entities that submit separate rate applications or certifications and are subsequently selected to be an examined respondent in an investigation or review must fully respond to Commerce's questionnaires to be eligible for separate rate status. That commenter stated that Commerce should not adopt the proposed provision and not ''automatically deem companies that failed to respond to all questionnaires as part'' of the nonmarket economy entity. The commenter stated that a failure to respond to all questionnaires would justify the application of adverse facts available, pursuant to section 776(a) and (b) of the Act, but would not necessarily justify the refusal of a grant of separate rate eligibility. That commenter stated that treating individually examined respondents differently from non-selected exporters in this manner would create an ''arbitrary distinction'' and would result in Commerce not considering ''the rate assigned'' to an examined respondent in ''calculating the separate rate'' if the examined respondent was ''deemed to be part'' of the nonmarket economy entity. The commenter stated that such a practice would create a ''significant incentive for manipulation by exporters and permit separate rate companies to potentially benefit from lower rates, notwithstanding the selected respondent's deemed representativeness of the non-individually examined companies.'' The commenter explained that under this situation, parties with no intent to fully participate or that anticipate substantial dumping margins would be incentivized to submit a separate rate application or certification and, once selected as an examined respondent, could withdraw from participation as a means of manipulating the rate applied to the non-selected separate rate companies.

Response

Commerce has made certain modifications to proposed § 351.108 in light of the comments it received on the proposed regulation. With respect to the concerns expressed by multiple commenters as to third country exporters, Commerce respectfully disagrees with the commenters who stated that there is no difference for purposes of Commerce's separate rate practice between exporters of subject merchandise owned, in whole or in part, by a nonmarket economy government located in the nonmarket economy and those exporters located in a third country.

When an entity is physically located in a nonmarket economy, there are multiple means by which the nonmarket economy government may, directly or indirectly, influence and control the entity. In the Act, Congress instructed Commerce to take into account at least six factors in determining if a country is a nonmarket economy: (i) the extent to which the currency of the foreign country is convertible into the currency of other countries; (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management; (iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country; (iv) the extent of government ownership or control of the means of production; (v) the extent of government control over the allocation of resources and over the price and output decisions; and (vi) such other factors as the administering authority considers appropriate.[26] Some of those factors are specific to the nonmarket economy government's ownership and control of the producers and exporters of the subject merchandise, but other factors reflect the nature of the nonmarket economy itself.[27] As Commerce has explained, its practice is focused on ''the government's use of a variety of legal and administrative levers to exert influence and control (both direct and indirect) over the assembly of economic factors across the economy.'' [28]

As noted above, Commerce has recognized in multiple cases the ability of the nonmarket economy government to influence or control production decisions, commercial decisions, or export activities within the nonmarket economy, even when such influence or control is applied through multiple entities and organizational relationships, and the Federal Circuit has affirmed such findings.[29] The nonmarket economy government might control one producer directly, through a government agency or a state-owned

[24] That commenter cited *Jinko Solar Co.* v. *United States,* 279 F. Supp. 3d 1253, 1260 (CIT 2017), and *Echjay Forgings Priv. Ltd.* v. *United States*, 475 F. Supp.3d 1350, 1366 (CIT 2020), for cases affirming Commerce's determinations that family members can share a common interest with a business.

[25] That commenter cited a memorandum drafted by Commerce, ''*Memorandum on China's Status as a Non-Market Economy,*'' dated October. 26, 2017, available at *https://enforcement.trade.gov/download/prc-nme-status/prc-nme-review-final-103017.pdf*.

[26] *See* section 771(18)(B) of the Act.

[27] In 1997, the Federal Circuit in *Sigma* v. *United States* recognized that the Act ''recognizes a close correlation between a nonmarket economy and government control of prices, output decisions, and the allocation of resources.'' *Sigma* v. *United States,* 117 F.3d at 1405–1406.

[28] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments;* 2012–2013, 80 FR 40998 (July 14, 2015), and accompanying Issues and Decision Memorandum at Comment 42.

[29] *See., e.g., Sigma* v. *United States* 117 F.3d at 1405; *Transcom* v. *United States,* 182 F. 3d 876, 882; *Michaels Stores* v. *United States,* 776 F.3d 1388, 1390; and *Changzhou* v. *United States,* 701 F.3d 1367, 1370.

enterprise, while indirectly influencing another producer through privately-owned companies over which the nonmarket economy has ownership interests or governing authority.

However, when an exporting entity is physically located outside of the nonmarket economy at issue, some of those conclusions may not equally apply. In other words, the nonmarket economy government's ''legal and administrative levers'' in the nonmarket economy that impact certain activities may differ from that government's ''legal and administrative levers'' in a third country where that government is not the legal authority. At the same time, Commerce recognizes that a nonmarket economy government can, depending on the specific circumstances, continue to exert substantial influence over the export activities of state-owned firms incorporated in third countries. For example, direct ownership of an exporter by a nonmarket economy government or state-owned enterprise could imply control over the selection of management of the exporter under the governing corporate agreements or inform the extent to which that exporter retains the proceeds of its export sales or repatriates them to the nonmarket economy parent.

Accordingly, whether the exporting entity is located in a market economy or a different nonmarket economy is a factor that can be relevant to the analysis of whether a third country exporter is owned or potentially controlled by the nonmarket economy government.

The focus of the separate rate test is ''if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities.'' [30] The ultimate question under the separate rate test is whether the nonmarket economy government has influence or control over important decisions of the entity, like the ''selection of management,'' which would be ''key'' in ''determining whether a company has sufficient independence in its export activities to merit a separate rate.'' [31]

In the case of an entity located in a third country that exports merchandise subject to an investigation or AD/CVD order and originating from the nonmarket economy, the subject merchandise might be exported directly to the United States from the nonmarket economy. Alternatively, the subject merchandise might be exported to a third country, either the one where the entity is located or another third country, where it is held in a warehouse, stored in inventory or otherwise retained for a period of time, before it is eventually exported to the United States at a later date. A third option might be that the subject merchandise undergoes some minor processing in a third country, like the painting or marking of a product, without changing the country of origin of the merchandise. In all of these potential situations, unless record evidence demonstrates that the company is wholly owned by a foreign entity and is incorporated and headquartered in a market economy, in accordance with § 351.108(c), Commerce requires a separate rate application or certification from that entity.[32] This is because it is Commerce's experience that entities in third countries that export merchandise from the nonmarket economy to the United States commonly are owned, in part or in whole, by the nonmarket economy government through the government's agencies or state-owned enterprises.[33] Additionally, based on experience, there is a strong possibility that through that ownership relationship the nonmarket economy government might control or influence the entity's export activities and decisions with respect to the merchandise being exported from the nonmarket economy. Such control might arise, for example, through the appointment of officers, managers, and the board of directors, but could also manifest through veto power or the use of ''golden shares'' and outsized voting rights within the company. Every company is unique, so a state-owned enterprise or other government-controlled entity might equally be able to direct or influence export-related decisions of a third country company based on the unique nature of its ownership share.

On the other hand, because the nonmarket economy government may not have the same legal and administrative levers in the third country which it has in the subject country, the exercise of ownership and control of the entity in the third country by the nonmarket economy government may differ. Accordingly, after consideration of the comments, Commerce has modified paragraph (a) of § 351.108 to add a paragraph (a)(3) which states that if a nonmarket economy government has direct ownership or control, in whole or in part, of an entity located in a third country market and that entity exports subject merchandise from the nonmarket economy to the United States, Commerce may determine on the basis of record information that such an entity is part of the government-controlled entity and assign that entity the nonmarket economy entity rate.

Furthermore, Commerce has modified § 351.108(b) and divided it into two provisions. Pursuant to paragraph (b)(1), Commerce will apply an updated separate rate test and analysis to entities located in nonmarket economies, as set forth in the *Proposed Rule,* and pursuant to paragraph (b)(2), Commerce may analyze an entity directly owned or controlled by a nonmarket economy government and located in a third country and determine based on record information if that third country exporter should be treated as part of the nonmarket economy entity and receive the nonmarket economy entity rate or if it should be granted a separate antidumping duty rate. This language is consistent with Commerce's historical analysis and treatment of entities located in nonmarket economies and allows for Commerce to consider the legal and administrative levers present in third countries that might allow for the control of an entity that exports subject merchandise to the United States and is owned, in part or in whole, by the nonmarket economy government.[34]

In response to the comments on proposed § 351.108(c), Commerce has clarified the language of the provision to explain that, in accordance with our current practice, if an entity claims that it is wholly owned by a foreign entity and headquartered and incorporated in a market economy, it must complete and submit relevant, designated sections of the separate rate application or

[30] *See Polyester Textured Yarn from the People's Republic of China, Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 84 FR 31297 (July 1, 2019), and accompanying Preliminary Decision Memorandum at ''Separate Rates.''

[31] *Id.*

[32] *See* Commerce's Separate Rate Application at 3, available at *https://access.trade.gov/Resources/nme/sep-rate-files/app-20190221/prc-sr-app-022119.pdf.*

[33] *See, e.g., Chinese Firms are expanding in South-Asia,* The Economist, dated April 24, 2024, available at *https://economist.com/asia/2024/04/25/chinese-firms-are-expanding-in-south-east-asia.*

[34] *See, De Facto Criteria for Establishing a Separate Rate in Antidumping Proceedings Involving Nonmarket Economy Countries,* 78 FR 40430, 40432 (July 5, 2013) (''We agree that there is a legitimate concern that NME producers under government control selling through affiliated third-country resellers may, in fact, control that reseller and, in such cases, the reseller's exporting activities would also be under government control'') and (''In circumstances when the record indicates there may be government control through the NME producer, we may require both the NME producer and the ME exporter to provide'' separate rate *de jure* and *de facto* information).

certification explaining as much and provide accompanying information on the record that supports such a claim.[35] Furthermore, Commerce has modified the language of § 351.108(d) to explain that all exporters of subject merchandise to the United States, even those claiming the ''wholly owned'' exception applies, must submit a separate rate application or certification, with the only difference being those claiming that the ''wholly owned'' exception need only complete a section of the application or certification explicitly designated for that purpose by Commerce.

On the other hand, Commerce will not modify the regulations to require further analysis or investigation under the ''wholly owned'' exception into possible ''ultimate owners'' of the foreign owners themselves in every proceeding in which the issue arises, as suggested by certain commenters. The facts of each antidumping proceeding are unique, and the application of any such requirement to Commerce in every case in which this arises, whether the foreign-owned entity is located in the nonmarket economy or in a third country, would be unreasonable and fail to take into consideration the time, record constraints and overall difficulty which Commerce could be faced with in pursuing such lines of inquiry in a proceeding involving multiple parties or complicated facts. Commerce has an extensive history of applying the foreign-owned exception in its separate rate practice,[36] and Commerce will continue to apply that exception and consider the evidence on the record in determining on a case-by-case basis whether the exception should apply to a given exporter. Furthermore, for the same reason, Commerce will not expand its normal analysis to mandate inquiry in the regulation into ''indirect'' means of ownership or control of foreign-owned entities by a nonmarket economy government through potential holding companies or shareholder deception in every case, as suggested by some commenters.

With regard to the comments on proposed deadlines for the filing of separate rate applications and certifications under § 351.108(d)(1) and (2), Commerce has reconsidered its proposed deadline of 14 days from publication of initiation in antidumping investigations in agreement with the commenters who noted that many importers or exporters who find themselves subject to an investigation might be unfamiliar with the antidumping laws and procedures and may need more than fourteen days after initiation to communicate with the appropriate lawyers, company representatives or government officials and gather information to submit necessary documentation with Commerce. Although one commenter is correct that Commerce normally determines the potential pool of respondents using Quantity and Value questionnaires in nonmarket economy procedures, Commerce disagrees that the receipt of those questionnaires, followed by the receipt of separate rate applications, does not delay the selection of respondents. As Commerce explained in the *Proposed Rule,* the longer Commerce must wait for questionnaires, applications, and certifications, the longer it takes for Commerce to select respondents and issue full questionnaires to respondents selected for examination.[37] Investigations, administrative reviews and new shipper reviews are all conducted under statutory deadlines, and the Act does not provide for extensions of those deadlines due to response times of Quantity and Value questionnaires and separate rate applications and certifications.

Commerce, therefore, continues to find that 30 days from initiation of an investigation is still too lengthy of a period in which to wait for separate rate applications in an investigation, but also agrees with some of the commenters that in an investigation 14 days may be too short of a time for importers and exporters to communicate and gather the necessary data. Accordingly, Commerce has modified § 351.108(d)(1) to allow for a separate rate application to be filed an additional seven days from that proposed in the *Proposed Rule.* Specifically, in antidumping investigations, interested parties will be allowed to file separate rate applications no later than 21 days following publication of initiation of the investigation in the **Federal Register**. This means that from the time a petition is filed in an investigation, interested parties will have notice that an investigation might be conducted and start gathering necessary information, and from the time the investigation notice is published in the **Federal Register**, they will have 21 days to answer the questions in Commerce's separate rate application, located on Commerce's website, and file the application electronically with the agency. Commerce has determined that this modification to the proposed regulation appropriately takes into consideration the concerns raised by some of the commenters, while also helping Commerce to prevent delays of its procedures by a few days when conducting an AD investigation.

However, with respect to administrative reviews and new shipper reviews, Commerce does not agree that the same issues exist as were raised by the commenters with respect to investigations. After an investigation is completed, an AD order is issued and published in the **Federal Register**.[38] Administrative reviews and new shipper reviews are conducted pursuant to an existing AD order. U.S. importers and foreign exporters alike are on notice that when merchandise subject to an AD order is imported into the United States, cash deposits will be collected on that merchandise, and duties will be assessed on that merchandise at some point.[39] Importers and exporters have an obligation to be aware of potential duties on the merchandise which they are importing or exporting, and ignorance of the existence of the AD order or of their fiduciary duties to pay the applicable trade remedies is not a

[35] *See* Commerce's Separate Rate Application at 3, available at *https://access.trade.gov/Resources/nme/nme-separate.html.*

[36] Commerce has allowed an exception for wholly-foreign-owned exporters from the application of the separate rate analysis for three decades. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China,* 61 FR 19026 (April 30, 1996) (explaining that ''Four of the responding exporters in this investigation are located outside the PRC . . . Further, there is no PRC ownership of any of these companies. Therefore, we determine that no separate rates analysis is required for these exporters because they are beyond the jurisdiction of the PRC government''); *Certain Steel Threaded Rod from the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2014–2015,* 81 FR 29843 (May 13, 2016), and accompanying Issues and Decision Memorandum at 5, *citing Final Results of Antidumping Administrative Review: Petroleum Wax Candles from the People's Republic of China,* 72 FR 52355 (September 13, 2011) (stating ''In its Section A response, the RMB/IFI Group, reported that it is wholly-owned by individuals or companies located in a market economy (''ME'') country. Therefore, because it is wholly foreign-owned, and we have no evidence indicating that it is under the control of the PRC government, a separate rate analysis is not necessary to determine whether this company is independent from government control. Accordingly, we preliminarily grant a separate rate to the RMB/IFI Group''); and *Wooden Bedroom Furniture From the People's Republic of China: Amended Final Results Pursuant to a Final Court Decision,* 75 FR 72788 (November 26, 2010) (stating ''Wanvog provided evidence that during the POR it was a wholly foreign-owned company. Therefore, consistent with the Department's practice, further analysis is not necessary to determine whether Wanvog's export activities are independent from government control, and we have preliminarily granted a separate rate to Wanvog'').

[37] *See Proposed Rule,* 89 FR at 57296.

[38] *See* section 736(a) of the Act.

[39] *Id.*

reasonable excuse. On the other hand, the fourteen-day deadline will allow Commerce the opportunity to avoid certain existing delays in its proceedings to the benefit of the participants who must answer questionnaires and to Commerce officials in analyzing and considering those parties' questionnaire responses and information. Accordingly, Commerce has not modified the fourteen-day deadline from the publication of initiation of an administrative review or new shipper review set forth in § 351.108(d)(2).

Commerce agrees with other suggestions and has adopted them as follows: (1) Commerce has removed the term ''the lack of'' in the header language for proposed § 351.108(b)(1)(iii) because the criteria listed in that section actually indicate *de facto* control; (2) Commerce has removed the word ''no'' in proposed § 351.108(b)(1)(iii) because, again, that provision speaks to evidence of *de facto* control or influence and the inclusion of the word ''no'' spoke to the opposite meaning; (3) Commerce has revised § 351.108(b)(1)(iii)(A) to read ''maintains or must maintain'' because the described situation covers both existing and required maintenance of certain government representatives in positions of control; (4) Commerce has included the term ''or managers'' following the term ''officers'' throughout the regulation because both officers and managers can influence corporate decisions; (5) Commerce has included the term ''or their family members'' when addressing situations in which representatives of the governments may, in fact, be placed in positions of leadership or power in a company, in accordance with Commerce's practice of recognizing that family members and family groupings may share a common business interest and authority; and (6) Commerce has included ''government-appointed or controlled labor unions'' in the regulation as types of government authorities through which a nonmarket economy may exert control or influence. In addition to those modifications, Commerce has emphasized in § 351.108(a)(2), that its analysis is based on record information, clarified language throughout the regulation when it was referring to a ''government'' that the government at issue is the ''nonmarket economy government,'' and removed the term ''or control'' from § 351.108(b)(1)(i)(B)(*2*) because that language is superfluous, as that particular provision pertains to the veto power of the nonmarket economy government giving it control over the decisions of the entity. Furthermore, Commerce has also modified ''production and commercial'' decisions throughout the regulation to be ''production, commercial and export'' decisions because export decisions are always under consideration in Commerce's separate rate analysis.

In addition, in response to a commenter's suggestion that Commerce revise the regulation to clarify that Commerce, not the separate rate applicants or certifiers, must be satisfied that the applications or certifiers have shown that the degree of government control or influence is not significant and that applicants or certifiers must provide proof of lack of government control or influence, Commerce has modified the text of § 351.108(b) to indicate that Commerce must determine ''that the exporter has demonstrated that it operates certain activities sufficiently independent from nonmarket economy government control.'' Commerce has also provided further language in § 351.108(d) to explain that if no separate rate application or certification is timely submitted by an exporter of merchandise subject to an investigation or AD/CVD order, Commerce may apply the nonmarket economy rate to that exporter's merchandise. Also, Commerce modified the title language to the overall regulation to emphasize that Commerce's separate rate analysis applies to entities, whether in the nonmarket economy or in a third country, that export merchandise from the nonmarket economy to the United States.

In response to the comment on proposed § 351.108(e) that entities that submit separate rate applications or certifications and are subsequently selected to be an examined respondent in an investigation or review by Commerce must fully respond to Commerce's questionnaires in order to be eligible for separate rate status, Commerce has expanded that proposed paragraph to not only require full responses to questionnaires but also full participation in the proceeding, as explained below.

With respect to Commerce's questionnaires, the full ''section A'' questionnaire asks more detailed questions specifically about corporate structure than the separate rate application or certification. It asks for an organizational chart on affiliation and has more comprehensive questions about manufacturing facilities, locations, legal structure, third parties, narrative history, capital verification reports, and other information in addition to ownership and affiliation. Further, the ''section C'' questionnaire requests information that supports claims that a respondent retained the proceeds of their export sales and made independent decisions regarding the disposition of profits or financing of losses. In addition to requesting more data about the company's corporate structure in the initial questionnaire, Commerce frequently will issue supplemental questionnaires to learn even more details about the affiliations and structure of the respondent being examined. Much of the ''section A'' questionnaire is akin to a more detailed request for information to supplement the separate rate application or certification and allows Commerce to confirm or clarify claims made in a separate rate certification or application.

In addition, full participation in the proceeding overall is necessary to allow Commerce to be able to verify any information relevant to determining separate rate eligibility, and it is not unusual for Commerce to discover at verification that information believed to be complete on the record before conducting verification was, in fact, incomplete after consideration of an entity's complete books and record. Accordingly, if a respondent selected for individual examination fails to fully respond to Commerce's questionnaires or, where applicable, fails to allow Commerce to verify information submitted in response to Commerce's questionnaires, absent extenuating circumstances, Commerce shall determine that it also has failed to demonstrate its eligibility for a separate rate.

The commenter on § 351.108(e) did not seem to take issue with the provision itself, but instead indicated concerns with what Commerce does after it has made a determination that the exporter is part of the nonmarket economy entity. The commenter expressed concerns that non-selected entities and examined respondents would collude in such a way that if an examined respondent realized that review of its entries could lead to a high dumping margin, which would in turn be used to help calculate the rate applied to the non-selected exporters, the examined respondent might choose not to answer questionnaires, thereby pulling it into the nonmarket economy entity and pulling it out of the non-selected exporters calculation, under Commerce's current practice for determining that non-selected exporter rate.

Although Commerce appreciates the concerns expressed by the commenter on this issue, Commerce disagrees that treating an examined respondent differently for purposes of its separate

rate analysis from those exporters who only submit separate rate applications and certifications is ''arbitrary.'' The distinction is in no way arbitrary because examined respondents must provide a much greater amount of information to Commerce to analyze and determine an antidumping margin covering their merchandise. In addition, without full participation by the examined respondent, including a response to questionnaires, Commerce is unable to confirm, clarify, or verify claims made in a separate rate certification or application. Furthermore, although Commerce has codified its methodology for determining a rate to be applied to non-selected exporters in an antidumping proceeding covering a nonmarket economy in general at § 351.109(g), neither that provision nor § 351.108(e) addresses the use, or nonuse, of the nonmarket economy entity rate in determining a rate to be applied to the non-selected exporters in an antidumping investigation or administrative review. The commenters' concerns seem to speak to that element of Commerce's calculation of a rate to apply to non-selected exporters, but because Commerce is not codifying that practice in this provision, Commerce has determined that this concern should be addressed on a case-specific basis. Accordingly, other than requiring full participation in the proceeding, Commerce has made no further modifications to § 351.108(e).

Finally, Commerce is not addressing in the new regulation or in the preamble to the final rule situations in which an entity located in a third country substantially transforms subject merchandise into a different product in the third country, completes or assembles the subject merchandise into a different product in the third country, or alters the subject merchandise in form or appearance in minor respects in the third country, as suggested by one of the commenters. All of those scenarios are already addressed in scope and circumvention proceedings by sections 781(b) and (c) of the Act and §§ 351.225(j) and 351.226(i) and (j) of Commerce's regulations.

4. Commerce Has Made a Small Modification to Proposed § 351.109(c)(2)(v), Which Applies to the Selection of Additional Respondents

Proposed new § 351.109 addresses Commerce's procedures for selecting respondents, calculating the all-others rate in investigations, calculating a rate for unexamined respondents in various proceedings, and the selection of voluntary respondents.[40]

Commerce received several generally supportive comments on the proposed new § 351.109. With respect to the selection of additional respondents, one commenter stated that the language ''soon after filing questionnaire response'' and ''early in the segment of a proceeding'' in proposed § 351.109(c)(2)(v)[41] is open-ended and would likely lead to debate over what counts as ''soon'' or ''early.'' That commenter recommended that Commerce instead define the cutoff for adding new respondents by stating Commerce would select a respondent only after determining that there is sufficient time left before deadlines in the proceedings to complete all of its procedures without additional administrative burden. That commenter suggested that by adding language that addressed timing and other such considerations, Commerce would set realistic parameters for parties to understand when Commerce may select additional respondents.

That commenter stated that this revised language would also establish a standard that is consistent with Commerce's approach elsewhere in its regulations. For example, § 351.311(b) provides that Commerce ''will examine the practice, subsidy, or subsidy program {discovered in the course of an investigation or review} if the Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review.'' Similarly, § 351.214(f)(2) states that Commerce may rescind a new shipper review where ''{a}n expansion of the normal period of review to include an entry and sale to an unaffiliated customer in the United States of subject merchandise would be likely to prevent the completion of the review within the time limits.''

The second commenter stated that it generally concurred with Commerce's proposed rule but recommended that the regulation define the parameters on the timing for the selection of additional respondents under § 351.109(c)(2)(v). For example, the proposed language does not define how soon after the filing of questionnaire responses a respondent could withdraw from participation and Commerce would consider reviewing another exporter or producer for examination, how early in the segment Commerce could determine that a selected exporter or producer is no longer participating in the investigation or administrative review and that there is sufficient time to pick another respondent, or when in the segment Commerce could determine that the exporter's or producer's sales of merchandise subject to an investigation or AD/CVD order are not *bona fide* but that there remains time to examine another respondent. Without a clear definition of what ''early in the segment'' means, the commenter explained the uncertainty could result in the selection of additional respondents and the filing of new questionnaire responses very late in a proceeding, thereby providing insufficient time for domestic producers to provide meaningful comment or for Commerce to issue supplemental questionnaires prior to a preliminary determination or preliminary results. Therefore, the second commenter recommended that Commerce add language to state that Commerce will select additional respondents only if it is within 90 days of initiation, consistent with the 90-day deadline for parties to withdraw requests for administrative reviews under § 351.213(d).

Two other commenters suggested that Commerce codify that a ''reasonable number of respondents'' in an investigation or administrative review where individual examination of all known exporters or producers is not practicable must be more than one respondent, consistent with recent holdings of the Court of International Trade (CIT) and Federal Circuit.[42]

Those two commenters also recommended that Commerce modify its practice to enable more frequent use of sampling as a respondent selection methodology. They stated that in many cases, selection of the two largest producers or exporters results in selection of the same respondents in proceeding after proceeding and allows those respondents to tailor their operations or reporting in a manner that avoids antidumping or countervailing duties without being representative of the foreign industry.

The commenters also expressed concern with Commerce's rejection of the use of sampling in most cases. In a 2013 notice, the agency stated that it would not rely on sampling unless it ''has the resources to examine individually at least three companies for the segment.''[43] One commenter stated

[40] *See Proposed Rule,* 89 FR at 57296.

[41] *Id.,* 89 FR at 57296–57300.

[42] *See YC Rubber Co. (North America) LLC* v. *United States,* No. 2021–1489, 2022 WL 3711377 at 3 (Fed. Cir. 2022); *see also Schaeffler Italia S.R.L.* v. *United States,* 781 F. Supp. 2d 1358, 1363 (CIT 2011).

[43] *See Antidumping Proceedings,* 78 FR 65963, 65965 (November 4, 2013) (announcement of

Continued

that Commerce rarely selects more than two respondents, particularly in administrative reviews, and claims that Commerce has not conducted a single proceeding since the issuance of the 2013 policy announcement in which it used sampling to select respondents. One commenter also stated that a system in which most foreign exporters will be excluded from individual examination and thus able to ''free ride'' off the largest respondents' margins creates a significant barrier to leveling the playing field in the U.S. market.

Another concern raised by one commenter was Commerce's normal reliance on USCBP data to select respondents. That commenter stated that while USCBP data is generally an appropriate starting point for respondent selection, these data can also be highly problematic for the purpose of respondent selection. For example, it is possible for quantities to be reported in different units that are not easily converted into a uniform unit of measurement. That commenter also suggested that USCBP data may also contain errors or appear to be incomplete, which can be evident on the face of the data or revealed only in light of information submitted by interested parties. Therefore, one commenter recommended that Commerce clarify in its regulations that, when such problems with USCBP data are evident or revealed by information placed on the record, Commerce will rely on additional information for the purpose of respondent selection. That commenter suggested that Commerce consider requiring all exporters requesting an administrative review to provide with their request the quantity and value of their shipments of subject merchandise during the period of review in order to have a second set of reliable data on the record from which to select respondents.

Lastly, one commenter expressed concerns regarding Commerce's proposed regulation for calculating the all-others and non-selected rates. That commenter referenced several past cases where Commerce used either quantity or value in calculating the dumping margin assigned to exporters and producers who were not individually reviewed and stated that Commerce's calculations had been inconsistent. That commenter stated that Commerce should clarify in the regulations the circumstances in which it will rely on a weighted average of publicly ranged U.S. sales values or the circumstances in which Commerce would rely on a weighted average of sales quantities for calculating the all-others rate and the non-selected respondents' rate.

Response

Commerce agrees with the commenter that suggested Commerce should focus on the time remaining and actions which need to be taken in a segment of a proceeding before selecting a new respondent. Accordingly, in the last sentence of § 351.109(c)(2)(v) Commerce has added language to say that the Secretary may select the next respondent based on the next largest volume or value ''if the Secretary determines that such a selection will not inhibit or impede the timely completion of that segment of the proceeding.''

On the other hand, Commerce does not agree with a commenter's suggestion that Commerce should codify a hard deadline before which it can select additional respondents. There is nothing in the Act which would suggest such a restriction, and imposing such a deadline in the regulation may curtail Commerce's ability to select respondents when issues arise during a proceeding. As mentioned in the *Proposed Rule,* considerable time and resources are necessary for issuing questionnaires and analyzing data for purposes of respondent selection.[44] If Commerce were to codify a deadline as suggested and then a respondent decided not to participate or to withdraw its request for administrative review, or Commerce determined that the U.S. sales reported by a selected respondent were not *bona fide* sales of subject merchandise after that deadline, yet Commerce also determined that there remained sufficient enough time for Commerce to select another respondent, then such a deadline would be a hindrance to the agency. Commerce should be able to select another respondent for examination in any of those scenarios. Accordingly, Commerce does not believe the codification of a hard deadline is advisable.

Section 777A(c)(1) and (e)(1) of the Act direct Commerce to determine an individual weighted-average dumping margin or countervailable subsidy rate for each known exporter and producer of the subject merchandise. If Commerce codified a hard deadline and for whatever reason one or more respondents dropped out after that deadline, Commerce might find itself with no ability to select additional exporters or producers, despite the statutory preference to review more exporters and producers and the fact that Commerce has determined that it has the time and resources to examine another exporter or producer. Such a restriction is illogical and would only provide Commerce with fewer opportunities to exercise its statutory authority to examine a reasonable number of respondents.[45] Accordingly, Commerce has not adopted that recommendation in the final rule.

As mentioned in the *Proposed Rule,* the primary focus of respondent selection is whether Commerce can effectively examine a reasonable number of producers and exporters, as Congress intended, to calculate an accurate dumping margin or countervailable subsidy rate.[46] Certain commenters requested that Commerce codify that when limiting individual examination to the largest producers/exporters, Commerce will select more than one respondent in every case. However, Commerce saw no need to codify any such requirement in its *Proposed Rule* and continues to see no benefit in codifying such a requirement into the regulation. Accordingly, Commerce has not placed such a restriction in the regulation.

With respect to the comments on sampling, section 777A(c) of the Act states that if it is ''not practicable to make individual weighted average dumping margin determinations'' because of ''the large number of exporters or producers involved'' in an investigation or review, Commerce may ''determine the weighted average dumping margins for a reasonable number of exporters or producers by limiting its examination to (A) a sample of exporters, producers or types of products that is statistically valid based on the information available'' to Commerce at the time of selection or (B) the exporters and producers accounting for the ''largest volume of the subject merchandise from the exporting country that can be reasonably examined.'' The Statement of Administrative Action (SAA) states that ''the authority to select samples rests exclusively with Commerce, but, to the greatest extent possible, Commerce will consult with

change in Commerce practice for respondent selection in AD proceedings and conditional review of the nonmarket economy entity in AD proceedings).

[44] *See Proposed Rule,* 89 FR at 57297.

[45] *See Viet I-Mei Frozen Foods Co.* v. *United States,* 83 F. Supp. 3d 1345, 1362 (CIT 2015), *aff'd,* 839 F.3d 1099 (Fed. Cir. 2016) (''{T}o the prevention of abuse where Commerce expends resources to initiate an individual examination—and the respondent seeks to withdraw its participation when it changes its mind about the benefit of such examination and prefers the 'all others' rate instead—is a reasonable basis on which Commerce may decline to abort its examination.'').

[46] *See Proposed Rule,* 89 FR at 57297.

exporters and producers regarding the method to be used.'' [47]

In its *2013 Change in Practice Notice,* Commerce explained that it will normally rely on sampling for respondent selection purposes in AD administrative reviews when (1) there is a request by an interested party for the use of sampling to select respondents, (2) Commerce has the resources to examine individually at least three companies for the segment, (3) the ''largest'' three companies (or more if Commerce intends to select more than three respondents) by import volume of the subject merchandise under review account for normally no more than 50 percent of total volume, and (4) information obtained by or provided to Commerce provides a reasonable basis to believe or suspect that the average export prices and/or dumping margins for the largest exporters differ from such information that would be associated with the remaining exporters.[48] In the rare cases where Commerce relies on sampling to select respondents, it is typically when there are multiple, and often numerous, prior reviews to draw upon for evidence of margin differentials attributable to size.

An important part of any methodology using sampling to select respondents is that the sampling must be ''statistically valid'' under section 777A(c)(A) of the Act. The commenters who expressed concerns with Commerce's respondent selection sampling methodology did not explain why that methodology is not statistically valid, or, in the alternative, provide an alternative methodology that would meet this statutory requirement.[49] Therefore, Commerce will continue to rely on the criterion specified in the *2013 Change in Practice Notice* and consider sampling when Commerce can select a minimum of three respondents to examine individually in light of resource constraints. Despite statements by the commenters to the contrary, Commerce has in fact completed a statistically valid sampling request since the issuance of the *2013 Change in Practice Notice,*[50] and statistically valid sampling for purposes of respondent selection remains a viable option for parties to request and consider.

In the *Proposed Rule,* Commerce stated that it would normally base respondent selection on information derived from USCBP.[51] While one commenter expressed concerns regarding Commerce's preference for USCBP data, suggesting that USCBP data are susceptible to errors, no database is perfect. Although the Act does not limit Commerce to relying only on USCBP data in its reviews, Commerce weighs USCBP data more heavily because they contain the actual entry documentation for the shipments, including the CBP 7501 entry summary form (or its electronic equivalent), invoice, and bill of lading.[52] USCBP data are based on information required by, and provided to, the U.S. government authority responsible for permitting goods to enter into the United States.[53] Moreover, significant penalties can be imposed on parties that report entry information inaccurately.[54] Furthermore, Commerce prefers USCBP data because they are ''a primary source, as opposed to a secondary source, which may be prone to errors in the data collection and aggregation process.'' [55] Given the aforementioned reasons, Commerce's treatment of USCBP data will remain unchanged when selecting that as a data source to determine the largest exporters or producers of subject merchandise.

In addition, Commerce will not include in the regulation a requirement that respondents that request an administrative review file a quantity and value questionnaire response when making a review request, as suggested by a domestic industry commenter. Such further information submissions from foreign exporters would be unnecessary and create an additional burden on Commerce to consider and analyze such submissions, regardless of whether such additional information on the record actually adds value to the case at hand.

Commerce agrees that for some imported products, problems arise in relying on certain USCBP volume data because different importers will report their entries in quantities that are denominated in different units of measure (UOMs). For example, in the 2023 CVD administrative review of softwood lumber from Canada, Commerce acknowledged that certain importers reported their imports based on cubic meters, others on square meters, others on kilograms, and still others based on number of pieces.[56] Commerce also explained that ''in addition to missing volumes, the various UOMs are problematic because, for example, measurements of weight (*e.g.,* kilograms) cannot be converted to measurements of volume (*e.g.,* cubic meters) without making certain assumptions, and 'number of pieces' simply cannot be converted to a measurement of volume.'' [57] On the other hand, the USCBP data in that review did contain ''value amounts for all entries of subject merchandise in the same unit of currency.'' [58] Therefore, as it had in prior review periods, Commerce determined to rely ''on the value data as a proxy for quantity and selecting respondents accounting for the largest value.'' [59] Commerce explained that using value as a proxy for quantity when there are issues with reported UOMs for entry quantities ''is transparent and consistent with Commerce's approach in other proceedings as well as the prior administrative reviews of this order.'' [60] For this reason, § 351.109(c)(2)(ii) specifically provides that if Commerce determines that ''volume data are

[47] See Statement of Administrative Action Accompanying the Uruguay Rounds Agreement Act, H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA) at 872.

[48] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65964 (November 4, 2013) (*2013 Change in Practice Notice*).

[49] *See* SAA at 873 (''Commerce will employ a sampling methodology designed to give representative results based on the facts known at the time the sampling method is designed'').

[50] *See, e.g.,* Commerce's Memorandum, ''Antidumping Duty Administrative Review of Steel Nails from the People's Republic of China: Sampling Pool for Selection of Respondents and Selection Methodology,'' dated April 1, 2019 (''In light of the particularly large number of exporters that are under review in this segment, as well as the history of margins in the prior segments of this proceeding, discussed above, we find that using a sampling methodology in this review addresses this enforcement concern'').

[51] *See Proposed Rule,* 89 FR at 57297.

[52] *See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2020–2021,* 87 FR 55996 (September 13, 2022) (*Fish Fillets from Vietnam*), and accompanying Issues and Decision Memorandum (''Although the petitioners assert that ship manifest data it placed on the record 'raises questions' regarding the CBP data, it is well-established that mere speculation does not constitute substantial evidence, which is the standard for Commerce to make a finding.'').

[53] *See, e.g., Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 33409 (July 13, 2009), and accompanying Issues and Decision Memorandum, at Comment 2.

[54] *See Fish Fillets from Vietnam* Issues and Decision Memorandum at Comment: Commerce Should Ensure that All Subject Merchandise Is Subject to the Appropriate Duties.

[55] *See, e.g., Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Preliminary Results of Antidumping Administrative Review and Preliminary Determination of No Shipments,* 77 FR 47593 (August 9, 2012).

[56] *See* Memorandum, ''Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2023: Respondent Selection,'' dated April 19, 2024 (ACCESS Barcode: 4546196–01).

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] *Id.*

unreliable or inconsistent, depending on the product at issue,'' Commerce ''may instead select the largest exporter of subject merchandise based on the value of the imported products instead of the volume of the imported products.'' The value data, however, will still normally originate from the USCBP. Thus, on this basis as well, Commerce sees no reason to second-guess its normal preference of using data derived from USCBP if possible.

Lastly, one commenter claimed that Commerce has been inconsistent on whether it relies on a weighted-average using publicly ranged U.S. sales values or on a weighted-average using U.S. sales quantities in calculating all-others and non-selected rates. That commenter requested that Commerce set a clear test in the regulation as to the circumstances in which Commerce will base its calculations on sales values and when it will base its calculations on sales quantities.

Upon consideration of this comment, Commerce has determined not to adopt this proposed addition to its regulations but clarifies here that the agency's practice is to calculate the all-others and non-selected rates using a weighted-average based on publicly ranged U.S. sales values. To the extent that Commerce chooses to use, instead, a weighted average using U.S. sales quantities in determining the all-others rate or a rate to apply to respondents who are not individually examined, such an application is an exception to Commerce's practice and would be case-specific and based on the unique facts to the record before the agency. If Commerce determines to calculate the all-others rate or rate for respondents who are not individually examined based on U.S. quantities instead of U.S. sales-values, Commerce will provide an explanation in its determination.

5. Commerce Has Made No Modifications to the Proposed Change to § 351.214, Which Covers Expedited CVD Reviews

In the *Proposed Rule,* Commerce proposed modifying the heading of § 351.214, which currently reads ''New shipper reviews under section 751(a)(2)(B) of the Act,'' by adding the phrase ''and expedited reviews in countervailing duty proceedings.'' [61] Commerce proposed such a change because section 751(a)(2)(B) of the Act provides Commerce the authority to determine dumping margins and CVD rates for exporters and producers that did not export subject merchandise to the United States during the period of investigation, referred to as ''new shipper reviews.'' However, paragraph (l) of § 351.214 does not relate to new shipper reviews but instead provides procedures for conducting expedited reviews of exporters not selected for individual examination in CVD investigations. Instead, the Federal Circuit in *Comm. Overseeing Action for Lumber Int'l Trade Investigations* v. *United States,* 66 F.4th 968, 977 (Fed. Cir. 2023) (*COALITION* v. *U.S.*) held that the ''individualized-determination provisions'' of section 777A(e) of the Act, along with the ''regulatory-implementation authority'' of section 103(a) of the URAA,[62] explicitly provide Commerce with the authority to promulgate § 351.214(l).[63] Therefore, Commerce proposed modifying the heading to § 351.214 to make it consistent with the holding in *COALITION* v. *U.S.*

One party commented on this change, stating that the Federal Circuit in *COALITION* v. *U.S.* held that expedited CVD administrative reviews are not prescribed by the Act. Accordingly, that commenter stated that Commerce should remove § 351.214(l) entirely from the regulation to conserve agency resources, instead of modifying the heading to § 351.214 as proposed.

Response

Commerce proposed to only revise the heading to § 351.214 and not to remove an entire provision pursuant to which Commerce has conducted expedited CVD administrative reviews. As the Federal Circuit held in *COALITION* v. *U.S.,* that provision was added consistent with language in the WTO Agreement on Subsidies and Countervailing Measures (the SCM Agreement),[64] and Commerce does not believe it would be reasonable to remove that language in this final rule. Accordingly, Commerce will not modify the regulation as suggested by the commenter and will modify the heading of § 351.214 as set forth in the *Proposed Rule.*

6. Commerce Has Made Certain Small Modifications to Proposed § 351.301(b)(2), Covering the Submission of Rebuttal Information

Commerce proposed a modification to one of its reporting regulations, § 351.301(b)(2), to require greater detail from interested parties filing factual information to rebut, clarify, or correct factual information on the record.[65] The existing regulatory language does not require the submitter of such information to explain what information on the record the alleged rebuttal/clarification/correction information actually rebuts, clarifies, or corrects, and the lack of such an explanation has created a burden on both Commerce and interested parties to understand why the information being provided under this paragraph is being submitted and how it is particularly responsive to the information already on the record.[66] Accordingly, Commerce proposed adding a sentence to the regulation that stated that the submitter ''must also provide a narrative summary explaining how the factual information provided under this paragraph rebuts, clarifies, or corrects the factual information already on the record.'' [67]

Two commenters expressed concerns with this proposed modification to the regulation, stating that the proposed additional requirement would hinder the submission of relevant information and delay proceedings because frequently parties that initially submit factual information in response to Commerce's questionnaires do not provide the detailed explanation required by the proposed language. They stated that the difference between what is required of those submitting initial factual information on the record and what would be required of those submitting rebuttal factual information would be inherently unfair. Furthermore, the commenters stated that to require submitters rebutting that information to prepare a detailed narrative before the record is complete would require parties to also prematurely disclose arguments in an ongoing segment of the proceeding, basically emboldening parties to ''litigate their arguments'' early in a segment of the proceeding in the guise of objections to the scope of rebuttal factual information. They stated that those submitting factual information on the record for the first time often may not provide a specific explanation for how the submitted factual information supports their questionnaire responses. Thus, those filing rebuttal information are often forced to submit information that they think might be responsive, but they may not learn until the time for filing new factual information has passed the specific capacity for which the initial facts on the record were actually submitted in the first place.

[61] *See Proposed Rule,* 89 FR at 57302.

[62] *See* Uruguay Round Agreements Act, Public Law 103–465, 108 Stat. 4809 (1994) (URAA).

[63] *See COALITION* v. *U.S.,* 66 F.4th at 977.

[64] *See* Agreement on Subsidies and Countervailing Measures (SCM Agreement); 19 U.S.C. 3511 (Approval and entry into force of Uruguay Round Agreements'') (December 9, 1994).

[65] *See Proposed Rule,* 89 FR at 57302.

[66] *Id.*

[67] *Id.*

The commenters also stated that such a requirement would push those submitting rebuttal information to request extensions from Commerce to prepare a detailed narrative. The commenters stated that placing such a requirement in the regulation would create a burden for Commerce with no real benefit, and, as such, they requested that Commerce reject the proposed modification to its regulations, or at minimum, have the required explanation only address how the information is ''relevant'' to the factual information already on the record.

Response

Commerce retains the view that the failure to identify the information being rebutted creates a burden on Commerce or other interested parties. Under the current regulatory language parties may submit information with no explanation as to what it rebuts, clarifies or corrects, thereby permitting the submission of information that does not meet those requirements despite the restrictions of the regulation. Having information on the record without an explanation of how it ties to the initial facts on record complicates Commerce's ability to analyze and enforce the limitations of submitting factual information under § 351.301. Accordingly, Commerce will continue to include language addressing this concern in the regulation.

With respect to the perceived unfairness of the reporting requirements of those submitting information in the first instance on the record in response to questionnaires, Commerce emphasizes two points. First, normally, when a respondent submits information on the record in response to a specific Commerce question, the reason that the information was submitted on the record in the first place is evident. That may not be the case, however, with rebuttal information submitted on the record with no explanation. Therefore, by their nature these two types of factual information submissions are different, and Commerce requires specific explanation from those submitting rebuttal information to identify the information already on the record that is being rebutted (or clarified or corrected).

Second, if an interested party reviewing the record does not believe that factual information submitted on the record in the first instance by another interested party supports or is relevant to the question asked by Commerce, the interested party has the ability to bring that concern to Commerce's attention in a timely fashion. Commerce may reject new factual information submitted on the record in the first instance if Commerce determines that it is not relevant to the questions or information request made of the respondent. In short, the record should be clear as to the reasons new factual information is being submitted, either through a response to an agency questionnaire, or in a rebuttal, clarification, or correction explanation. Commerce has determined, therefore, that the regulation should reflect that understanding of new factual information and the administrative record.

Commerce has made certain small changes, however, to the language set forth in the *Proposed Rule.* The opening paragraph of § 351.301(b) requires those submitting factual information in the first instance to provide a ''written explanation identifying the subsection of 351.102(b)(21) under which the information is being submitted.'' Commerce has revised the new language in § 351.301(b)(2) to state that the submitter of rebuttal, clarifying or correction factual information must ''provide a written explanation describing how the factual information'' rebuts, clarifies, or corrects the factual information already on the record. This language provides greater symmetry in the parties' obligations in the regulation while emphasizing the type of information Commerce is seeking from those submitting rebuttal factual information—not a long narrative submission, but rather a concise and complete explanation describing specifically what factual information on the record the new factual information rebuts, clarifies or corrects.

7. Commerce Has Made No Changes to the New Deadlines in Proposed § 351.301(c)(3), Covering the Submission of Benchmark and Surrogate Value Data, But Has Added Language Permitting Commerce To Issue a Schedule With New Deadlines in Unique Circumstances

Commerce proposed a revision to § 351.301(c)(3) to update deadlines for filing certain information on the record.[68] Current § 351.301(c)(3)(i) and (ii) establish a thirty-day time limit before the scheduled dates of preliminary determinations and results of review for interested parties to submit factual information to value factors of production under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2) in AD and CVD investigations, administrative reviews, new shipper reviews, and changed circumstances reviews.

The *Proposed Rule* explained that those submissions sometimes contain hundreds, if not thousands, of pages of information that Commerce must analyze in a short amount of time prior to issuing a preliminary determination or preliminary results.[69] Because the volume of information often contained in these submissions can be so large, it makes it difficult for Commerce to meet its statutory deadlines to determine the appropriate surrogate values or benchmarks in the preliminary determination or preliminary results.[70] Commerce also explained that since the 30-day deadlines were codified, Commerce has experienced a large increase in AD and CVD proceedings and orders which it must administer.[71] Accordingly, to effectively administer and enforce the AD and CVD laws, Commerce proposed modifying these time limits to allow Commerce additional time to more fully analyze these voluminous submissions for purposes of its preliminary decisions.[72] Specifically, Commerce proposed revising § 351.301(c)(3)(i) to create both a paragraph (c)(3)(i)(A) and (B) covering investigations. Under the proposal, the time limit for parties to submit factual information to value factors of production under § 351.408(c) in AD investigations under § 351.301(c)(3)(i)(A) would be no later than 60 days before the scheduled date of the preliminary determination, and the time limit for parties to submit factual information to measure the adequacy of remuneration under § 351.511(a)(2) in CVD investigations would be no later than 45 days before the scheduled date of the preliminary determination in proposed § 351.301(c)(3)(i)(B).[73]

Furthermore, for administrative reviews, new shipper reviews, and changed circumstances reviews, proposed § 351.301(c)(3)(ii) would require parties to submit factual information to value factors of production under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2) no later than 60 days before the scheduled date of the preliminary results of review.[74]

Commerce received several comments on the proposed change in deadlines. One party supported the change, stating that the modifications would enhance Commerce's ability to enforce trade laws in a timely and efficient manner and

[68] *See Proposed Rule,* 89 FR at 57302–57303.

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

would provide interested parties with a more complete preliminary determination, as the agency would have more time to consider and analyze its benchmark and surrogate value determinations for purposes of the preliminary agency decision. That commenter agreed with Commerce that the agency does not currently have sufficient time to review the benchmark and surrogate value data provided in either submissions or rebuttal submissions, and therefore, Commerce frequently cannot address those submissions in part or in whole in the preliminary determination or results, to the disservice of the interested parties. That commenter stated that it disagrees with the claim that the revisions will unduly affect the ability of interested parties to gather and submit necessary factual information on the record and emphasized that if Commerce's preliminary determinations contain more analysis and information as a result of this change in the deadlines, it will provide interested parties with an opportunity to submit fulsome, better comments in anticipation of a final determination or results of review.

The other commenters indicated that they were opposed to the change in deadlines for submitting benchmark and surrogate value data, and instead advocated for Commerce to retain its current thirty-day deadlines. There were essentially four concerns or suggestions which they expressed pursuant to the proposed change. First, if Commerce needs an additional 15 days for CVD investigations and an additional 30 days for surrogate values and CVD administrative reviews, that is 15 days and 30 days, respectively, which interested parties will no longer have to gather benchmarks and surrogate value information and then submit it to Commerce. Domestic industries stated that Commerce's proposal was biased against them because respondents are already familiar with their factors of production in an AD case and would be able to consider possible surrogate values even before they have filed their questionnaire responses and supplemental questionnaire responses, creating a disadvantage for domestic industries with a shorter period of time to gather information in AD proceedings. Likewise, domestic industries said they were also disadvantaged in CVD cases because respondents would have time to consider benchmarks while answering Commerce's questionnaires. With respect to both types of proceedings, domestic industries expressed concerns that respondents would have an incentive to request extensions and thereby run out the clock, making it impossible for domestic industries to find and submit appropriate benchmarks and surrogate values based on the questionnaire responses.

On the other hand, a foreign government stated that respondents are at a disadvantage in CVD investigations with a shorter period of time to gather potential benchmark data because domestic industries that file a petition have already had an opportunity to consider benchmarks for a less than adequate remuneration (LTAR) allegation, and in both CVD investigations and reviews, petitioners have time before they make new subsidy allegations to gather potential benchmark information. Further, another commenter stated that the shortened deadlines would be unfair for respondents that spend extensive amounts of time answering questions and gathering data. That commenter stated that that providing such a short period in which to file benchmark and surrogate value data would add unreasonably to respondents' burden and impact the quality of their responses.

In both AD and CVD cases, the commenters stated that the ultimate submissions would be of lesser quality and accuracy because the time period in which to gather sufficient data would be too short, thereby impeding Commerce's ability to issue supplemental questionnaires and the domestic industry's ability to identify deficiencies in the respondents' questionnaire responses. They also expressed concerns that it would be more difficult to analyze foreign government responses to Commerce's questionnaires and determine if a tier-one or tier-two benchmark under § 351.511 would be appropriate, and if supplemental questionnaires were issued to respondents with respect to their reported factors of production in an AD case, there may be little to no time for domestic parties to consider potential surrogate values so late in the proceeding within the proposed deadlines.

Some commenters noted that Commerce sometimes sets an earlier deadline for surrogate value submissions and then allows further submissions subsequently within the 30-day deadline. This proposed change, they stated, would make that entire process more difficult, therefore reducing the potential surrogate value information on the administrative record. The commenters, therefore, stated that the proposed shorter deadlines would result in less complete administrative records, less accurate preliminary determinations and results of administrative reviews, and more extension requests from parties to submit necessary information, with no clear benefit to Commerce.

The second expressed concern involved the postponement or extension of preliminary determinations or results of administrative reviews. The commenters stated that 60 days and 45 days before a preliminary determination or results of administrative review is issued, petitioners may not have yet requested postponement or, in administrative reviews, Commerce may not have yet decided to extend the preliminary results. If the preliminary determination or results were extended, so too would be the benchmark and surrogate value submission deadlines. They stated that the result might be that interested parties work quickly to find proposed benchmarks or surrogate values, submit them on time, and then discover that the preliminary determination or results or review have been extended. Had the interested parties known that an extension was forthcoming, the commenters stated that parties could have used the additional time to find potentially better quality and more accurate information. They noted that with respect to the extension of preliminary results of reviews in administrative reviews, Commerce normally issues an extension 30 days before the preliminary results are set to be issued, which would result in the described situation if that practice was retained. They stated that adding this amount of uncertainty to Commerce's procedures is unnecessary and should be avoided. Accordingly, the commenters requested that if Commerce retains the proposed changes, it should modify the dates upon which extensions to preliminary determinations or results would be granted so that parties would be aware if the benchmark and surrogate value deadlines had been extended as well.

The third comment on this proposed change to deadlines was a suggestion for Commerce to instead tie deadlines for submitting surrogate value information or market benchmarks to other points in the proceedings, including supplemental responses, which would allow the record regarding factors of production specifications and subsidy programs to be fully developed by the deadline. The commenter providing this suggestion stated that it would both achieve the stated goal of giving Commerce more time to analyze submissions and would avoid creating delays or a lack of adequate surrogate

value or benchmark information on the record.

The final group of suggestions Commerce received on this issue was that if Commerce insisted on maintaining the changes in deadlines, it should make certain other changes to its regulations and practice, such as allowing for rebuttal benchmark and surrogate value submissions to be submitted on the record after those regulatory deadlines have passed if subsidy program information or factors of production end up being placed on the record on or after those deadlines. In addition, the same commenter suggested that Commerce also consider limiting extension deadlines for questionnaire responses so that late filings do not chip away at the opportunity for the domestic industry to file adequate responsive benchmark or surrogate value submissions.

Response

Although Commerce recognizes the concerns expressed by the commenters, it continues to find that setting the deadline to submit surrogate value comments and information 60 days prior to the scheduled due date of the preliminary determination and preliminary results in AD nonmarket economy proceedings is reasonable, as is setting the deadline for the submission of benchmark comments and information 45 days before the scheduled date of the preliminary determination in a CVD investigation, and 60 days prior to the scheduled preliminary results in a CVD administrative review.

Commerce's determinations are based on the facts on the administrative record and they are frequently challenged before the CIT, Federal Circuit, and various World Trade Organization (WTO) and United States-Mexico-Canada Agreement (USMCA) dispute panels. Accordingly, Commerce must have sufficient time to consider and analyze the facts on the record when it issues preliminary or final determinations or results, to be certain that its decisions are accurate and based on the substantial evidence on the record. In short, Commerce needs the additional 15 and 30 days which it has proposed adding to § 351.301(c)(3).

While interested parties will have less time to gather and submit benchmark data and surrogate value information, both the domestic industry and respondents to the agency's proceedings produce the domestic like product/subject merchandise and therefore have an acute understanding of the inputs that are required to produce subject merchandise in a nonmarket economy AD or similar proceeding.

With respect to surrogate value submissions specifically, Commerce disagrees that the 60-day deadline will result in parties having to submit surrogate values and comments prior to the submission of a section D questionnaire response, specific to nonmarket economy cases, containing workable factors of production information. In the vast majority of cases, parties have sufficient time to prepare and submit surrogate value comments and information well after a section D questionnaire response is submitted to the respondent. However, if there is a timing concern, parties should request in writing that the agency extend the deadline for the submission of surrogate value comments and information.

With respect to the deadlines for benchmarks in CVD investigations, most of the alleged subsidy programs at issue in a CVD investigation are known on the date the petition is filed, and Commerce indicates the alleged subsidy programs that it has determined to investigate in the initiation checklist, issued concurrently with the date Commerce signs the initiation notice. Further, in Commerce's experience a domestic industry's allegation that a product has been sold for LTAR includes information regarding an appropriate benchmark.

Additionally, in CVD investigations where a LTAR subsidy is alleged, Commerce's initial questionnaire solicits information as to whether market conditions in the subject country permit the use of certain benchmarks. Thus, parties should be on notice at the early stages of the investigation that they may need to submit comments and information regarding certain benchmark information.

Likewise, with respect to administrative reviews, Commerce finds that requiring parties to submit benchmark and surrogate value information 60 days prior to the scheduled due date of the preliminary results is reasonable given that the timeline for CVD and AD reviews is substantially longer than the timeline for CVD and AD investigations. Under section 751(a)(3)(A) of the Act, Commerce has 245 days to issue its un-extended CVD and AD preliminary results of review and 365 days to issue fully extended CVD and AD preliminary results of review. These schedules provide ample time for Commerce to solicit, and respondents to provide, information on benchmarks and surrogate values, thereby permitting parties to meaningfully comment on such information by the revised 60-day deadline.

Notwithstanding the above, Commerce agrees that it will have to make adjustments to its practice as a result of these changes in some instances, as raised by one of the commenters. For example, as some of the commenters noted, there may be instances in AD nonmarket economy proceedings in which the initial section D questionnaire response has not been submitted by the 60-day deadline. In such situations, Commerce will adjust the comment schedule to allow for parties to have sufficient time to submit surrogate value comments and information. Likewise, in certain CVD investigations, it is possible that a respondent or foreign government may submit its initial response regarding a LTAR subsidy allegation on a date that occurs on or after the proposed 45-day deadline. In such instances, again, Commerce may need to adjust the comment schedule to allow for parties to have sufficient time to submit benchmark information for that alleged LTAR program.

Furthermore, with respect to new subsidy allegations, under § 351.301(c)(2)(iv)(A), domestic industries must make new subsidy allegations in CVD investigations no later than 40 days before the scheduled date of the preliminary determination. This results in a second potential situation in which Commerce's proposal to require benchmark information to be submitted no later than 45 days prior to the scheduled date of the preliminary determination will not be feasible. Accordingly, if the new deadlines for benchmark submissions found in § 351.301(c)(3) have already passed or are imminent, Commerce will determine that they do not apply in that case to new subsidy LTAR allegations filed near or on the due date specified under § 351.301(c)(2)(iv)(A). In addition, if the domestic industry files new subsidy allegations at an earlier stage of an initiated CVD investigation, it may occur that Commerce's initiation, issuance of the new subsidy allegation questionnaire, and receipt of the respondents' responses to the new subsidy allegation questionnaire are not completed in time for interested parties to submit benchmark information by the forty-five-day deadline. In both of those instances, Commerce agrees that it would likely need to establish a separate schedule for the interested parties to provide them with sufficient time to submit benchmark information.

Accordingly, in the final rule, Commerce has added § 351.301(c)(3)(i)(C) which states that if

Commerce determines that interested parties will not have sufficient time to submit factual information in investigations under the deadlines set forth in paragraph (c)(3)(i)(A) or (B) because of circumstances unique to the segment of the proceeding, Commerce may issue a schedule with alternative deadlines for parties to submit factual information on the record.

With respect to administrative reviews, Commerce acknowledges that there may be cases in which it will also have to issue a separate schedule for interested parties to have sufficient time to submit new factual information in this regard. For example, in AD nonmarket economy administrative reviews, if the initial section D questionnaire response is submitted on or after the revised sixty-day deadline, Commerce may need to issue a separate schedule for the interested parties to submit surrogate value comments and information. Likewise, in CVD administrative reviews, Commerce may also need to issue a separate schedule for parties to submit benchmark comments and information when the domestic industry alleges a LTAR subsidy and Commerce has yet to issue an initiation decision memorandum or questionnaire responses concerning such an allegation were not submitted until a date on or after the revised sixty-day deadline.

Accordingly, Commerce has also divided § 351.301(c)(3)(ii) into two paragraphs, with § 351.301(c)(3)(ii)(A) reflecting the previously proposed language and § 351.301(c)(3)(ii)(B) to add new language similar to that of § 351.301(c)(3)(i)(C), stating that if Commerce determines that interested parties will not have sufficient time to submit factual information in administrative reviews, new shipper reviews, and changed circumstances reviews under the deadlines set forth in paragraph (c)(3)(i)(A) because of circumstances unique to the segment of the proceeding, Commerce may issue a schedule with alternative deadlines for parties to submit factual information on the record.

Commerce disagrees, however, with the concern that these new deadlines will disadvantage interested parties because it is Commerce's practice to grant postponement or extensions of preliminary determinations or results of administrative review 30 days before the preliminary determination or results, which would fall after benchmarks and surrogate values are due. The scenario that commenters describe already occurs under the current 30-day comment deadline, and thus, Commerce does not find this argument to be a valid basis to refrain from the 45- and 60-day benchmark and surrogate value deadlines in CVD and AD nonmarket economy investigations. However, Commerce acknowledges that the scenario described by parties has the potential to occur more frequently in the context of CVD and AD nonmarket economy administrative reviews. Therefore, in CVD and AD nonmarket economy administrative reviews in which the 60-day deadline to submit benchmark and surrogate values information is approaching, and Commerce has yet to extend the due date of the preliminary results, parties may file a request for Commerce to extend the deadline to file benchmark and surrogate value information.

Commerce also disagrees that basing the deadline for parties to submit benchmark comments and information in CVD investigations on the receipt of the last questionnaire response pertaining to the LTAR subsidy and surrogate value comments, and information in AD nonmarket economy investigations on the last section D questionnaire response would be preferable to deadlines for submissions being tied to the issuance of preliminary determination or results. Commerce finds that such an approach would be impractical, as it would require Commerce and parties to track different benchmark and surrogate value comment deadlines across cases. Such an approach also assumes that Commerce would be able to easily determine the point in CVD and AD nonmarket economy investigations when the ''last'' such questionnaire responses were submitted, as an insightful deficiency submission from a party could lead to Commerce determining that that yet another supplemental questionnaire is needed.

Such an approach could also lead to outcomes where different respondents have a different number of days between the date when benchmark and surrogate value comments are submitted and the preliminary determination due date, which means that interested parties would not have the same number of days across cases to prepare comments for consideration in the preliminary determination or results that parties often submit, and which often address benchmark and surrogate value issues.

Furthermore, Commerce disagrees with the suggestion that if it proceeds with the revised benchmark and surrogate value deadlines, then it should allow rebuttal benchmark and surrogate value submissions to be submitted on the record after those regulatory deadlines have passed if factors of production or subsidy program information is submitted on the record on or after those deadlines. As noted above, based on the agency's experience with AD nonmarket economy investigations and reviews, Commerce believes that in most cases it will be able to solicit section D questionnaire information from respondents such that parties will have sufficient time with the initial section D questionnaire response, first section D supplemental questionnaire supplemental response, and any additional supplemental section D questionnaire response to submit surrogate value information by the revised deadlines. Further, as discussed above, because the nature of the good alleged to have been provided for LTAR and the potential need for tier-one, tier-two, and tier-three benchmarks is known at the outset of CVD investigations and reviews, Commerce expects interested parties will normally be able to submit their LTAR benchmark information by the revised deadlines.

However, as explained above, should a respondent submit a supplemental questionnaire response containing new factual information regarding factors of production information or LTAR benchmarks on or after the revised deadlines, then pursuant to § 351.301(c)(1)(v) Commerce will normally allow other interested parties a sufficient amount of time to submit rebuttal, clarifying, or corrected factual information on the record pertaining to the benchmark and the factors of production information contained in those supplemental submissions.

Finally, the same commenter also suggested that Commerce consider limiting extension deadlines for questionnaire responses in the regulation so that late filings do not reduce the opportunity for the domestic industry to file adequate responsive benchmark or surrogate value submissions. It is Commerce's practice to respond to respondents' extension requests with consideration of the deadlines that Commerce and parties face in CVD investigations and reviews and AD nonmarket economy investigations and reviews, and the agency will continue to do so under the current regulations. Therefore, Commerce has elected not to adopt additional language in the regulation to limit extension deadlines for questionnaire responses as suggested.

Accordingly, for the reasons described above, Commerce determines that requiring benchmark and surrogate value comments and information to be submitted 45 days and 60 days prior to the scheduled due date of preliminary determinations and administrative

review results to be a practical and necessary modification to the regulation to allow Commerce to accurately and sufficiently consider the information and make its determination on these issues.

8. Commerce Has Made No Modifications to Proposed § 351.306(a)(3), Which Covers the Sharing of Data With U.S. Customs and Border Protection

As amended in 2015, section 777(b)(1)(A)(ii) of the Act states that Commerce may disclose proprietary information ''to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding negligence, gross negligence or fraud under this title.'' Current § 351.306(a)(3) states that Commerce may disclose business proprietary information to ''an employee of U.S. Customs and Border Protection'' involved in conducting ''a fraud investigation.'' However, the Act now includes ''negligence'' and ''gross negligence'' investigations. Thus, Commerce proposed amending § 351.306(a)(3) to expand the covered investigations to negligence and gross negligence investigations as well as fraud investigations.[75]

One commenter suggested that Commerce add further language to the regulation and include the phrase ''or any other action specifically contemplated in section 777(b)(1)(A)(ii) of the Act'' to, in the words of the commenter, ''eliminate the need for similar updates in the future should the Act be further amended.'' However, if the Act is modified in the future, Commerce will be able to revise its regulations at that time in accordance with any new statutory language and obligations.

9. Commerce Has Made Small Revisions to Proposed § 351.308(i), Which Covers the Application of Facts Available in AD and CVD Proceedings

In the *Proposed Rule* Commerce updated § 351.308(g) to reflect its practice of applying either partial facts available or total facts available and added § 351.308(h) and (i) to reflect changes to section 776 of the Act by Congress in 2015.[76] Two parties commented on this regulation, with one expressing its full support as written, and the other, although indicating its support for the changes, providing suggested edits to revise one possible inconsistency and to prevent redundancy. Specifically, proposed § 351.308(i)(2) states that Commerce ''may'' use the highest CVD rate available if it determines that such an application is warranted, whereas § 351.308(j) states that Commerce ''will normally select the highest program rate available using a hierarchical analysis.'' Second, the commenter recommended various revisions to § 351.308(i)(2) to avoid certain perceived redundancies.

Response

After consideration of the comments on this provision, Commerce agreed that certain small changes to § 351.308(i)(2) were warranted. First, Commerce has replaced the phrase ''The Secretary may use the highest countervailing duty rate available'' with ''The Secretary will normally apply the highest calculated above-*de minimis* countervailing duty rate available'' to be in accordance with the language of the CVD adverse facts available hierarchy, found at § 351.308(j). In addition, Commerce has moved the phrase ''in accordance with the hierarchy set forth in paragraph (j) of this section'' from the second sentence in the paragraph to the first sentence of the paragraph, because the entire paragraph relates to Commerce's CVD adverse facts available hierarchy, and not just the second sentence.

10. Commerce Has Modified Proposed § 351.401(f) To Reflect That It Is Concerned About the Significant Potential for Manipulation of Prices, Production, or Export Decisions, and That It Will Not Normally Collapse Certain Affiliated Input Suppliers and Home Market Resellers of the Domestic Like Product

When affiliated producers share ownership or management or have intertwined operations, there is a significant potential for the manipulation of the prices or production of the subject merchandise. Commerce has a longstanding and court-affirmed practice of ''collapsing'' certain affiliated entities and treating them as a single entity for purposes of its AD calculations.[77] As currently written, § 351.401(f)(1) codifies Commerce's practice of collapsing affiliated producers who ''have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities'' where ''there is a significant potential for the manipulation of price or production.'' Section 351.401(f)(2) identifies the factors Commerce may consider in determining whether there is significant potential for the manipulation of price or production.

By collapsing affiliated producers and calculating a single weighted-average dumping margin for the combined entity, the current regulation discourages producers subject to antidumping duties from shifting their production or sales to affiliated producers to evade those duties.[78]

However, as Commerce explained in the *Proposed Rule,* affiliated non-producers such as exporters and processors can also manipulate and influence prices and production through their mutual relationships.[79] Accordingly, to prevent manipulation of prices and production, and the evasion of duties, Commerce has in several AD proceedings collapsed non-producers with both producers and non-producers, and the CIT has affirmed Commerce's authority to do so.[80] Although the Act does not expressly address collapsing, the CIT has held that Commerce's collapsing practice, as applied to both affiliated producers and non-producers, effectuates the basic purpose of the Act: to calculate accurate dumping margins and to prevent the evasion of duties.[81]

Commerce, therefore, proposed revising § 351.401(f) to explicitly address the ability of the agency to collapse producers and non-producers when it determines that there is significant potential for the manipulation of prices or production between two or more affiliated parties.[82]

Commerce received three comments on proposed § 351.401(f). Two commenters agreed with the decision to modify § 351.401(f) to address Commerce's ability to collapse

[75] *See Proposed Rule,* 89 FR at 57303.

[76] *See* Trade Preferences Extension Act (TPEA) of 2015, Public Law 114–27, 129 Stat. 362, 384 (2015), section 502, codified at 19 U.S.C.1677(e) and *Proposed Rule,* 89 FR at 57303–04.

[77] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil,* 69 FR 76910 (December 23, 2004) (*Shrimp from Brazil*), and accompanying Issues and Decision Memorandum at Comment 5; *see also Rebar Trade Action Coalition* v. *United States,* 398 F. Supp. 3d 1359, 1366–1371 (CIT 2019) (*Rebar Trade Action Coalition*); *Queen's Flowers de Colombia* v. *United States,* 981 F. Supp. 617, 622 (CIT 1997) (*Queen's Flowers*); and *Viraj Group.* v. *United States,* 476 F.3d 1349, 1355–58 (Fed. Cir. 2007).

[78] *See Rebar Trade Action Coalition,* 475 F. Supp. at 1368.

[79] *See Proposed Rule,* 89 FR at 57305 (citing, as an example, *Shrimp from Brazil* Issues and Decision Memorandum at Comment 5).

[80] *See NACCO Materials Handling Group, Inc.* v. *United States,* 971 F. Supp. 586, 591–92 (CIT 1997) (*NAACO Materials*); *Queen's Flowers,* 981 F. Supp. at 617–622; *and Echjay Forgings,* 475 F. Supp. 3d. at 1360 (CIT 2020) (citing *Hontex Enterprises Inc. d/b/a Louisiana Packing Company* v. *United States of America,* 248 F. Supp. 2d. 1323 (CIT 2003) (*Hontex*)).

[81] *See Queen's Flowers,* 981 F. Supp. at 622.

[82] *See Proposed Rule,* 89 FR at 57305 (citing *United States Steel Corp.* v. *United States,* 179 F. Supp. 3d 1114, 1135 (CIT 2016)).

producers and non-producers but suggested certain additional modifications to Commerce's proposed rule. Another commenter expressed concerns that Commerce's decision to modify § 351.401(f) may undermine Commerce's ability to apply its transactions disregarded rule or major input rule, pursuant to sections 773(f)(2) and (3) of the Act.

The first commenter suggested a change to § 351.401(f)(3) to expand Commerce's ability to consider the extent of necessary retooling in its analysis of affiliated parties' production facilities that are used for similar or identical products. The commenter proposed that Commerce clarify that its analysis will go beyond evaluating ''manufacturing priorities'' to also consider the possibility of a shift in production among affiliated facilities or any other commercial activities related to production. As an example, it referred to an administrative review where Commerce found that the respondent had the potential to rearrange selling and producing roles between affiliated producers and non-producers.[83]

A second commenter agreed that the proposed modification reflected Commerce's current practice and authorities but expressed concerns that the expansion of Commerce's practice of collapsing entities to include non-producers could unintentionally result in less accurate dumping margins. Specifically, under section 773(f)(2) and (3) of the Act, Commerce may disregard direct or indirect transactions between affiliated parties that do not fairly represent the market costs and the full costs of production in such transactions. These are commonly called the ''transactions disregarded'' and ''major input'' rules. They are frequently applied in consideration of transactions between affiliated input suppliers and producers of subject merchandise. The current regulation addresses only affiliated entities that both might produce the subject merchandise, while the proposed revision to the regulation would allow for the collapsing of affiliated input suppliers and producers of subject merchandise. Accordingly, the commenter expressed concerns that Commerce might elect to collapse such affiliated entities rather than apply the transactions disregarded or major input rules, thereby allowing the respondent to manipulate Commerce's calculations, with the result being a less accurate dumping margin.[84] The commenter stated that such an application of the collapsing regulation would expand the number of non-market prices and below-cost affiliated-entity transactions that Commerce would not disregard, with resulting calculations that include more transactions between affiliated entities at values not reflective of the market prices producers would pay for the same transaction with a non-affiliated entity. It cautioned that this proposal could create a situation wherein the exception could swallow the rule, contrary to sections 773(f)(2) and (3) of the Act, and therefore suggested that Commerce not codify its current collapsing practice with respect to non-producers and producers.

A third commenter praised the proposed modification to § 351.401(f) and stated that the new language would permit Commerce to address the evasion and manipulation of duties by affiliated parties. That commenter, however, also expressed concerns that the proposed language could result in the manipulation of Commerce's calculation of dumping margins for the same reason as the second commenter. That commenter stressed that the purpose of § 351.401(f) is to prevent the manipulation of dumping margins, and thus Commerce should add language in the regulation to the effect that if record evidence suggested collapsing would result in the manipulation of Commerce's calculations, Commerce could decline to collapse the affiliated entities. Furthermore, the commenter recommended that Commerce include a non-exhaustive list of entity relationships that might result in a collapsing decision.

Response

After consideration of the comments on the regulation, Commerce is adding a new paragraph to § 351.401(f) to address exceptions to Commerce's collapsing practice and making certain other minor edits. Specifically, Commerce is amending proposed § 351.401 to add a paragraph (f)(4), titled ''Exceptions.'' Commerce has a practice of not collapsing affiliated input suppliers with other affiliated parties if the input suppliers do not produce similar or identical products to the subject merchandise or export subject merchandise to the United States.[85] Likewise, Commerce also has a practice of not collapsing affiliated sellers of the foreign like product in the home market with other affiliated parties, if those sellers (including resellers) of the foreign like product in the home market do not produce similar or identical products to the subject merchandise or export subject merchandise to the United States.[86] Commerce has therefore codified both exceptions to its collapsing practice in the regulation as § 351.401(f)(4)(i) and (ii). To be clear, although Commerce will normally not collapse such entities, Commerce might still apply the transactions disregarded rule or the major input rule, in accordance with sections 773(f)(2) and (3) of the Act, if such an application is warranted.

In addition, pursuant to the concerns of possible evasion or manipulation, Commerce has decided to include a third ''catch-all'' provision at § 351.401(f)(4)(iii), which states that if Commerce determines that treating certain affiliated entities as a single entity would otherwise be inappropriate based on record information, Commerce may decide not to collapse those affiliated entities. Collapsing determinations are case-specific, and frequently Commerce makes its determinations based on proprietary information that reflects complex and unique relationships between affiliated entities. Commerce agrees with the commenters that the overarching purpose of § 351.401(f) is to prevent manipulation of prices, production, or export decisions among affiliated entities. Further, the factors listed in § 351.401(f)(2) are non-exhaustive and Commerce may consider additional factors as evidence that there is significant potential for manipulation, or even determine that not all of the factors listed are identified to find evidence of significant potential for manipulation.[87] In examining the factors that pertain to significant potential for manipulation, Commerce considers both actual manipulation in

[83] *See, e.g., Shrimp from Brazil* Issues and Decision Memorandum at Comment 5.

[84] *See AK Steel Corp.* v. *United States,* 226 F.3d 1361, 1375–76 (Fed. Cir. 2000) (''once Commerce has decided to treat the companies as one 'person' for purposes of the anti-dumping analysis, it is not statutorily required to apply the provisions'').

[85] *See, e.g., Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Final Determination of Sales at Less Than Fair Value,* 69 FR 53675 (September 2, 2004), and accompanying Issues and Decision Memorandum at Comment 5; *Certain Fabricated Structural Steel from Canada: Final Determination of Sales at Less Than Fair Value,* 85 FR 5373 (January 30, 2020), and accompanying Issues and Decision Memorandum at Comment 6: and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada,* 70 FR 12181 (March 11, 2005), and accompanying Issues and Decision Memorandum at Comment 41.

[86] *See Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2021–2022,* 89 FR 40467 (May 10, 2024), and accompanying Issues and Decision Memorandum at Comment 5.

[87] *See Antidumping Duties: Countervailing Duties; Final Rule,* 62 FR 27296, 27346 (May 19, 1997).

the past and the possibility of future manipulation.[88] As Commerce stated in the preamble to the regulation when it was issued in 1997, the standard in looking at potential manipulation is focused ''on what may transpire in the future;'' thus Commerce may consider the record in total, covering past, present and future potential manipulation of prices, production or other commercial activities.[89] Given the wide array of possible affiliations between producers, exporters, and other entities in various channels of trade, the concerns expressed by the commenters, and Commerce's intention to prevent potential manipulation, whether it be through collapsing or, in some cases, not collapsing affiliated entities, the regulation now includes a collapsing-exception provision that covers any situation in which the collapsing of entities would be ''otherwise inappropriate based on record information.''

In addition to that change, Commerce is correcting a typographical error that resulted in publishing § 351.401(f)(2)(iii) as a second § 351.401(f)(2)(ii).[90]

Finally, Commerce proposed to modify the phrase ''potential manipulation of price or production'' in § 351.401(f)(1) and (2) to encompass ''potential manipulation of prices, production or other commercial activities.'' The reason for this change was to address the collapsing of non-producing affiliated exporters that, given the nature of their affiliations, might not lead to the manipulation of prices or production but might lead to the manipulation of various export decisions.[91] Upon further reflection, Commerce has determined that the term ''other commercial activities'' is too broad a term to describe that scenario and might lead to confusion. Accordingly, Commerce is modifying § 351.401(f)(1) and (2) to apply to the ''potential manipulation of prices, production, or export decisions.'' Commerce has determined that such language more accurately reflects the concerns that led to the proposed revision.

With respect to the suggestion that Commerce clarify that it can make a determination based on more than just a restructuring of ''manufacturing priorities,'' including a focus on the shifting of production among facilities of affiliated entities or a restructuring of commercial activities among affiliated parties related to production, Commerce disagrees that such a change is necessary. The term ''restructure manufacturing priorities'' has been in the regulation since it was initially proposed in 1996.[92] In the decades that followed, as the commenter explained, Commerce has found the term ''restructure manufacturing priorities'' to cover various factual scenarios, including the shifting of production between affiliated producers and the restructuring of commercial activities among affiliated parties related to production. ''Manufacturing priorities'' is not a defined term, and may cover both production and non-production actions, if those potential actions might lead to the manipulation of prices, production, or other commercial activities among affiliated entities. Accordingly, Commerce has not adopted this proposed modification to § 351.401(f).

In addition, Commerce will not include a non-exhaustive list of entity relationships that might result in a collapsing decision as suggested by one of the commenters. As explained above, there are many ways by which entities might be affiliated, and likewise there are many unique entity relationships that can lead to the potential manipulation of prices, production or export decisions. Collapsing decisions are best left analyzed on a case-by-case basis and frequently can be far more complex than can be summarized in a simple list of examples. Accordingly, Commerce has determined that a non-exhaustive list of examples in the regulation would likely lead to greater confusion than provide clarity, and it has therefore not included such a list in the final rule.

11. Commerce Has Made Small Adjustments to Proposed § 351.404(g)(2), Which Applies to the Determination of Normal Value and Certain Multinational Corporations

Section 773(d) of the Act provides a special rule for certain multinational corporations when Commerce is determining the appropriate normal value to use in its antidumping calculations. The Act states that if, in the course of an investigation, Commerce determines that three criteria exist, Commerce ''shall determine the normal value of the subject merchandise by reference to the normal value at which the foreign like product is sold in substantial quantities outside the exporting country.''

Those three criteria are: (1) subject merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of the foreign like product which are located in another country or countries; (2) the foreign like product is not sold (or offered for sale) for consumption in the exporting country or is sold in the exporting country for insufficient amounts to allow for a proper comparison with the United States, and, therefore, Commerce should look to third country sales to determine normal value (or a sales-based particular market situation exists); and (3) the normal value of the foreign like product produced in one or more of the facilities outside the exporting country is higher than the normal value of the foreign like product produced in the facilities located in the exporting country.[93]

Section 773(d) of the Act requires that Commerce make adjustments for the differences in the costs of production between the exporting country and the third country where the merchandise is also produced. It states that for ''purposes of this subsection, in determining the normal value of the foreign like product produced in a country outside the exporting country,'' Commerce shall determine its price ''at the time of exportation from the exporting country'' and make any adjustments ''required by subsection (a) for the cost of all containers and coverings and all other costs, charges and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the exporting country.'' [94]

Although Commerce has applied the special rule for certain multinational corporations (''MNC provision'') in determining normal value for many years, none of Commerce's regulations address the MNC provision. Commerce proposed the addition of § 351.404(g) to address the filing requirements for those alleging the applicability of the MNC provision and to clarify that the MNC provision is only applicable when the non-exporting country is a market economy and not a nonmarket economy.[95]

Specifically, Commerce proposed codifying its practice directing parties alleging that the MNC provision should

[88] *Id.* at 27345–45.

[89] *Id.*

[90] *See Proposed Rule,* 89 FR 57329.

[91] *See, e.g., Hontex,* 248 F. Supp. 2d 1323, 1345–1350.

[92] *See Antidumping Duties; Countervailing Duties; Proposed Rule,* 61 FR 7308, 7381 (February 27, 1996).

[93] *See* section 773(d) of the Act; *see also* section 773(a)(1)(C) of the Act.

[94] *See* section 773(d) of the Act.

[95] *See Proposed Rule,* 89 FR at 57305–06.

apply to submit their allegations in accordance with the filing requirements set forth in § 351.301(c)(2)(i). Moreover, Commerce explained that the provision does not apply when the non-exporting country at issue is a nonmarket economy country because, in accordance with § 351.408, when the non-exporting country is a nonmarket economy, Commerce will apply the factors of production methodology described in section 773(c) of the Act.[96]

Two parties submitted comments regarding the proposed addition of § 351.404(g). The first commenter requested not that Commerce modify § 351.404(g), but rather modify § 351.301(c)(2)(i), which provides that in general, market viability allegations, and through § 351.404(g)(1), allegations that the MNC provision applies, should be due ''10 days after the respondent interested party files the response to the relevant section of the questionnaire, unless the Secretary alters this time limit.'' The commenter maintained that requiring parties to review questionnaire responses, research independent factual information, and prepare allegations within 10 days creates a significant burden. Accordingly, that commenter requested that Commerce increase the dates for market viability and MNC provision allegations from 10 days to 30 days in § 351.301(c)(2)(i).

The second commenter requested that Commerce revisit its practice of not applying the MNC provision to AD proceedings in which the non-exporting country would be a nonmarket economy. The commenter acknowledged that the Federal Circuit in *Ad Hoc Shrimp Trade Action Committee* v. *United States,* 596 F. 3d 1365, 1370 (Fed. Cir. 2010) (*Ad Hoc*) affirmed Commerce's interpretation of the Act to apply to market economies only as permissible, but the commenter noted that the dissent in that case disagreed that Commerce's interpretation was consistent with the Act, reasoning that if the Congress had intended for the provision to not apply to nonmarket economy non-exporters, Congress would have clearly stated as such in the Act.[97] The commenter stated that Commerce's practice, as reflected in proposed § 351.404(g)(2), unduly and unnecessarily limits Commerce's ability to apply the MNC provision when the non-exporter is located in a nonmarket economy to the disservice of domestic industries seeking trade remedy relief from the dumping of merchandise produced and exported by a multinational corporation. Accordingly, the commenter requested that Commerce revise § 351.404(g)(2) to apply the MNC provision equally to multinational corporations and their affiliates located in market and nonmarket economies.

Response

With respect to the first commenter's request, Commerce has determined not to modify the ten-day deadline set forth in § 351.301(c)(2)(i). Investigations and administrative reviews are extremely fact intensive and restricted by statutory deadlines. Adding 20 days to that deadline would take away from the time Commerce needs to analyze and consider the allegation. Notably, § 351.301(c)(2)(i) states that Commerce may ''alter this time limit.'' Accordingly, if a party wishing to allege that the MNC provision should be applied in a case believes that it needs more time to submit an allegation, before the 10 days have passed that party may request an extension from Commerce to do so. In requesting an extension, the party should provide Commerce with the reason it needs additional time to file an allegation and specify the actions it will take in the extended time to ensure that its MNC provision allegation is complete when it is submitted to the agency.

In response to the second commenter, the MNC provision includes citations to section 773(a) of the Act, which covers a determination of normal value based on third country sales and makes no reference to section 773(c) of the Act, which applies to nonmarket economies.[98] Further, the provision explicitly includes adjustments for costs of production, but the statutory nonmarket economy analysis, which incorporates surrogate values and factors of production, does not involve costs of production. For that reason, Commerce has concluded that the MNC provision, by its very terms, cannot apply if the non-exporting country is a nonmarket economy. As the commenter notes, the Federal Circuit affirmed that determination in *Ad Hoc.*[99]

Specifically, the Federal Circuit reasoned that the MNC provision was ''silent regarding nonmarket economies,'' but the Act ''instructs Commerce to determine the normal value of the subject merchandise by reference to the normal value at which the foreign like product is 'sold in substantial quantities' and its 'price at the time of exportation from the exporting country,' '' and that ''sold'' and ''price'' are terms ''not used to describe calculating the normal value in a nonmarket economy.'' [100] The majority also referred approvingly to Commerce's reasoning that because the case before the Court involved a market economy (Thailand), to use a nonmarket economy as the alternative producer would be the same as ''treating a market economy country as a nonmarket economy and would, therefore, circumvent'' the Act which only provides for a nonmarket economy analysis when the country at issue is a nonmarket economy.[101]

As Commerce has stated before in analyzing the MNC provision, it is of no consequence whether some of a respondent's affiliated parties are located in nonmarket economy countries and some are located in market economy countries, or whether all of a respondent's affiliated parties are located in a nonmarket economy country.[102] The Act, as interpreted in relevant case law, requires that the MNC provision be applied in cases where prices and costs are disregarded in favor of the factors of production methodology. If Congress had intended for the MNC provision to apply equally to nonmarket economy and market economy countries, it could have included language in the MNC provision that applied to nonmarket economies, but it did not do so.[103] Accordingly, Commerce will not modify its interpretation of the MNC provision in proposed § 351.404(g)(2) or change its practice in this regard.

Commerce has, however, made certain small changes to the language to provide further clarity that if the

[96] *Id.*

[97] *See Ad Hoc,* 596 F.3d at 1373 (J. Prost dissenting). The commenter pointed out that in 1996, Commerce had a different interpretation of the Act, stating in *Melamine Institutional Dinnerware Products from the People's Republic of China,* 61 FR 43337, 43340 (August 22, 1996), Commerce determined that the Act was silent and therefore to both market economy and nonmarket economy cases.

[98] *See* section 773(c) of the Act (''Nonmarket Economy Countries'').

[99] *See Ad Hoc,* 596 F. 3d at 1370.

[100] *Id.*

[101] *Id.* at 1371. The Federal Circuit also affirmed Commerce's interpretation of the legislative history of the provision that ''Congress was concerned with the practice of discriminatory pricing where a home market was not viable and yet a respondent's low-priced exports to the United States market were supported by higher priced sales of its affiliates in a third country market.'' (citing Senate Committee on Finance Report on Trade Reform Act of 1974, S. Rep. No. 93–1298, at 175 (November 16, 1974)). The Court agreed with Commerce that ''Congress was addressing the problem of discriminatory pricing practices of multinational corporations, but pricing practices are generally irrelevant in nonmarket economies.''

[102] *See Utility Scale Wind Towers from Malaysia: Final Results of Antidumping Duty Administrative Review;* 2021–2022, 89 FR 56735 (July 10, 2024), as amended 89 FR 65848, at accompanying Issues and Decision Memoranda at Comment 8.

[103] *Id.*

Secretary determines that the non-exporting country is a nonmarket economy and that normal value would be determined using a factors of production methodology if the MNC provision was applied, Commerce will not apply the MNC provision in that situation.

12. Commerce Has Revised Certain Language in Proposed § 351.405(b)(3), Which Covers the Calculation of Constructed Value Profit

As set forth in proposed § 351.405(a), pursuant to section 773(e) and (f) of the Act, in certain circumstances Commerce may determine normal value by constructing a value based on the cost of manufacturing; selling, general and administrative expenses; and profit. In constructing such a value, the Act provides that Commerce use the ''actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country.'' [104] However, there are times when the ''actual data are not available with respect'' to those production and sale amounts, and in those circumstances, section 773(e)(2)(B) of the Act establishes three alternative methods for calculating amounts for selling, general, and administrative expenses, and profit, in connection with the production and sale of a foreign like product, in those instances.[105] The Act provides Commerce with the discretion to select from any of the three alternative methods, depending on the information available on the record.[106]

One of those three options, described in section 773(e)(2)(B)(iii) of the Act, allows Commerce to use amounts incurred and realized for selling, general, and administrative expenses and for profit based on ''any other reasonable method'' with one exception. The Act provides that ''the amount allowed for profit may not exceed the amount normally realized by exporters or producers'' other than the individually examined exporter or producer ''in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of productions as the subject merchandise.'' This limitation on profit used in constructed value is frequently called the ''profit cap.''

The SAA states that in applying ''any other reasonable method'' under the Act, ''Commerce will develop this alternative through practice,'' [107] and as Commerce explained in the *Proposed Rule,* it has done just that for many years.[108] It has been Commerce's practice to consider four criteria in selecting sources for selling, general, and administrative expenses, as well as for profits, under ''any other reasonable method.'' In the *Proposed Rule,* Commerce determined to codify that criteria in proposed § 351.405(b)(3).[109] Accordingly, under the proposed regulation, Commerce will ''normally consider'': (A) the similarity of the potential surrogate companies' business operations and products to the examined producer's or exporter's business operations and products; (B) the extent to which the financial data of the surrogate company reflects sales in the home market and does not reflect sales to the United States; (C) the contemporaneity of the surrogate company's data to the period of investigation or review; and (D) the extent of similarity between the customer base of the surrogate company and the customer base of the examined producer or exporter in selecting such sources.

Upon review of the *Proposed Rule,* however, Commerce has concluded that its preamble language may have confused two different aspects of its analysis under the Act. In the *Proposed Rule,* Commerce described these criteria as relating not only to the sources for ''any other reasonable method'' for selecting selling, general, and administrative expenses, as well as profit, but also pertaining to ''the amount normally realized by exporters or producers'' other than the individually examined exporter or producer ''in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of productions as the subject merchandise.'' [110] In other words, Commerce correctly referred to the use of these criteria in determining what sources to use when relying on ''any reasonable method,'' but incorrectly also referred to the use of this criteria in selecting a ''profit cap.'' [111] That mischaracterization also was reflected in proposed § 351.405(b)(3). Commerce is therefore modifying the regulation to remove that ''profit cap'' language and to clarify that the four criteria pertain to the selection of sources for determining amounts for selling expenses and for profit under section 773(e)(2)(B)(iii) of the Act.

Two commenters expressed their support for the new regulation, finding it to be timely and useful in achieving Commerce's stated goal of enhancing the administration of the AD and CVD laws. One of those commenters provided a suggestion that Commerce state that the list of criteria is not exhaustive in the regulation, or in the alternative add a fifth criteria that states that Commerce might also consider other factors and information as appropriate in selecting sources for selling, general and administrative expenses and profit as ''any other reasonable method'' under the Act.

Response

Other than the modifications Commerce has made to proposed § 351.405(b)(3) described above, Commerce has made no further changes to the provision. The language states that Commerce will ''normally consider the following criteria,'' and thus, by its terms the regulation is already clear that the list is not exhaustive. Likewise, because the list of criteria is not exhaustive, it is unnecessary to add a fifth ''catch-all'' criterion to the regulatory list. Normally, as the regulation states, and consistent with Commerce's long-standing practice, Commerce will consider the four listed criteria in selecting a profit amount for its constructed value calculations, but if Commerce determines that there is some additional information on the record that might be relevant to its analysis, the regulation does not prevent or prohibit Commerce from considering that information as well in its analysis.

[104] *See* section 773(e)(2)(A) of the Act.

[105] *See* SAA at 840 (''At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases'').

[106] *See Certain Steel Nails from the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 80 FR 28955 (May 20, 2015) (*Certain Steel Nails from Korea*), and accompanying Issues and Decision Memorandum at Comment 4.

[107] *See* SAA at 841.

[108] *See Proposed Rule,* 89 FR at 57306.

[109] *Id.,* 89 FR at 57306–07.

[110] *See Proposed Rule,* 89 FR at 57288 and 57306.

[111] *See* SAA at 841 (addressing the ''any other reasonable method'' statutory option, as well as the profit cap: ''The Administration also recognizes that where, due to the absence of data, Commerce cannot determine amounts for profit under alternatives (1) and (2) or a ''profit cap'' under alternative (3), it might have to apply alternative (3) on the basis of 'facts available.' This ensures that Commerce can use the alternative (3) when it cannot calculate the profit normally realized by other companies on sales of the same general category of products'').

13. Commerce Has Revised Proposed § 351.408(b) To Describe the Methodology for Selecting Surrogate Countries and the Use of Gross Domestic Product To Determine Economic Comparability

In the *Proposed Rule,* Commerce indicated that it was modifying § 351.408(b) to reflect that Commerce may consider either *per capita* gross national income (GNI) or *per capita* gross domestic product (GDP) in selecting potential surrogate countries for purposes of antidumping investigations and administrative reviews of nonmarket economies.[112] Currently, § 351.408(b) states that in determining whether a country is at a level of economic development comparable to the nonmarket economy under sections 773(c)(2)(B) and 773(c)(4)(A) of the Act, Commerce will ''place primary emphasis on *per capita* GDP as the measure of economic comparability.'' However, Commerce's general practice has been to use *per capita* GNI instead of *per capita* GDP as the measure of economic comparability.[113] Commerce's use of GNI has been recognized and affirmed as reasonable by the U.S. Court of International Trade as a measure to determine economic comparability in multiple holdings.[114] *Per capita* GNI measures the total income earned by the residents of a country, whether from domestic or foreign sources, divided by the average population of that country.[115] *Per capita* GDP, on the other hand, measures the total value of goods and services produced within a country per person in a given year.[116] The *Proposed Rule* explained either *per capita* GNI or *per capita* GDP can be reasonably used to determine comparable economies, depending on the facts before the agency.[117] Proposed § 351.408(b) also provided that Commerce could consider additional factors in selecting comparable economies and explained that consideration of these factors would assist it in avoiding distortive economic comparisons.[118]

Commerce received several comments on the proposed modifications to § 351.408(b). Numerous commenters indicated their appreciation of Commerce's codification of its established practice and its goal of considering additional factors to determine which countries may be deemed economically comparable to a non-market economy. However, commenters also expressed concern that including the option of using both GNI and GDP and identifying the additional factors adds uncertainty to the selection of surrogate countries. Most commenters were not opposed to the use of GDP only or GNI only but were very concerned about the potential confusion and inconsistencies if Commerce were able to pick one or the other on a case-by-case basis. Other commenters expressed opposition to the consideration of additional factors in Commerce's analysis entirely for similar reasons.

One commenter questioned the relationship between GNI and GDP and the additional factors. The commenter pointed out that the *Proposed Rule* stated that it ''will place *primary emphasis*'' on GNI or GDP, as compared to the additional factors it ''may also consider'' pursuant to new § 351.408(b)(1) through (4),[119] and questioned if Commerce was therefore mandated to analyze all of these factors in every case, or only GNI and GDP in all cases and the other factors in some cases. Moreover, that commenter stated that implementing the additional factors as a mandatory, case-specific, multi-factor economic analysis when the current methodology is often sufficient would unnecessarily increase costs in terms of time, human resources, and legal fees for both Commerce and domestic interested parties. Therefore, that commenter recommended that Commerce clarify that it may decline to consider the proposed additional factors absent record evidence that relying on GDP or GNI would result in understated dumping margins for the subject non-market economy entity or entities.

A second commenter also expressed that it was unclear when and why, in any given proceeding, Commerce would place primary emphasis on GNI over GDP and vice versa. That commenter recommended that Commerce provide clarification regarding how it will take GNI and GDP information into consideration. In addition, while that commenter agreed that Commerce should have the flexibility to consider information other than GNI and GDP in determining economic comparability, it also stated that the proposed § 351.408(b)(3) related to the quality of the available data should be considered a separate and distinct determination from whether a country is economically comparable. Similarly, that commenter stated that by limiting the number of countries considered to be economically comparable based on factors unrelated to economic comparability, Commerce risked unnecessarily limiting potential surrogate countries and making it more difficult to identify the best available information for valuing a respondent's factors of production. Accordingly, that commenter recommended that Commerce confirm that the potential quality and accessibility of data are not relevant in determining whether a country can be considered economically comparable to the nonmarket economy country at issue.

The third commenter acknowledged that the proposed changes commendably address the fact that the use of GNI alone may not result in a principled or predictable calculation of normal value or antidumping margins. However, that commenter also stated that the proposed changes do not address the fact that Commerce's practice continues to elevate economic comparability over merchandise comparability, adding greater uncertainty to the selection of surrogate countries and contrary to the intent of the statute. That commenter stated that because Commerce's practice is to first create a list of six surrogates deemed to be equal in terms of economic comparability,[120] Commerce will select a country producing comparable merchandise that is ''the same'' in terms of economic development over a country that produces identical merchandise but is slightly less comparable in economic terms. Because the statute requires that a surrogate be both economically comparable and a significant producer of comparable merchandise, the third commenter stated that both criteria call for a comparison that will yield relative levels of comparability. Accordingly,

[112] *See Proposed Rule,* 89 FR at 57330.

[113] *See Antidumping Methodologies in Proceedings Involving Nonmarket Economy Countries: Surrogate Country Selection and Separate Rates; Request for Comment,* 72 FR 13246, 13246 n.2 (March 21, 2007).

[114] *See, e.g., Clearon Corp* v. *United States,* 38 CIT 1122, 1137–1140 (July 24, 2014); *see also Tri Union Frozen Prods.* v. *United States,* 163 F. Supp. 3d. 1255, 1268, n. 8 (CIT 2016); and *Tianjin Wanhua Co.* v. *United States,* 253 F. Supp. 3d. 1318, 1322 (CIT 2017).

[115] *See* World Bank. (2024). GNI per capita (current US$), available at *https://data.worldbank.org/indicator/NY.GNP.PCAP.CD* (*see* ''details'' section in chart); comparable definition is in IMF, ''IMF Glossary'', available at *https://www.imf.org/en/About/Glossary.*

[116] *See* World Bank. (2024). GDP per capita (current US$), available at *https://data.worldbank.org/indicator/NY.GDP.PCAP.CD* (see ''details'' section in chart); comparable definition is in IMF, ''IMF Glossary'', available at *https://www.imf.org/en/About/Glossary.*

[117] *See Proposed Rule,* 89 FR at 57330.

[118] *Id.*

[119] *Id* (emphasis in the comment, not in the *Proposed Rule*).

[120] *See* Enforcement and Compliance's Policy Bulletin No. 04.1, regarding, ''Non-Market Economy Surrogate Country Selection Process'' (March 1, 2004), available on Commerce's ACCESS website at *https://access.trade.gov/Resources/policy/bull04-1.html.*

that commenter recommended that Commerce modify the current approach to balance economic comparability and merchandise comparability to make surrogate country determinations more predictable and consistent. Particularly in the case of products that are only produced in a few countries, that commenter suggested that Commerce place more weight on merchandise comparability to allow for the selection of a country that is likely to provide market-based factor values for the subject merchandise, even though its overall economy over time may have improved or declined relative to a nonmarket economy country. To assess merchandise comparability, the third commenter cited the *Shanghai Foreign Trade* litigation where Commerce identified various factors that allow parties to analyze, rank, and anticipate which merchandise will be considered comparable for purposes of section 773(c)(4)(ii) of the Act.[121] The Court in *Shanghai Foreign Trade* recognized that Commerce's established practice in selecting surrogate financial statements was to apply a three-part test that examines ''physical characteristics, end uses, and production processes'' [122] of the products produced by a company in a surrogate country to see if they were comparable.

In addition, the third commenter also recommended that Commerce not arbitrarily foreclose the use of the country producing identical or more comparable merchandise simply because it is not one of the countries deemed by Commerce to be ''the same'' as the subject nonmarket economy country in terms of economic comparability in its annual list of comparable economies. That commenter recommended that both economic comparability and merchandise comparability factors should be weighed such that a country outside the current six-country GNI list might still be selected as the surrogate country based on significant production of identical merchandise (or merchandise that is more comparable to the subject merchandise than any products produced in any of the six listed countries).

Lastly, a fourth commenter stated that it generally supported Commerce's proposed changes. However, that commenter was concerned that placing primary emphasis on ''either *per capita* gross domestic product (GDP) or *per capita* gross national income (GNI) . . .'' [123] provides an equivocation that incorporates an additional and unnecessary element of uncertainty in an already complicated process of surrogate country selection. That commenter stated that given Commerce's long-standing and successful utilization of GNI alone, it recommended that Commerce codify the use of GNI in place of the current reference to GDP. With respect to the additional factors, the fourth commenter stated that it supported Commerce's proposal to incorporate into § 351.408(b) the qualitative analysis of the availability of potential surrogate values, but only in part.

For the first proposed factor (*i.e.,* economic activity), the fourth commenter stated that the reference in the *Proposed Rule,* to ''development phase and role in the global economy,'' [124] was too ambiguous and could be ripe for abuse even if not incorporated into the text of the regulation. The commenter stated that the phrase runs counter to Commerce's longstanding practice that its selection of surrogate values, such as surrogate companies for financial ratios, does not require Commerce to use surrogates that exactly replicate the experience of respondents. As for the second proposed factor (*i.e.,* examination of trade patterns), the fourth commenter stated that the proposed revision inadvertently suggested that the import and export analysis may include commodities other than identical or comparable merchandise. That commenter therefore recommended that Commerce modify the regulation to consider the composition and quantity of ''exports of identical or comparable merchandise'' from those countries.

The commenter supported the third proposed factor (*i.e.,* availability, accessibility, and quality of data), noting that Commerce includes similar elements in its deliberation.[125]

Finally, for the fourth proposed factor (*i.e.,* additional economic factors for consideration), the fourth commenter stated that the introduction of indicators in the preamble such as purchasing power parity to account for differences in spending power between countries could largely negate the standard analysis of economic comparability using either GNI or GDP. The fourth commenter also noted that another example provided in the preamble—''regional indicators that would allow Commerce, when reasonable, to select a surrogate country or countries that are in the same geographic region as the nonmarket economy country''—is so broad and subjective that it might nullify all other considerations, such as GNI or net exports of merchandise under consideration. Accordingly, the fourth commenter stated that it did not support this last factor, and it urged Commerce to not include such language in § 351.408(b).

Response

Upon consideration of the comments on Commerce's proposed revisions to § 351.401(b), it has become clear from the questions and concerns raised that a regulatory provision that only focuses on the ''Economic Comparability'' aspect of Commerce's analysis is not sufficient. Accordingly, Commerce has revised the provision, codified each of the three steps in selecting surrogate countries, and revised the header of the provision to read ''Selecting Surrogate Countries.''

The first step, now codified in § 351.408(b)(1), explains that Commerce is directed by sections 773(c)(2)(B) and 773(c)(4)(A) of the Act to select surrogate countries which are at a level of economic development comparable to that of the nonmarket economy at issue. Furthermore, unlike in the *Proposed Rule,* final § 351.408(b)(1)(i) provides that in measuring economic comparability, Commerce will place primary emphasis solely on GDP. Commerce acknowledges the concerns expressed by several commenters that if Commerce had the option of using either GNI or GDP in determining economic comparability, it could potentially lead to perceived inconsistencies and otherwise lead to confusion associated with the use of either measurement of economic comparability. After taking into consideration those comments, Commerce has determined that the agency and the public is best served by a single, consistent and predictable measurement to determine countries economically comparable to a nonmarket economy in all cases.

As Commerce acknowledged in the *Proposed Rule,*[126] for several years it has used GNI levels to measure economic comparability, a practice that

[121] *See, e.g., Shanghai Foreign Trade Enterprises Co., Ltd.* v. *United States,* 318 F. Supp. 2d 1339, 1348 (CIT 2004) (*Shanghai Foreign Trade*).

[122] *Id.* (citing *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Administrative Review,* 67 FR 48612 (July 25, 2002), and accompanying Issues and Decision Memorandum at Comment 5).

[123] *See Proposed Rule,* 89 FR at 57330.

[124] *Id.,* 89 FR at 57307, 57330.

[125] *See, e.g., Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2019–2020,* 86 FR 33,988 (June 28, 2021), and accompanying Issues and Decision Memorandum (June 21, 2021) at 16–17.

[126] *Id.*

has been upheld by the CIT in multiple cases as being in accordance with law.[127] However, as explained below, for purposes of comparing different economies for purposes of an AD analysis, the use of GDP levels is a more appropriate alternative. Accordingly, final § 351.408(b) will continue to provide that Commerce will use GDP to determine countries economically comparable to each nonmarket economy at issue in cases before it, starting with the next list of comparable economies issued by Commerce following the publication of this final rule.

Commerce recognizes that there are similarities between GNI and GDP, and both are acceptable options for measuring economic comparability. Both indicators are close to one another numerically and represent important means of measuring a country's overall economic activity. Some authoritative institutions, such as the World Bank, regularly publish both indicators and have found that GNI provides a useful indicator that is ''closely correlated with other, nonmonetary measures of the quality of life, such as life expectancy at birth, mortality rates of children, and enrollment rates in school.'' [128] Moreover, the World Bank often relies on *per capita* GNI levels more heavily than per capita GDP levels as a means of measuring countries' income, as it includes earnings a country's citizens receive either within its borders or from its foreign assets.[129] Other authoritative institutions, such as the Organization for Economic Cooperation and Development (OECD), also publish both indicators on a regular basis, and have found that many analysts prefer the theoretical construct of GNI over GDP, given its ability to isolate income earned by all of its citizens regardless of geographic boundaries.[130] For reasons such as this, Commerce has relied upon GNI in making economic comparisons for several years.

However, while there are benefits to using GNI when investigating relative levels of wealth across countries, Commerce has determined that the use of GDP would be more appropriate for this specific function. Primary among those reasons is that GDP measures the total value of goods and services produced within a country's borders during a specific period, while GNI measures the total income earned by citizens and residents, including money received from sources outside the country. According to the World Bank, the technical definition of GDP is ''the sum of gross value added by all resident producers in the economy plus any product taxes and minus any subsidies not included in the value of the products,'' and represents the income citizens earn on wealth they hold in the domestic economy and in other countries less the payments made to foreign owners of wealth located in the domestic economy.[131] Using GDP, rather than GNI, avoids the challenges associated with measuring international salaries of citizens outside of the country of measurement associated with the GNI calculations. Accordingly, GDP is often considered among economic institutions and authorities to be the more practical of the two indicators.[132]

Furthermore, because of the complexities associated with estimating GNI, GDP is widely used by economic institutions which compare economies. Although each measure of economic aggregation has its shortcomings, the OECD characterizes GDP as ''a core indicator of economic performance and is commonly used as a broad measure of average living standards or economic well-being,'' while the Federal Reserve Bank of St. Louis classifies it as ''one of the most common measures.'' [133] Furthermore, the International Monetary Fund (IMF), states that GDP ''has become widely used as a reference point for the health of national and global economies'' and that it is often cited in news sources and in reports by governments, central banks, and the business community.[134] In fact, as the primary measure of production in the international guidelines for economic accounting (System of National Accounts), the United States moved to the use of GDP to compare countries in the 1990s.[135] The Bureau of Economic Analysis, which is the U.S. government agency responsible for reporting aggregated economic output for the country, explained that this move was based in large part by a desire to allow ''reliability in comparisons of economic activity across countries.'' [136]

Finally, while GNI may be a more accurate indicator of national wealth, it is less aligned with Commerce's objective of finding countries at comparable levels of economic development for the purposes of identifying appropriate surrogate for factors of production. GDP focuses squarely on a country's production. Reliance on GDP will also ensure that country comparisons will not be skewed by disproportionally high or low incomes of country citizens that lie outside the geographic boundaries of the comparison countries.

To the extent that commenters raised concerns about the use of GDP, it was because Commerce has relied upon GNI to measure economic comparability for many years and its methodology had become transparent and predictable. Commerce continues to believe that its use of GNI has, historically, been lawful, reliable and transparent, and until Commerce issues its next list of comparable economies, Commerce will continue to rely on its current list of comparable economies determined based on GNI (which can be accessed at *https://access.trade.gov/Resources/surrogate.aspx*) after this final rule is issued. When Commerce next issues its list of comparable economies, it will be based on GDP data from the World Bank, consistent with both the current and revised regulations. For comparability purposes, and for consistency with how Commerce used GNI, the World Bank's GDP indicator will be US$ denominated nominal GDP levels.

In addition to the switch from relying on GNI data to GDP data, under final § 351.408(b)(1)(ii) Commerce may also

[127] *Id.* at n.128.

[128] Why Use GNI Per Capita To Classify Economies Into Income Groupings?, World Bank, available at *https://datahelpdesk.worldbank.org/knowledgebase/articles/378831;* Neil Fantom and Umar Serajuddin, The World Bank's Classification of Countries by Income, World Bank, available at *https://documents1.worldbank.org.*

[129] Why Use GNI Per Capita To Classify Economies Into Income Groupings?, World Bank, available at *https://datahelpdesk.worldbank.org/knowledgebase/articles/378831.*

[130] *See* National Income Per Capita, *OECD Factbook: Economic, Environmental and Social Statistics* (May 6, 2014) (OECD Factbook 2014), available at *https://oecd-ilibrary.org/economics/oecd-factbook-2014/national-income-per-capita_factbook-2014-21-en.*

[131] World Bank, ''GDP Per Capita'' in Metadata Glossary of World Bank's Databanks, available at *https://databank.worldbank.org/metadataglossary/world-development-indicators/series/NY.GDP.PCAP.KN. See also Paul Krugman & Maurice Obstfeld, International Economics: Theory and Practice (7th ed.* 2005), at 281.

[132] *See* OECD Factbook 2014 at 58.

[133] *See* ''*GDP Per Capita,*'' *OECD National Accounts at a Glance 2014* (2014), available at *https://www.oecd-ilibrary.org/docserver/na_glance-2014-6-en.pdf,* and Grittayaphong, Peter, *Beyond GDP: Three Other Ways to Measure Economic Health,* Federal Reserve Bank of St. Louis (April 19, 2023), available at *https://www.stlouisfed.org/open-vault/2023/apr/three-other-ways-to-measure-economic-health-beyond-gdp.*

[134] *See* Tim Callen and Sarwat Jahan, *Gross Domestic Product: An Economy's All,* International Monetary Fund: IMF's Finance & Development -Back to the Basics, available at *https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/gross-domestic-product-GDP.*

[135] *See* Gross Domestic Product as a Measure of U.S. Production, Bureau of Economic Analysis: Survey of Current Business, available at *https://apps.bea.gov/scb/pdf/national/nipa/1991/0891od.pdf;* Kelly Ramey, The Changeover from GNP to GDP—A Milestone in BEA History, Bureau of Economic Analysis, Volume 101, available at *https://apps-fd.bea.gov/scb/issues/2021/03-march/pdf/0321-reprint-gnp.pdf.*

[136] *Id.*

consider additional factors in determining whether countries are at a comparable level of economic development to the reference non-market economy. In the proposed regulation, Commerce set forth factors such as the ''overall size and composition of economic activity in those countries'' and ''the composition and quantity of exports from those countries.'' [137] Certain commenters questioned how those general terms would relate to Commerce's comparable economy analysis. After consideration of those concerns Commerce has removed the factors from the regulation, instead clarifying here in greater detail than the *Proposed Rule* that in certain cases Commerce might consider additional factors that would be relevant to economic comparability, such as if the size or structure of certain market economies under consideration are significantly different from that of the nonmarket economy at issue. For example, a small island country might share a GDP level with a nonmarket economy in a particular year, but Commerce might determine that the uniqueness of the market economy's situation is such that it would be inappropriate to consider that small island country comparable to the nonmarket economy at issue for purposes of deriving surrogate values to use in Commerce's antidumping calculations. Likewise, Commerce might consider that an economy with a similar GDP in a certain year to the nonmarket economy is primarily agrarian or service-oriented, while the nonmarket economy might be structured as a primarily industrial economy. Commerce might therefore consider that notwithstanding a similar GDP, other countries may serve as better comparators given Commerce's interest in finding surrogates for price and costs in production.

Commerce recognizes that there might be other factors, unique to a given situation, that may also warrant further consideration in determining if country should be used as a surrogate. To be clear, if Commerce determined to omit certain countries from its surrogate country list based on factors other than GDP, Commerce would identify those factors and explain its basis and reasoning for excluding that country from the surrogate country list when it issues that list on the Commerce website.[138]

Finally, under the economically comparable analysis, Commerce has codified its current practice and added § 351.408(b)(1)(iii), which states that on an annual basis, Commerce will determine market economies economically comparable to individual nonmarket economies and list those market economies on its website.

In addition to its economically comparable analysis, Commerce has also codified the second step of its surrogate country analysis at § 351.408(b)(2). Sections 773(c)(2)(A) and 773(c)(4)(B) of the Act direct Commerce to consider countries that are significant producers of merchandise comparable to the subject merchandise. Accordingly, after issuing a list of certain countries that are economically comparable under § 351.408(b)(1), Commerce will next select significant producers of comparable merchandise under § 351.408(b)(2) from among economically comparable countries.

Lastly, the third step, under § 351.408(b)(3), provides that if there is more than one economically comparable country that produces comparable merchandise in a given case that might be considered a potential surrogate country, Commerce will consider the totality of the information on the record in selecting a surrogate country. Such criteria include the availability, accessibility, and quality of data from those countries and the similarity of production processes and products manufactured in the potential surrogate countries in comparison to the subject merchandise.

Commerce introduced the element of data quality in the *Proposed Rule,*[139] but did so with respect to the first step of its surrogate country analysis pertaining to economic comparability. As explained above, the inclusion of that element with respect to economic comparability raised concerns among commenters. Commerce agrees that in practice, although it may find that data availability, accessibility, and quality can at times be a concern, data quality normally does not become a significant issue until Commerce must select a surrogate country from among a list of economically comparable countries with significant producers of comparable merchandise. Even if Commerce has determined that a country is economically comparable to the nonmarket economy country, if the data quality on the record is unusable, insufficient data can create serious problems for the agency's normal value calculations. For example, incomplete data from a potential surrogate country may result in distorted surrogate values, which in turn can adversely affect Commerce's calculation of AD margins. Therefore, the data quality with respect to potential surrogate countries plays a pivotal role in ensuring the accuracy and transparency of the surrogate country selection process. Accordingly, Commerce has included the availability, accessibility, and quality of data element in the third step of Commerce's surrogate country selection analysis.

Commenters raised concerns regarding the proposed § 351.408(b)'s reliance on general economic comparability rather than focusing on the export composition of countries that produce merchandise identical or comparable to the subject merchandise. In response, Commerce included all three steps of its surrogate country analysis in the updated regulation, because while export composition is not part of the first step of Commerce's surrogate country analysis (which was the only part analyzed in the current regulation and addressed in the *Proposed Rule),* it is analyzed in the second and third parts of its analysis in selecting a surrogate country.

Another concern raised by certain commenters was Commerce's proposed inclusion of ''additional factors which are appropriate to consider in light of unique facts or circumstances'' with respect to its economic comparability analysis.[140] Commerce has not included that language in the final regulation but has retained the ''additional considerations in determining economic comparability'' at § 351.408(b)(1)(ii) and provided examples for when it might consider additional unique factors in its comparability analysis in this preamble. Commerce appreciates the need for predictability and consistency in its analysis but also recognizes that each country, whether a market economy or nonmarket economy, is unique, and if a factor arises in a given case that Commerce determines is significant and relevant enough to consider as part of its economic comparability analysis, Commerce must have the ability to do so to comply with its statutory responsibilities.

In addition, certain parties commented more specifically on the importance of the comparability of merchandise from a potential surrogate country. One commenter suggested that Commerce should at times place greater importance on the comparability of merchandise over the comparability of economies in selecting a surrogate country. In accordance with that suggestion, the commenter recommended that both economic

[137] *See Proposed Rule,* 89 FR at 57307.

[138] *See* § 351.408(b)(1)(ii) (codifying that Commerce will provide its reasoning as described).

[139] *Id.,* 89 FR at 57307.

[140] *See Proposed Rule,* 89 FR at 57330 (at proposed § 351.408(b)(4)).

comparability and merchandise comparability factors should be weighed such that a country outside the current six-country GNI list might still be selected as the surrogate country based on significant production of identical merchandise (or merchandise that is more comparable to the subject merchandise than any products produced in any of the six listed countries).

Commerce has not adopted that commenter's suggestion in revising § 351.408(b). The Act states that Commerce ''shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.'' [141] While economic comparability and comparable merchandise production are both important considerations in Commerce's surrogate country analysis, it is Commerce's longstanding practice to prioritize economic comparability, with the similarity of merchandise produced in those potential surrogate countries serving as a secondary aspect of Commerce's analysis. The Federal Circuit has stated that when a statute does not mandate a procedure or methodology for applying a statutory test, ''Commerce may perform its duties in the way it believes most suitable'' [142] and has affirmed Commerce's selection of surrogate countries in several cases on the basis of this methodology.[143] Indeed, consistent with this practice, Commerce's modified surrogate country memo affirms the prioritization of ''economic comparability'' in the surrogate selection process, while also acknowledging the relevance of selecting a ''significant producer of comparable merchandise.'' [144] Likewise, consistent with that practice, the revised regulation also prioritizes economic comparability, as reflected in the first, second and third steps of Commerce's surrogate selection analysis in § 351.408(b)(1), (2) and (3) of the final rule.

Nonetheless, Commerce agrees with that commenter that the similarity of merchandise produced by countries that are both economically comparable and significant producers of subject merchandise can be an important consideration in the agency's surrogate country analysis, depending on the facts on the administrative record. Accordingly, in analyzing the comparability of merchandise from potential surrogate countries with subject merchandise, Commerce has codified in § 351.408(b)(3) that besides the availability, accessibility and quality of data, Commerce will also consider the similarity of production processes and products manufactured in the potential surrogate countries to the subject merchandise. Consistent with Commerce's normal practice, Commerce may consider if the merchandise is identical or similar to the subject merchandise and may consider other factors besides the physical characteristics of the products if the administrative record contains such detailed information.[145]

14. Commerce Will Remove the Integral Linkage Specificity Provision, as Well as the Agricultural and Small- and Medium-Sized Businesses Exceptions to the Specificity Rule (Currently Found at § 351.502(d), (e), and (f))

It is axiom that Commerce will only countervail a subsidy program that provides benefits that are specific as that term is contemplated under U.S. CVD law; that is, not broadly available and widely used but narrowly focused and used by discrete segments of an economy.[146]

In the *Proposed Rule,* Commerce proposed removing the integral linkage specificity provision, as well as the agricultural and small- and medium-sized business exceptions to the specificity rule, currently found at § 351.502(d), (e), and (f).[147] Commerce received comments on these proposed changes. After considering those comments, Commerce is removing these provisions consistent with the *Proposed Rule.*

Integral Linkage Provision

Consistent with the proposed changes to the regulation, the agency will delete the integral linkage provision found at current § 351.502(d) pursuant to which Commerce, at its discretion, may expand its analysis of whether a particular investigated subsidy program is specific under section 771(5A)(D) of the Act by expanding its specificity analysis to programs other than that particular investigated subsidy program if the investigated subsidy program is ''integrally linked'' to other subsidy programs under investigation. The concept of integral linkage contained in § 351.502(d) was a discretionary practice at the time of its codification. There is not, and has never been, a statutory requirement to expand the analysis of specificity under section 771(5A)(D) of the Act beyond the particular investigated subsidy program. Since 1998, when Commerce added the integral linkage provision to the regulations, respondents have rarely invoked this provision, and Commerce has rarely found two or more subsidy programs to be integrally linked.[148] For these reasons, Commerce has determined to remove the integral linkage provision found at current § 351.502(d).

Two parties commented in opposition to the removal of the integral linkage provision. While they acknowledged Commerce's observation that there is no express statutory requirement to expand the analysis of specificity under section 771(5A)(D) of the Act, the commenters stated that the elimination of the regulation diminishes clarity and certainty by removing analytical standards deemed useful in resolving whether a measure satisfies the statute's specificity requirements. Commerce finds these arguments unpersuasive.

While the commenters state that the elimination of this regulation diminishes clarity with respect to Commerce's analytical standards, these parties have cited no cases or instances since this regulation was promulgated

[141] *See* sections 773(c)(4)(A) and 773(c)(4)(B) of the Act.

[142] *See JBF RAK LLC* v. *United States,* 790 F.3d 1358, 1364 (Fed. Cir. 2015).

[143] *See, e.g., Jiaxing Brother Fastener Co.* v. *United States,* 822 F.3d 1289, 1300 (Fed. Cir. 2016) (affirming Commerce's selection of Thailand over the Philippines as the surrogate country).

[144] *See* Memorandum, ''List of Surrogate Countries for Antidumping Investigations and Reviews from the People's Republic of China (''China''), dated August 27, 2024, available at *https://access.trade.gov/Resources/surrogate/China_Surrogate_Country-List_Memo.pdf.* The memorandum specifies that when multiple countries meet the criteria of economic comparability, the availability and quality of publicly available data should guide the selection process. Commerce's surrogate country memo also indicates that if no countries on the list produce comparable merchandise, Commerce may consider countries outside the list in selecting a surrogate country.

[145] As one commenter pointed out, in *Shanghai Foreign Trade* the CIT recognized that Commerce's practice in selecting surrogate financial statements, for example, is to compare not only the physical characteristics of the potential surrogate product with the subject merchandise, but the end use and similarity of production process between the products as well. *See Shanghai Foreign Trade,* 318 F. Supp. 2d at 1348. Such considerations might also be relevant in selecting a surrogate country, but only if the information on the record is of sufficiently quality and completeness to support such an analysis.

[146] *See, e.g.,* sections 771(5)(A) and 771(5A)(D) of the Act and SAA at 929–930.

[147] *See Proposed Rule,* 89 FR at 57308–10.

[148] *See, e.g., Countervailing Duties; Final Rule,* 63 FR 65348, 65357 (November 25, 1998) (*1998 CVD Regulations*); *see also* the *Preamble* to *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366, 23368 (May 31, 1989) (*1989 Proposed Regulations*). The 1989 Proposed Regulations were never finalized.

in which the integral linkage provision provided useful guidance or clarity to Commerce's analysis of a subsidy program's specificity. Because the integral linkage provision is not required by the Act and has not provided any useful assistance or clarity to the agency's specificity analysis conducted under section 771(5A)(D) of the Act, Commerce has removed the provision from the regulation.

The Agricultural Exception

Consistent with the proposed changes to the regulation, in this final rule Commerce has removed the agricultural exception found at current § 351.502(e). Current § 351.502(e) provides that Commerce will not regard a domestic subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to the agricultural sector. When paragraph (e) was issued, Commerce explained that this exception for generally available agricultural subsidies was consistent with prior practice and that Commerce would find an agricultural subsidy to be countervailable only if it were specific *within* the agricultural sector, *e.g.,* a subsidy limited to livestock or livestock received disproportionately large amounts of the subsidy.[149]

This regulation was based on Commerce's decisions in several cases during the 1980s, including *Asparagus from Mexico,*[150] *Fresh Cut Roses from Israel,* [151] and *Certain Fresh Cut Flowers from Mexico.*[152] In *Asparagus from Mexico,* Commerce determined that the provision of water to agricultural producers was not countervailable, explaining: ''{p}referential rates are not provided to the producers of any one agricultural product'' and ''{w}e do not consider the provision of water at a uniform rate to all agricultural producers in this region to be a benefit, which would constitute a bounty or grant, because Commerce considers the agricultural sector to constitute more than a single group of industries within the meaning of the Act.'' [153] Commerce cited this finding in support of its determination that benefits from government-funded agricultural extension services were not countervailable in *Fresh Cut Roses from Israel.*[154] This practice of considering the agricultural sector to constitute more than a specific industry or group of industries was reaffirmed again in *Certain Fresh Cut Flowers from Mexico.*[155]

Commerce's conclusion in this regard on the application of the CVD law was upheld by the CIT in *Roses Inc.* v. *United States,* where the Court held that ''Commerce's determination that a group composed of all of agriculture, that is, whatever is not services or manufacturing, is not within the meaning of the statutory words 'industry or group of industries' is a reasonable interpretation of the statute.'' [156]

Commerce first attempted to codify a specificity exception for the agricultural sector in the *1989 Proposed Regulations,* which were never finalized.[157] When Commerce attempted to codify this agricultural exception the agency was administering the CVD law with limited guidance from the Act with respect to the analysis of specificity. The CVD law did not have an explanation or a definition of a ''specificity test'' which is now incorporated under the current statute. In addition, the Trade Agreements Act of 1979 that governed Commerce's administration of the CVD law at that time did not set forth any criteria with respect to the analysis of specificity. Section 771(5)(B) of the Trade Agreements Act of 1979 only referenced domestic subsidies ''provided or required by government to a specific enterprise or industry, or group of enterprises or industries.'' Indeed, the criteria to be used in any specificity analysis undertaken by Commerce was not in the Act but only in the *1989 Proposed Regulations.*

The agricultural exception that was codified in § 351.502(e) in the *1998 CVD Regulations* was based upon the *1989 Proposed Regulations.* With respect to the codification in 1998 of the agricultural exception in § 351.502(e), one commenter suggested that Commerce should abandon the special specificity rule for agricultural subsidies citing section 771(5B)(F) of the Act and Article 13(a) of the WTO Agreement on Agriculture referencing the so-called ''green box'' category of non-countervailable agricultural subsidies. In response to that comment, Commerce stated that ''[g]iven the absence of any indication that Congress intended the 'green box' rules to change the Department's practice or overturn *Roses,* Commerce is retaining the special specificity rule for agricultural subsidies.'' [158]

Commerce has now reconsidered its exception for agricultural subsidies. A blanket specificity exception provided to agricultural subsidy programs denotes a conclusion by Commerce unrelated to any case-related (or case-specific) facts regarding the availability and use of a subsidy by any enterprise or industry or group thereof and that every country that is subject to a CVD investigation has an identical agricultural sector within its economy. The SAA states that Commerce can only make a specificity determination on a case-by-case basis.[159] Accordingly, it is more consistent with the SAA to eliminate the blanket specificity exception for the group of enterprises or industries in agriculture.

The elimination of the agriculture exception to specificity should not be construed as a change in policy by Commerce, nor does it imply a renewed emphasis on pursuing any particular agricultural subsidies or agricultural subsidies in general. Rather, Commerce's analysis of whether an agricultural subsidy is specific will be conducted on a case-by-case basis, consistent with the SAA, based on an examination of the specificity criteria enacted under section 771(5A)(D) of the Act within the framework of the specificity test set forth in the SAA. Commerce is legally bound by these criteria. In practice, the agricultural exception has not been a deciding factor in Commerce's analysis of agricultural subsidies because, as commenters have noted, Commerce has countervailed agricultural subsidies consistent with the specificity standards set forth within section 771(5A)(D) of the Act.[160]

Comments on the removal of the agricultural exception from the

[149] *See 1998 CVD Regulations,* 63 FR at 65357–58.

[150] *See Final Negative Countervailing Duty Determination: Fresh Asparagus from Mexico,* 48 FR 21618, 21621 (May 13, 1983) (*Asparagus from Mexico*).

[151] *See Fresh Cut Roses from Israel: Final Results of Administrative Review of Countervailing Duty Order,* 48 FR 36635, 36636 (August 12, 1983) (*Fresh Cut Roses from Israel*).

[152] *See Certain Fresh Cut Flowers from Mexico,* 49 FR 15007, 15008 (April 16, 1984) (*Certain Fresh Cut Flowers from Mexico*).

[153] *See Asparagus from Mexico,* 48 FR at 21621.

[154] *See Fresh Cut Roses from Israel,* 48 FR at 36636.

[155] *See Certain Fresh Cut Flowers from Mexico,* 49 FR at 15008.

[156] *See Roses Inc.* v. *United States,* 774 F Supp. 1376, 1383–84 (CIT 1991).

[157] *See 1989 Proposed Regulations* at § 355.43(b)(7).

[158] *1998 CVD Regulations,* 63 FR at 65358.

[159] *See* SAA at 930.

[160] *See, e.g., Sugar from Mexico: Final Affirmative Countervailing Duty Determination,* 80 FR 57337 (September 23, 2015), and accompanying Issues and Decision Memorandum; *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination,* 78 FR 50387 (August 19, 2013), and accompanying Issues and Decision Memorandum; *Final Affirmative Countervailing Duty Determinations: Certain Durim Wheat and Hard Red Spring Wheat from Canada,* 68 FR 52747 (September 5, 2003), and accompanying Issues and Decision Memorandum; and *Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination,* 83 FR 28186 (June 18, 2018), and accompanying Issues and Decision Memorandum.

regulation were evenly split between those parties that supported the removal of the specificity exception and those that opposed.

The commenters that supported the removal of the agricultural exception stated that there is no basis under current law to maintain a regulatory exception that conflicts with both the statutory language of section 771(5A)(D) of the Act and the SAA. Other commenters that supported the removal of the exception also noted the changing economic landscape of the agricultural sector since the agricultural exception was implemented by Commerce in the 1980s.

Those commenters that opposed the removal of the agricultural exception stated the following general points: (1) Commerce did not clearly indicate how the Act requires or permits the agency to delete the exception from the agency's regulation; (2) the removal of the exception would be inconsistent with the statute and Congress' affirmation of Commerce's agricultural exception practice; (3) domestic agricultural policies and broad-based agricultural subsidies are generally considered a normal function of government and, therefore, should not be susceptible to countervailing actions; (4) the agricultural exception has not prevented Commerce from conducting CVD investigations on agricultural products; (5) the agricultural sector is highly diverse and is composed of more than a single group of enterprises or industries within the meaning of section 771(5A)(D) of the Act; and (6) removing the exception would send the wrong signal to U.S. trading partners.

Response

Before addressing these comments, Commerce must first address another point made by various commenters regarding the reference Commerce made to the economic criteria and the economic importance of the agricultural sector in the *Proposed Rule.* In the *Proposed Rule,* Commerce referenced various economic factors of the agricultural sector during the early 1980s when the agency created its agricultural exception and then explained how those economic factors may have changed in the ensuing four decades.[161] These factors were cited in the *Proposed Rule* to explain, in part, how Commerce analyzed the specificity of investigated agricultural subsidies in the early 1980s when there was, as explained above, no statutory criteria with respect to analyzing whether a subsidy was limited to a specific enterprise or industry or group of enterprises or industries.[162] Commerce also referenced these factors in an attempt to make the point that a blanket and static specificity exception provided to any one group of enterprises or industries could become *de facto* obsolete over a long period of time.[163] Commerce did not intend to suggest that any analysis of specificity should or could be based solely on this type of economic data as that type of restricted analysis would be inconsistent with the SAA. The SAA is explicit on this point as it states that there is no precise mathematical formula for determining when the number of enterprises or industries eligible for a subsidy is sufficiently small as to be considered specific.[164] A proposal to establish such quantitative criteria was made during the Uruguay Round but was quickly rejected by the United States and many other participants.[165]

The comments received by Commerce make clear that the discussion of various economic criteria in the *Proposed Rule* was confusing to the public and could be subject to various interpretations, some of which could be inconsistent with the agency's intent and with the SAA. Therefore, Commerce has not included that language in the preamble to this final rule.

As to the remaining submissions, concerns that Commerce's removal of the agricultural exception is in violation of or inconsistent with the Act are without legal foundation. Congress incorporated the SAA and the specificity test established within the SAA into U.S. law; in addition, section 771(5A)(D) of the Act contains the criteria that Commerce must apply in its analysis to determine whether a subsidy program is specific. Nothing in the Act or the SAA prohibits Commerce from considering whether agriculture provides a basis for specificity. Removing the regulation that provided a blanket specificity exception for the agricultural sector recognizes the case-by-case nature of a specificity analysis consistent with the Act.

The commenters' statement that Congress has affirmed Commerce's agricultural specificity exception is incorrect. To support this claim, the parties cited the preamble to the *1998 CVD Regulation* where Commerce stated that ''[g]iven the absence of any indication that Congress intended the 'green box' rules to change the Department's practice or overturn *Roses,* Commerce is retaining the special specificity rule for agricultural subsidies.'' [166] However, it is clear from the context of the cited language in the preamble that it was solely related to an argument that Commerce should abandon the agricultural exception because of the creation of a category of ''green box'' agricultural subsidies under section 771(5B)(F) of the Act. Thus, the statement in the preamble referenced by these parties is unpersuasive as the issue of ''green box'' subsidies is unrelated to the removal of this exception. Commerce also notes that the treatment of ''green box'' agricultural subsidies under section 771(5B)(F) of the Act has long-since lapsed and is no longer applicable under the CVD law. Thus, the prior statutory exception to countervailing certain subsidies to the agricultural sector is no longer in effect.

Commenters opposing the removal of the agricultural exception also state that broad-based agricultural subsidies are a normal function of government and, therefore, should not be susceptible to countervailing actions. Commerce finds this argument unavailing as Commerce has the authority under the Act to countervail support that meets the statutory requirements for a countervailable subsidy, and these Commenters have not pointed to any statutory provision that prohibits Commerce from considering whether subsidies to the agricultural sector are countervailable. Congress has not exempted agricultural subsidies from the CVD law. In fact, to the contrary, a specific provision at section 771B of the Act addresses subsidies provided to processed agricultural products.

To support the claim that Commerce should not remove the agricultural exception, commenters stated that the exception has not prevented Commerce from investigating and countervailing agricultural subsidies. Yet the fact that the agency has countervailed agricultural subsidies under the existing regulations highlights the irrelevance of this exception and the lack of a need for it in the first place.

The commenters opposing the removal of the agricultural exception also stated that the agricultural sector is highly diverse and is composed of more than a single group of enterprises or industries within the meaning of section 771(5A)(D) of the Act. Commerce does not disagree that the agricultural sector is generally highly diverse and may be composed of more than a single group of enterprises or industries. At the same

[161] *See Proposed Rule,* 89 FR at 57308–57309.

[162] *Id.*

[163] *Id.*

[164] *See* SAA at 929–30.

[165] *Id.* at 930.

[166] *See 1998 CVD Regulations,* 63 FR at 65358.

time, section 771(5A)(D) of the Act requires that Commerce determine whether a subsidy, including an agricultural subsidy, is limited to a group of enterprises or industries on a case-by-case basis,[167] and therefore Commerce has removed the agricultural exception consistent with the *Proposed Rule.*

In sum, the statements made by these commenters do not support the need to have a blanket and static specificity exception, especially because Commerce will continue to consider the issue of specificity based on the language in the SAA and section 771(5A)(D) of the Act.

Finally, one commenter opposing the removal of the agricultural exception stated that its removal would disavow agriculture's unique situation and would send the wrong signal to U.S. trading partners. Commerce disagrees. As stated above, the elimination of the agriculture exception to specificity should not be construed as a change in policy by Commerce; indeed, Commerce has previously found certain subsidies to enterprises or industries in the agricultural sector to be countervailable.

One commenter did not directly oppose the removal of the exception but emphasized that Commerce's analysis of specificity should be consistent with the specificity criteria that are set forth in Article 2 of the WTO Agreement on Subsidies and Countervailing Measures (the SCM Agreement).[168] Commerce agrees with this commenter, as the specificity criteria set forth within Article 2 of the SCM Agreement are incorporated within section 771(5A)(D) of the Act.

Small- and Medium-Sized Business Exception

Commerce proposed deleting the small- and medium-sized business exception to the specificity rule currently found at § 351.502(f).[169] That regulation states that Commerce ''will not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to small firms or small- or medium-sized firms (SMEs).'' The specificity test discussed in the SAA states that Commerce will find not specific only those subsidy programs ''which truly are broadly available and widely used throughout an economy.'' Therefore, Commerce has determined in this final rule to eliminate the specificity exception provided to SMEs under § 351.502(f), consistent with the SAA.

A blanket specificity exception provided to SME subsidy programs suggests a conclusion by Commerce that every country that is subject to a CVD investigation has an identical or similar economy with respect to the role played by SMEs. The SAA and the language of section 771(5A)(D) of the Act require that Commerce analyze specificity based upon the ''jurisdiction of the authority providing the subsidy'' and makes clear that specificity can be found when a subsidy is limited to any ''group'' of enterprises or industries. Accordingly, Commerce has determined that it is appropriate to delete the SME exception that was under § 351.502(f), as the specificity of SME subsidy programs should be determined on a case-by-case basis, pursuant to the language of the SAA and section 771(5A)(D) of the Act.

Commerce's deletion of the SME exception, like the deletion of the agriculture exception, should not be construed as a change in the agency's policy or practice. In fact, the SME exception has also not been a deciding factor when raised, as Commerce has countervailed SME programs meeting the specificity standards set forth within section 771(5A)(D) of the Act.[170] These two blanket specificity exceptions have been removed from our regulations, consistent with both the SAA and section 771(5A)(D) of the Act.

A subsidy allegation that alleges specificity solely because a program is limited to SMEs, in general, would not normally be sufficient to support an allegation of *de jure* specificity. With a specificity allegation made under section 771(5A)(D)(iii) of the Act, the agency would also normally expect that the interested party explain why there would be a reason to believe or suspect than an SME program would be *de facto* specific based upon information reasonably available to it.

Four commenters submitted comments in support of the removal of the SME exception and two commenters opposed the deletion of the SME exception. The parties that opposed the removal of the SME exception stated that there is no conflict between the SME exception and the SAA. They submit that both the SCM Agreement and U.S. law provide that a subsidy program is not *de jure* specific if it sets forth objective criteria that are ''economic in nature and horizontal in application, such as the number of employees or the size of the enterprise.'' [171]

The parties submit that the SAA states that there are ''many instances in which U.S. law or administrative practice will remain unchanged under the Uruguay Round Agreements'' and that the *de jure* specificity prong of the statute ''is consistent with existing Commerce practice.'' The parties also submit that finding programs for SMEs not specific is consistent with the original purpose of the specificity test that is set forth in the SAA.

Response

While the first two statements are indeed accurate reflections of the language within the SAA and that a finding that an SME program is not specific, based on the facts on the record, may be consistent with the SAA's specificity test; however, these statements do not directly address the current regulatory provision for a blanket and static specificity exemption for SME programs. Commerce also notes that with respect to the cited SAA statement that the *de jure* specificity prong of the statute ''is consistent with existing Commerce practice,'' the SME exception cited to section 771(5A)(D) of the Act which covers both *de jure* as well as *de facto* specificity. Ultimately, Commerce is of the view that a decision of whether a subsidy is limited to an enterprise or industry or group of enterprises or industries within the

[167] *See* SAA at 930.

[168] *See* Agreement on Subsidies and Countervailing Measures (SCM Agreement); 19 U.S.C. 3511 (Approval and entry into force of Uruguay Round Agreements'') (December 9, 1994).

[169] *See Proposed Rule,* 89 FR at 57308–310.

[170] *See, e.g., Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521 (April 4, 2011), and accompanying Issues and Decision Memorandum discussing the Fund for SME Bank-Enterprise Cooperation Projects; and *Large Diameter Welded Pipe from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2018–2019,* 86 FR 42779 (August 5, 2021), and accompanying Issues and Decision Memorandum discussing Smart Factory Construction and Advancement Project program.

[171] The commenters' description of the CVD law is not a completely accurate statement of U.S. law. Section 771(5A)(D)(ii) of the Act is a corollary clause to *de jure* specificity. Under clause (ii), a subsidy would not be deemed to be *de jure* specific merely because it was bestowed pursuant to certain eligibility criteria. However, the eligibility criteria or conditions must be objective, clearly documented, capable of verification, and strictly followed. In addition, eligibility for the subsidy must be automatic where the criteria are satisfied. Finally, clause (ii) defines the term ''objective criteria or conditions'' as criteria or conditions that are neutral and that do not favor one enterprise or industry over another. The quoted language referenced by these parties is taken from page 930 of the SAA and is taken out of context from the full definition of ''objective criteria or conditions.'' The SAA states that ''the objective criteria or conditions must be neutral, must not favor certain enterprises or industries over others, and must be economic in nature and horizontal in application, such as the number of employees or the size the enterprise.'' Therefore, the SAA sets forth three different legal requirements for ''objective criteria or conditions'' and these are (1) must be neutral, (2) must not favor certain enterprises or industries over others, and (3) must be economic in nature and horizontal in application, such as the number of employees or the size of the enterprise.

meaning of section 771(5A)(D) of the Act must be made on a case-by-case basis based upon record evidence.

Accordingly, after careful consideration of the comments received on this issue, Commerce has removed the SME exception from the regulations for the reasons set forth above.

15. Commerce Will Revise and Move the Disaster Relief Exception to the Specificity Rule and Create an Employment Assistance Program Exception to the Specificity Rule, in § 351.502(d) and (e), as Proposed, With Slight Modifications

As stated above, for Commerce to find benefits provided by a particular program to be countervailable, the program must provide benefits that are specific as that term is contemplated under U.S. CVD law; that is, not broadly available and widely used but narrowly focused and used by discrete segments of an economy. In the *Proposed Rule,* Commerce proposed updating the disaster relief exception to the specificity rule and moving it from § 351.502(g) to § 351.502(d).[172] Commerce is now codifying that proposed move and updating the regulation in this final rule. The current disaster relief regulation states that Commerce will not regard disaster relief as being specific under section 771(5A)(D) of the Act if such relief constitutes general assistance available to anyone in the area affected by the disaster. With the onset of the global COVID–19 pandemic, Commerce encountered certain government programs that provided COVID–19 relief to individuals and enterprises affected by the pandemic. Where the assistance was generally available to any individual or enterprise in the area affected by the pandemic, Commerce found the assistance to be not specific.

It was unclear under the current disaster relief specificity exception whether the definition of ''disaster relief'' included relief provided during a pandemic. Commerce's practice of finding pandemic relief (if available to any individual or enterprise in the affected area) to not be countervailable because the relief was determined to be not specific under section 771(5A)(D) of the Act has been uncontroversial. However, Commerce has modified the regulatory language to specify that Commerce will not regard disaster relief, including pandemic relief, as being specific under section 771(5A)(D) of the Act if such relief constitutes general assistance available to any individual or enterprise in the area affected by the disaster. This exception to specificity provided to disaster relief, including pandemic relief, would not apply when this relief is limited on an industry or enterprise basis because the relief would not be available to all individuals or enterprises in the area affected by the disaster.

Similar to the exception provided for disaster relief assistance, Commerce proposed a new employment assistance program exception to the specificity rule at § 351.502(e) in the *Proposed Rule.*[173] As with the disaster relief assistance provision, Commerce is now codifying that proposed regulation in this final rule. Under Commerce's current practice, the agency does not generally find employment assistance programs that are created to promote the employment of certain classes or categories of workers or individuals to be specific.[174] Under this new rule at § 351.502(e), Commerce will regard employment assistance programs as being not specific under section 771(5A)(D) of the Act if such assistance is provided solely with respect to employment of general categories of workers, such as those based on age, gender, disability, veteran, and unemployment status, and is available to any individual with one or more of these characteristics without any industry restrictions.

In examining the specificity of these types of employment assistance programs, similar to unemployment programs, programs that focus on the general employment of certain classes of individuals without industry- and enterprise-based restrictions would not be specific within the meaning of section 771(5A)(D) of the Act.

However, job creation or retention programs that provide incentives to certain enterprises or industries, such as those implemented to attract new firms or industries or to provide incentives for firms to expand, would not fall within this exception. Similarly, any employment program related to the hiring of employees with specific job skills such as high-tech or engineering skills would also not fall within this exception. Rather, the specificity of such programs will continue to be determined on a case-by-case basis pursuant to the language of the SAA and section 771(5A)(D) of the Act.

Two commenters submitted comments with respect to disaster relief and general employment exceptions. One party commented that Commerce failed to explain why it is appropriate to codify the agency's practice of not finding programs that are created to promote the employment of certain classes or categories of individuals to be specific. That commenter stated that while disaster relief—the other sole remaining exception—can be seen as a unique situation, it is unclear why employment assistance merits a regulatory exception. However, this party stated that if Commerce wanted to codify this practice it should ensure that the regulatory language is consistent with the explanation of the regulation provided by the agency in the preamble to the proposed rule. Therefore, this party recommended two changes to the text of this regulation that are highlighted: (1) assistance is provided solely with respect to *general* categories of workers; and (2) the assistance is available to everyone hired within those categories without any industry *or enterprise* restrictions. Commerce finds these suggestions improve the regulation and has made these changes in these *Final Rules.*

Another commenter stated that with respect to both the disaster relief and general employment exceptions, Commerce should clarify whether these types of programs may be *de facto* specific or regionally specific if the facts of the case would normally support such a finding.

With the removal of the exceptions for agricultural and small- and medium-sized businesses, Commerce has only codified two specificity exceptions for disaster relief and the general employment of categories of workers. The purpose and focus of the CVD law and specificity as set forth within the statute is based upon whether, on a *de jure or de facto* basis, a government has created a subsidy program that may distort the market allocation of resources by limiting that subsidy program, and the benefits from that subsidy program, to an enterprise or industry or a group of enterprises or industries.[175] The remaining exceptions for disaster relief and general employment of categories of workers are unrelated to the enterprise or industry

[172] *See Proposed Rule,* 89 FR at 57310.

[173] *Id.*

[174] *See, e.g., Certain Steel Nails from Korea the Republic of Korea: Final Negative Countervailing Duty Determination,* 80 FR 289966 (May 20, 2015), and accompanying Issues and Decision Memorandum at 13.

[175] *See, e.g., Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366, 23367 (May 31, 1989); *see* Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37261 at General Issues Appendix (July 9, 1993); *Final Negative Countervailing Duty Determination; Carbon Steel Wire Rod from Czechoslovakia,* 49 FR 19370 (May 7, 1984); *Final Negative Countervailing Duty Determination; Carbon Stel Wire Rod from Poland.* 49 FR 19274 (May 7, 1984), affirmed by the Federal Circuit in *Georgetown Steel Corp* v. *United States,* 801 F.2d 1308 (Fed. Cir. 1986).

specificity criteria set forth within section 771(5A)(D) of the Act. The disaster relief exception is based on the occurrence of natural disasters that are outside the control of a government, and the exception for general categories of workers is focused on individual qualities or characteristics that are unrelated to specific enterprises or industries.

The proposal by the commenter that general disaster relief programs may be found to be regionally specific would invalidate disaster relief programs because most natural disasters such as earthquakes, hurricanes, tornadoes, wildfires, and flooding normally do not impact, at any one time, an entire country but only specific regions within a country. Therefore, under Commerce's practice and this regulation, disaster relief programs will not be found to be regionally specific if the relief constitutes general assistance available to anyone in the area affected by the disaster. Similarly, Commerce does not find employment assistance programs provided to the general category of workers listed in the employment assistant regulation to be specific to industries or enterprises based on the conditions set forth in that regulation. However, employment programs related to the hiring of employees with specific job skills, and job creation or retention programs that provide incentives to certain enterprises or industries, such as those implemented to attract new firms or industries or to provide incentives for firms to expand, may be either *de jure* or *de facto* specific within the meaning of the Act based upon the facts of the case. While general employment assistance programs for general categories of rural or urban unemployed individuals would not normally be found to be regionally specific, a government worker assistance program that is implemented and legally restricted to only designated regions within the authority's jurisdiction would normally be found to be regionally specific within the meaning of section 771(5A)(D)(iv).

16. Commerce Has Made Some Small Changes to Proposed § 351.503(b)(3), the Benefit Regulation

In the *Proposed Rule,* Commerce proposed to add a new paragraph to the benefit regulation at § 351.503(b)(3) to provide rules for the general treatment of contingent liabilities and assets that are not otherwise addressed in the regulations.[176] Under current § 351.505(d), in the case of an interest-free loan for which the repayment obligation is contingent upon the company taking some future action or achieving some goal in fulfillment of the terms of the loan, Commerce normally treats the outstanding balance of the loan as an interest-free short-term loan.

However, other types of contingencies exist which are not explicitly referenced in that loan regulation. Commerce has encountered hybrid programs which have elements of two or more types of financial contributions, and, thus, two or more types of benefits. For example, in India, a program provides for import duty waivers contingent upon future export performance of the recipient.[177] With respect to Korea, Commerce has investigated a research and development (R&D) grant program in which participating companies are required to repay 40 percent of the R&D grant if the R&D project is deemed by the government to be successful.[178] In these cases, Commerce treated the outstanding contingent liability of the import duty exemptions in India and the R&D grant in Korea as contingent liability interest-free loans within the meaning of § 351.505(d). In addition, under § 351.510, which covers direct and indirect taxes and import charges, the benefit from the deferral of indirect taxes and import charges when the final waiver of such taxes and charges is contingent on fulfillment of other criteria such as realizing an amount of export earnings is also calculated using the methodology described under § 351.505(d).

While the treatment of these contingent import duty exemptions and R&D grants under § 351.505(d) has never been a source of controversy, for purposes of clarity and flexibility the agency proposed and in this final rule codifies a separate paragraph under the benefit regulation to specifically provide for the treatment of contingent liabilities and assets that are not otherwise addressed in the regulations in this final rule. As Commerce encounters ever more complicated government programs, the goal is to have a regulation that provides for the specific treatment of contingent liabilities to ensure that there is no question that any government program that incorporates a contingent element falls within the purview of the CVD law and Commerce's regulations.

Commerce has also incorporated the element of contingent assets into this regulatory addition to ensure that a contingent asset that is provided by a government and that has not been measured under the other rules within our CVD regulations can be addressed within this benefit section of the CVD regulations. Therefore, for either the provision of a contingent liability or asset, under this change to the regulation the agency will treat the balance or value of the contingent liability or asset as an interest-free provision of funds and would calculate the benefit using, where appropriate, either a short-term or long-term commercial interest rate.

Every comment Commerce received on this regulation was in support of the change. However, one of the commenters proposed a small change to the regulation. This commenter stated that the proposed regulation specifies that Commerce will treat the balance or value of the contingent liability or asset as an interest-free provision of funds and will calculate the benefit using a short-term commercial interest rate. The commenter noted that this approach may not be appropriate for all contingent liabilities and assets; for example, if the period between the provision and the closing of the contingency is greater than one year, the use of a short-term interest rate would not be appropriate. This commenter suggested that Commerce replace the proposed language with ''will calculate the benefit using a short-term commercial interest rate or a long-term commercial interest rate based on the time period between the provision and the closing of the contingency.'' Since the agency agrees that the regulation should reflect that, where appropriate, Commerce will use either a short-term or long-term interest rate to determine the benefit from a contingent liability or asset, Commerce has made that modification to § 351.503(b)(3).

17. Commerce Has Made Some Small Changes to Proposed § 351.505(c)(2) and 505(e)(2), the Loan Regulation

Section 351.505 applies to the procedures and policies pertaining to loans under the CVD law. In the *Proposed Rule,* Commerce proposed to make modifications to § 351.505(b), (c), and (e) and add new § 351.505(a)(6)(iii).[179] After consideration of the comments on these changes, Commerce is implementing

[176] *See Proposed Rule,* 89 FR at 57310.

[177] *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review,* 73 FR 40295 (July 14, 2008), and accompanying Issues and Decision Memorandum at Comment 42 (discussing the Export Promotion Capital Goods Scheme (EPCGS)).

[178] *See, e.g., Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 76 FR 3613 (January 20, 2011), and accompanying IDM at 2–3 (discussing the Act on Special Measures for the Promotion of Specialized Enterprises for Parts and Materials).

[179] *See Proposed Rule,* 89 FR at 57311–312.

those modifications with some small changes.

Section 351.505(a)(6)(ii) pertains to loans provided by government-owned banks. Commerce proposed to add a paragraph (a)(6)(iii) to address the initiation standard for specificity allegations for loans provided by government-owned policy banks, which are special purpose banks established by governments. Under the new language in paragraph (a)(6)(iii), an interested party would meet the initiation threshold for specificity under paragraph (a)(6)(ii)(A) of Commerce's current CVD regulations with respect to section 771(5A)(D) of the Act if the party could sufficiently allege that loan distribution information is not reasonably available and that the bank provides loans pursuant to government policies or directives.

Commerce has found that information on the distribution of loans and data on the enterprises and industries that receive loans from government-owned policy banks is usually not published and, therefore, not reasonably available to U.S. petitioning industries. Thus, these interested parties are hindered in their ability to make a specificity allegation under section 771(5A)(D)(iii) of the Act due to lack of transparency of these government-owned entities. It has been our experience that government-owned policy banks are normally established by laws and regulations which discuss the purposes of the policy banks; these laws and regulations are usually publicly available and, thus, would be available to U.S. petitioning industries.

The provision of, and access to, capital is a critical component to the growth and development of firms and industries. The control of the distribution or allocation of capital by the government has been shown to lead to a misallocation and distortion of resources within an economy.[180] Fundamentally, a subsidy is a distortion of the market process for allocating an economy's resources and this principal is an underlying foundation of Commerce's entire CVD methodology.[181]

Therefore, based on the lack of publicly available data with respect to the distribution of loans for most of the state-owned policy banks that have been the subject of subsidy allegations in the past, Commerce's addition of § 351.505(a)(6)(iii) addresses the initiation standard for an allegation of specificity for state-owned policy banks. Where loan distribution information for the state-owned policy bank is not reasonably available, under the new language in § 351.505(a)(6)(iii) an interested party would normally meet the initiation threshold for specificity under the Act if the party sufficiently alleges that the bank provides loans pursuant to government policies or directives.

Commerce is also modifying § 351.505(b) and (c) to establish a uniform standard with respect to the treatment of long-term loans. Commerce currently calculates the benefit for long-term loans using different methodologies depending on whether the long-term loan has a fixed interest rate, a variable interest rate, or a different repayment schedule. These modifications would now ensure consistency in the benefit calculation of long-term loans by focusing on the key aspect that the benefit in any given year is the difference between the amount of interest the firm paid on the investigated loan and the amount of interest that the firm would have paid on a comparable commercial loan. In addition, the use of a *comparable* commercial loan as defined under § 351.505(a) already appropriately adjusts for any differences in the government-provided loan based on whether the loan is fixed rate, variable rate, or with a term based on a different payment schedule.

Therefore, consistent with the *Proposed Rule* Commerce has modified and deleted parts of current § 351.505(c), specifically both § 351.505(c)(3) and (4). Current sections 351.505(c)(3) and (4) separately address long-term loans with different repayment schedules and long-term loans with variable interest rates. Commerce is deleting those provisions and adding a provision that indicates that, instead, Commerce will calculate the benefit conferred by any type of long-term loan in the same manner by taking the difference between what the recipient of the government loan would have paid on a comparable commercial loan and the actual amount the recipient paid on the government-provided loan during the period of investigation (POI)/period of review (POR) and allocating that benefit amount to the relevant sales during the POI/POR. Therefore, all long-term loans will be addressed solely under § 351.505(c)(2).

One commenter suggested a change to the proposed § 351.505(c)(2) language, stating that the subsidy benefit conferred from a long-term loan would be based on ''the difference between the interest paid by the firm in that year on the government-provided loan and the interest the firm would have paid on the comparison loan.'' [182] This commenter recommended that to ensure clarity, Commerce replace the term ''comparison loan'' with ''comparable commercial loan,'' the term used to describe the loan benchmark in § 351.505(a). Commerce agrees and has made this change in the final version of § 351.505(c)(2).

In addition, consistent with the *Proposed Rule* Commerce has deleted sentences in current § 351.505(c)(1) and (2) that state that in no event may the present value of the calculated benefit in the year of receipt of the loan exceed the principal of the loan. Commerce is also deleting the same sentence with respect to the provision of contingent liability interest-free loans at § 351.505(e)(1). Section 771(5)(E) of the Act does not provide a cap on the benefit a loan may confer, so Commerce is therefore removing that regulatory restriction. The deleted language of the regulation was a holdover from the 1980s when Commerce would calculate a benefit from a loan by calculating a grant equivalent for the loan and then allocate that amount over the Average Useful Life (AUL) of a firm's renewable physical assets, a methodology that has long since been abandoned by Commerce.

One commenter objected to the deletion of the language that in no event may the present value of the calculated benefit in the year of loan receipt exceed

[180] *See, e.g.,* Shleifer, A., State versus Private Ownership, *National Bureau of Economic Research Working Paper 6665* at 19 (1998), available at *https://www.nber.org/papers/w6665;* Iannotta, G., Nocera, G., *et al.,* The Impact of Government Ownership on Bank Risk, *J. Fin. Intermediation* (2013), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2233564;* Gonzalez-Garcia, J. and Grigoli, F., State-Owned Banks and Fiscal Discipline, *IMF Working Paper* (2013), available at *https://www.imf.org/en/Publications/WP/Issues/2016/12/31/State-Owned-Banks-and-Fiscal-Discipline-40982;* Sapienza, P., The Effects of Government Ownership on Bank Lending, *J. of Fin. Economics* (2004); La Porta, R., Lopez-De-Silanes, F., *et al.,* Government Ownership of Banks, *J. Finance* (2002); Levy Yeyati, E., Micco, A, *et al.,* Should the Government Be in The Banking Business? The Role of State-Owned and Development Banks, *Inter-American Development Bank Working Paper,* available at *https://publications.iadb.org/en/publication/should-government-be-banking-business-role-state-owned-and-development-banks;* Ijaz Khwaja, A., and Mian, A., Do Lenders Favor Politically Connected Firms? Rent Provision in an Emerging Financial Market, *Q. J. Economics* (2005), ; Serdar Dinc, I., Politicians and Banks: Political Influences on Government-owned Banks in Emerging Markets, *J. Fin. Economics* (2005), ; Carvalho, D., The Real Effects of Government-Owned Banks: Evidence from an Emerging Market, *J. Finance* (2012); and Claessens, S., Feijen, E., *et al.,* Political Connections and Preferential Access to Finance: The Role of Campaign Contributions, *J. Fin. Economics* (2008).

[181] *See 1989 Proposed Regulations,* 54 FR 23366, 23367 (May 31, 1989).

[182] *See Proposed Rule,* 89 FR at 57331.

the principle of the loan. That commenter stated that there should be a limit on the amount of the benefit based on reasonable presumptions of what a loan market would actually bear and stated that the Act directs Commerce to determine a loan benefit based on ''a comparable commercial loan that the recipient could actually obtain on the market.'' That commenter stated that a benchmark such as the one used when a company is determined to be uncreditworthy is susceptible to overestimation.

As noted above, the ''benefit cap'' language that Commerce is deleting from the current regulation was based upon a loan methodology that Commerce ceased using over 30 years ago. When Commerce became the administering authority of the CVD (and AD) law in 1980, to determine the subsidy benefit conferred by a government loan, Commerce, after calculating the interest payment differential for the entire term of the government loan, would then calculate the present value of the stream of benefits to the year in which the loan was made. In other words, Commerce determined the subsidy value of the government loan as if the benefits had been bestowed as a lump-sum grant in the year in which the loan was given. This grant equivalent was then allocated evenly over the life of the loan to yield annual subsidy amounts. When the loan was provided for the purchase of capital equipment, this grant equivalent was allocated over the average useful life of the capital equivalent.[183] Because Commerce was in essence treating the loan benefit as a grant, it employed this grant benefit cap. This grant equivalent loan methodology was abandoned by Commerce over 30 years ago and thus, the grant ''benefit cap'' language is obsolete and has been stricken from our loan regulations.

More importantly, as the commenter pointed out, section 771(5)(E)(ii) of the Act states that in the case of a loan, a subsidy benefit is conferred if there is a difference between the amount the recipient of the loan pays on the government loan and the amount it would have paid on a comparable commercial loan that it could actually obtain on the market. Commerce's § 351.505 loan regulation implements this statutory requirement, and the Act does not provide any benefit cap on the loan subsidy calculated under section 771(5)(E)(ii) of the Act.

Finally, while not germane to the broader statutory issue and to the modifications that have been made to § 351.505, Commerce disagrees with the commenter's statement that an uncreditworthy benchmark is susceptible to overestimation. The fact that an uncreditworthy benchmark under § 351.505(a)(3)(iii) will yield a loan benefit greater than a benchmark from ''a comparable commercial loan that the recipient could actually obtain on the market'' does not mean that the subsidy loan benefit is overestimated. The higher calculated subsidy benefit results from the government providing a loan to a firm that could not receive lending from a commercial bank because the firm is uncreditworthy. Commerce's uncreditworthy benchmark merely accounts for the fact that an uncreditworthy firm cannot obtain a commercial loan.

In addition, Commerce proposed to modify current § 351.505(e), which addresses the treatment of a contingent liability interest-free loan.[184] Under current § 351.505(e)(2), Commerce treats a contingent liability interest-free loan as a grant if at any point in time the agency determines that the event upon which repayment depends is not a viable contingency. However, the current regulation does not address the situation where the recipient firm has either taken the required action or achieved the contingent goal and the government has waived repayment of the contingent loan. Therefore, Commerce is modifying this regulation to state that it will also treat the contingent loan as a grant when the loan recipient has met the contingent action or goal and the government has not taken any action to collect repayment.

Commerce received no comments objecting to the revision in § 351.505(e)(2) under which Commerce will treat a contingent loan as a grant if ''the government has not taken action to collect repayment.'' However, one party recommended a minor change to the text to state that ''the government has not taken *meaningful* action to collect repayment.'' Commerce agrees with this recommended edit and has made this change to § 351.505(e)(2) in this final rule.

18. Commerce Has Modified Certain Language in Proposed § 351.509(b)(1), the Direct Taxes Regulation

Commerce proposed modifying §§ 351.509 and 351.510, the regulations covering direct taxes and indirect taxes and import charges (other than export programs).[185] Commerce is codifying those proposed changes in this final rule. The modification to both provisions clarifies Commerce's treatment of the exemption of taxes and import charges in zones designated as being outside the customs territory of the country, and in response to comments Commerce has made a change to § 351.509(b)(1) as proposed.

In the 2012 CVD investigation of *Steel Pipe from Vietnam,* Commerce determined that the exemption of import charges on capital assets into an export processing zone was not countervailable.[186] Commerce stated that the Government of Vietnam designated the respondent company as an export processing enterprise, and based upon that designation the company's facilities are a ''non-tariff zone'' and thus the operations of the company were outside the customs territory of the country.[187] Therefore, Commerce concluded that because the company was outside the customs territory of Vietnam, the exemption of import duties on capital goods did not provide a financial contribution in the form of revenue forgone.[188] However, upon further consideration of our decision in *Steel Pipe from Vietnam,* Commerce has concluded that its treatment of firms or zones that are designated as being ''outside the customs territory'' of a country in that case to be at odds with our long established practice, our regulations, and the purpose of the CVD statute.

Under § 351.102(a)(25), ''government-provided'' is a shorthand expression for any act or practice being analyzed as a possible countervailable subsidy. Critical to Commerce's analysis of whether a government act or practice constitutes a countervailable subsidy is a determination of what the situation of the firm would be in the absence of the government program. For example, § 351.509(a), which addresses direct taxes, states that a benefit exists to the extent that the tax paid by the firm is less than the tax the firm would have paid in the absence of the program; under § 351.510(a) regarding indirect taxes and import charges, a benefit exists to the extent that the taxes or an import charge paid by a firm as a result of the program are less than the taxes or import charges the firm would have paid in the absence of the program.

[183] *See,* Appendix 2 to the *Final Affirmative Countervailing Duty Determinations on Certain Steel Products from Belgium;* 47 FR 39304; 39316 (September 7, 1982).

[184] *See Proposed Rule,* 89 FR at 57311.

[185] *Id.,* 89 FR at 57312.

[186] *See Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination,* 77 FR 64471 (October 22, 2012), and accompanying Issues and Decision Memorandum at Comment 3.

[187] *Id.*

[188] *Id.*

Similarly, under the benefit regulation at § 351.503(b), Commerce will consider a benefit to be conferred by government programs when a firm pays less for its inputs (*e.g.,* money, a good or service) than it otherwise would pay or receives more revenue than it otherwise would earn in the absence of the government program.

The government designation of either a firm or a zone as being outside the customs territory constitutes a government act or program is consistent with the definition of ''government-provided'' under § 351.102(a)(25). By establishing areas in which it will not collect taxes or import charges on capital goods, the government has taken an explicit action to provide both a financial contribution and a benefit to a firm that is operating within the designated area. Absent the government action, the firm otherwise would have paid either direct taxes or import charges to the government. These government actions provide incentives to exporters, and, as the Supreme Court explained in *Zenith,* a purpose of the countervailing duty law and the imposition of countervailing duties is ''to offset the unfair competitive advantage that foreign producers would otherwise enjoy from export subsidies paid by their governments.'' [189]

Thus, to ensure the appropriate application of the CVD statute, Commerce is amending both §§ 351.509(a)(1) and 351.510(a)(1) to close a potential loophole through which foreign governments might provide a countervailable subsidy including a prohibited export subsidy. Commerce has included the additional language within § 351.509(a)(1): ''a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program, *including as a result of being located in an area designated by the government as being outside the customs territory of the country*'' (emphasis added). For § 351.510(a), the amended language reads: ''a benefit exists to the extent that the taxes or import charges paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program, *including as a result of being located in an area designated by the government as being outside the customs territory of the country*'' (emphasis added). This new language is also included in Commerce's new § 351.521(a)(1), discussed further below, that addresses indirect taxes and import charges on capital goods and equipment (export programs).

Commerce has not added this language to §§ 351.518 and 351.519, which address the exemption, remission, or deferral upon export of prior-stage cumulative indirect taxes and the remission or drawback of import charges upon export for inputs consumed in the production of an exported product. The treatment of inputs consumed in the production of an exported product codified under these sections of our regulations addresses long-established rules of global trade adopted by the United States that were first established under the General Agreement on Tariffs and Trade (GATT) and later incorporated into the SCM Agreement. For the same reason, Commerce has not incorporated this language into § 351.517, which addresses the exemption or remission upon export of indirect taxes.

Commerce received only supportive comments for these changes. Commerce has also made a clarifying change to § 351.509. The agency is removing the word ''normally'' from § 351.509(b)(1*)* to codify Commerce's long-standing practice of always using the date that a firm filed its tax return to determine the receipt of an income tax benefit and stating that ''[f]or all exemptions or remissions related to income taxes, this date will be the date on which the firm filed its tax return.''

19. Commerce Has Moved the Proposed Language in the Provision of Goods or Services Regulation From § 351.511(a)(2)(i) to 351.511(a)(2)(iii) and Made a Small Revision to Proposed 351.511(a)(2)(iii)(C)

Section 351.511 regulates how Commerce examines and determines if goods or services are being sold for less than adequate remuneration (LTAR) in accordance with section 771(5)(E)(iv) of the Act. Section 351.511(a)(2) defines ''adequate remuneration'' and describes the use of a market-determined benchmark price resulting from actual transactions in the country subject to the CVD proceeding for purposes of evaluating the adequacy of remuneration. Pursuant to the language of the current provision, under certain circumstances, an in-country, market-determined price could also include ''actual sales from competitively run government auctions.''

In the *Proposed Rule,* Commerce proposed a modification to the regulation which would list the circumstances under which such auction prices may serve as a usable tier-one benchmark.[190] Upon consideration of the comments on this issue, Commerce has determined to codify that modification in this final rule, although it has moved the provision from tier 1 to tier 3. Under the new language in the regulations, § 351.511(a)(2)(iii), Commerce states that for a government run auction to be ''competitively run,'' the government auction must use ''competitive bid procedures that are open without restriction on the use of the good or service;'' it must be ''open without restrictions to all bidders, including foreign enterprises, and protect the confidentiality of the bidders;'' it must account ''for the substantial majority of the actual government provision of the good or service in the jurisdiction in question;'' and the winner of the government auction must be ''based solely on price.''

While the preamble to the *1998 CVD Regulations* provides some guidance on when Commerce would use actual sales from a government-run auction to evaluate adequate remuneration,[191] the codification of a more defined set of auction criteria in § 351.511(a)(2)(iii) ensures consistency and clarity in the application of this regulation and better informs the public of the criteria that will be used by Commerce in evaluating whether prices from a government-run auction can be used for purposes of evaluating the adequacy of remuneration.

Commerce received various comments on this regulation with some parties supporting and others opposing the auction criteria within the proposed § 351.511(a)(2)(i). The commenters that opposed the criteria stated that (1) a May 2024 decision by a North American Free Trade Agreement (NAFTA) Binational Panel in *Softwood Lumber from Canada* stated that Commerce should use Quebec government auction prices; (2) the criteria are not based on statistical and economic data; (3) the auction criteria are different than the criteria listed in the *Proposed Policies Regarding the Conduct of Changed Circumstances Reviews of the Countervailing Duty on Softwood Lumber from Canada,* 68 FR 37456, 37457 (June 24, 2003) (*Proposed Policies*); (4) the criterion that the auction be open to all bidders including foreign enterprises ignores a number of sound policy reasons why eligibility criteria might exist for an auction; and (5) it is common practice for prices for a minority of the transactions within a larger market to be used in determining

[189] *See Zenith Radio Corp.* v. *United States,* 437 U.S. 443, 455–56 (1978).

[190] *See Proposed Rule,* 89 FR at 57313–57315.

[191] *See 1998 CVD Regulations,* 63 FR at 65377.

prices in that larger market, such as wholesale dealers auctions for used cars that are used as a basis for determining other prices for used cars and prices for aluminum sold on the London Metal Exchange which are used as a barometer for prices of aluminum in the world market.

Some commenters opposing the auction criteria stated that instead of these auction criteria, Commerce should evaluate auction-based benchmarks on a case-by-case basis and give due regard for expert opinions submitted by interested parties. In addition, one commenter stated that Commerce should modify this regulation to state that the agency may use actual sales from competitively run government auctions if the government auction conforms to market-economy principles and the agency determines that such an auction is fair and emulates the characteristics of a private auction without adding distortions. That commenter further suggested that Commerce should not elaborate in the regulation or in the preamble to the final rule on how a government run auction would constitute a fair tier 1 benchmark because it may be very difficult for the agency to obtain all information associated with a particular auction.

Commerce has carefully considered all the concerns raised by the commenters on this matter, as well as the proposed alternatives to the regulation. Commerce disagrees that those concerns merit a rejection of the proposed regulation language and does not agree with the suggested alternatives. Indeed, the suggested alternative language is inconsistent with the changes to the analysis of the provision of a good or service by the government provided in the Act by the URAA.

Before the enactment of the URAA, under the Trade Agreements Act of 1979, the government provision of a good or service would constitute a countervailable subsidy if the government provided that good or service ''at preferential rates.'' [192] Under the analysis of whether the government provision of a good or service was provided at a preferential rate, Commerce would compare the price charged by the government for that good or service to the companies that were subject to a CVD investigation to the price that the government received from other users of that good or service.[193] The parameter of Commerce's analysis was not based upon market prices (*i.e.,* transaction prices of that good or service between private parties) but was, instead, based upon the prices that the government charged and received for that good or service from different parties within its jurisdiction. Therefore, the analysis focused on government actions and behavior, not on the market actions between private, commercial parties. Commerce's analysis for the provision of a good or service, including the benchmark used to determine the countervailable benefit, was based upon the government prices for that good or service.

The URAA, enacted in December 1994, changed the standard for determining whether the provision of a government good or service provided a countervailable benefit from one based on preferentiality and the difference in prices charged by the government to different parties for that good or service, to a standard based upon private, commercial market prices. Thus, the URAA rejected the preferentiality standard using government prices as a benchmark in determining whether there is a countervailable benefit conferred by the government provision of a good or service.[194]

When Commerce issued its regulations in 1998 for the provision of a good of service under § 351.511, the agency stated that in the 1997 proposed regulations it held this provision as ''reserved'' because Commerce had limited experience with the new benefit standard under section 771(5)(E)(iv).[195] Nevertheless, Commerce included criteria in the final *1998 CVD Regulations,* because while commenters recognized Commerce's lack of experience with the new statutory standard for a government provision of a good or service made it difficult to promulgate a regulation, these commenters requested guidance as to how Commerce intended to identify and measure adequate remuneration.[196]

Even with this admitted lack of experience in 1998, when Commerce issued its CVD regulation on the provision of a good or service, the agency created rules that have generally served it well in addressing the provision of a good or service by the government.[197] However, it is clear now, after many years of experience administering this area of law, that when Commerce included the discretion to rely on prices from competitively run government auctions, the agency lacked sufficient experience to adequately address the issue in its regulations. While Commerce provided some guidance in the Preamble to the *1998 CVD Regulations,* the agency did not provide any useful regulatory criteria for the use of government auction prices within § 351.511. Accordingly, Commerce is modifying the regulation now to correct for that problem.

In addition, in 1998, Commerce, based on this lack of experience in administering the new statutory provision for a government provision of a good or service, did not fully consider and address the use of government auction prices in the regulation within the change of the statutory context that rejected the use of government prices as a benchmark to determine whether the government provision of a good or service confers a countervailable subsidy. All the benchmark prices that Commerce may use under § 351.511(a)(2)(i) and (ii), other than government auction prices, are prices that are derived from transactions between private, commercial parties. The use of a government auction price as a benchmark to determine whether the government price of a good or service confers a countervailable benefit uses one government price to measure the subsidy benefit of another government price. The use of this type of government price as a benchmark is a type of benchmark that would have been used under the preferentiality methodology that was rejected by Congress in the URAA. Essentially, the reference to the use of a government auction price is based on the old preferentiality standard because it is based on measuring a government provision of a good or service by using another government provision of a good or service as a benchmark.

Commerce's practice in administering this area of law, however, makes clear that Commerce has maintained a concern regarding the use of government prices, including the use of government auction prices, for many years, because since the *1998 CVD Regulations* were issued, Commerce has never relied upon a government auction price to measure the adequacy of remuneration of the government provision of a good or service. Commerce has used all the other benchmarks set forth within § 351.511(a)(2)(i), (ii), and (iii), but not government auctions.

This normal rejection of the use of government auction prices is based, in part, on the statutory standard enacted under the URAA that moved from the

[192] *See* section 771(5)(B)(ii) of the Trade Agreements Act of 1979.

[193] *See, e.g.,* § 355.44(f)(1) of the *1989 Proposed Rules,* 54 FR 23366 and 23381.

[194] *See, e.g.,* SAA at 927.

[195] *See,* Preamble to *1998 CVD Regulations,* 63 FR at 65377.

[196] *Id.*

[197] *Id.*

use of government prices to the use of prices derived from transactions between private parties.[198] Furthermore, the Preamble of the *1998 CVD Regulations* states that Commerce will not use prices within a market that is distorted, because the government provider constitutes either a majority or substantial portion of the market. The rejection of the use of auction prices is based on that reasoning as well. Accordingly, based on both the language of the Act and the language within the Preamble of the *1998 CVD Regulations,* in determining to modify this regulation, Commerce considered whether it would be more appropriate to just remove the provision within the regulation that allows the agency to use government auction prices or instead provide a set of more defined criteria as to when government auction prices may be used to determine the adequacy of remuneration. In consideration of the comments and administrative concerns, Commerce determined that it is best to maintain this discretionary option, but to codify criteria for the use of government auction prices.

While the use of a government price for the good or service, such as a government auction price, would be appropriate under the old ''preferentiality'' standard for the provision of a good or service, Commerce recognizes that the preamble to § 351.511(a)(2)(iii) provides for the use of possible government price discrimination.[199] While Commerce expressed concerns that the possible use of government prices may continue the use of the preferentiality standard, the agency stated that there may be situations where there may be no better alternative than the use of a government price. However, Commerce stated that it would only rely on a government price as a benchmark if the government good or service is provided to more than a specific enterprise or industry or group thereof.[200] The use of a government price (*i.e.,* price discrimination) under § 351.511(a)(2)(iii) is a ''last resort'' when there are no other available benchmark options under § 351.511(a)(2)(i), (ii), and (iii). Similarly to government auction prices, Commerce has never used government price discrimination as a benchmark to measure the adequacy of remuneration since the enactment of the URAA.

Because a government auction price is akin to the use of a preferentiality benchmark and government price discrimination is referenced as a type of assessment that Commerce may make under a § 351.511(a)(2)(iii) market principles benchmark analysis, Commerce has determined that it is more appropriate to consider the use of government auction prices within § 351.511(a)(2)(iii) instead of § 351.511(a)(2)(i). In addition, the Preamble to the *1998 CVD Regulations* states that Commerce will assess whether a government price was set in accordance with market principles through an analysis of such factors as the government's price setting-philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination.[201] Because Commerce is moving the use of government auction prices into a § 351.511(a)(2)(iii) market principles analysis, the agency is also codifying the types of assessment that were addressed in the Preamble to the *1998 CVD Regulations.* Since 1998, Commerce has found that an assessment of costs (including rates of return) and whether the government's price setting philosophy (methodology) is consistent with market principles has been effective in our analysis of the government provision of goods and services like electricity, natural gas, water, and the provision or leasing of natural resources such as land, mining rights and stumpage.

While Commerce has maintained its discretion to use government prices from a government-run auction, Commerce will normally only use government auction prices when the agency determines that there is no other benchmark available under § 351.511(a)(2)(i) and (ii). Before Commerce would even consider the use of government auction prices in that situation, the government-run auction must meet all the criteria established under § 351.511(a)(2)(iii).

While Commerce has explained above the reason the claims made by the commenters opposing the regulation are unpersuasive and inconsistent with the analysis of the provision of good by the government required by the Act and the *1998 CVD Regulations,* Commerce will also further address each of the arguments raised by the commenters.

First, a NAFTA Binational Panel in *Softwood Lumber from Canada* regarding the use of Quebec government auction prices is not binding on Commerce's development, creation or modification of Commerce's CVD regulations.[202]

Second, the argument that the regulatory criteria are not based on statistical and economic data is equally without merit. The criteria established within this regulation are derived from the legal standards enacted by Congress under the URAA that changed the analysis of a government good or service based on government price discrimination (*i.e.,* government prices) to a standard based upon transaction prices between private parties.[203] The two studies that were commissioned by the parties to defend their arguments in a CVD case and which were referenced in the parties' comments to our *Proposed Rules* have no bearing on the statutory provision addressing the government provision of a good or service enacted by Congress in the URAA.

While Commerce is not questioning the academic credentials of the two individuals commissioned to produce the submitted studies, there are various schools of economic thought within this discipline. Nonetheless, even if there are different schools of economic thought on the matter, a general accepted principle of economics is that price is a function of demand and supply. Thus, changes to either the demand or the supply of a good would normally have an impact on the price of the good. In the instances where an interested party has argued that Commerce use a government auction price as a benchmark, both the supply of the good as well as administrative controls relating to the demand of the good have all been in the hands of a government authority. Thus, even ignoring the change in the statutory criteria that moved away from using a government price as a benchmark, as explained above from pre-URAA to post-URAA, there is a clear element of distortion within jurisdictions in which the government has an overwhelming presence in the market. Moreover, through its administrative and policy preferences, the government can impact and change both the demand and supply of goods.

Certain commenters also pointed out that the criteria in this regulation for a competitive run government auction are different than the criteria listed in the *Proposed Policies.* Commerce ultimately found those *Proposed Policies* to be not constructive and thus never adopted and implemented them.[204] Instead,

[198] *See, e.g.,* SAA at 927.

[199] *See 1998 CVD Regulations,* 63 FR at 65378.

[200] *Id.*

[201] *Id.*

[202] *See* SAA at 926.

[203] *Id.* at 927.

[204] *See, e.g., Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances,* 82 FR 51814 (November 8, 2017), and accompanying Issues and Decision Memorandum at 104 (''The *Policy Bulletin* was a preliminary document, through which comments were solicited from the public pertaining to

Commerce is codifying its existing criteria now, within § 351.511(a)(2)(iii).

Some commenters also suggested that the requirement that the auction be open to all bidders, including foreign enterprises, ignores a number of sound policy reasons why eligibility criteria might exist for an auction. Regardless of the government's policy reasons for placing restrictions on who may participate in the government run auction or on restricting how the good may be used, these governmental restrictive policies and administrative practices implement government-created restrictions on the demand for the good. One of the parties claimed that the bidding restrictions that it places on its administrative auctions have no impact on demand of the government provided good. However, that statement raises the question as to why this authority maintains these bidding restrictions, if as the commenter stated, these restrictions have no impact on demand and price. Again, this argument is unpersuasive. However, Commerce does agree that legitimate bidding requirements that consist of deposit requirements that are applied equally to all bidders or the exclusion of government employees from participating in a government-run auction would not necessarily invalidate a government-run auction that otherwise met all the criteria set forth in the regulation.

Some commenters stated that it is common practice that prices for a minority of the transactions within a larger market serve as market-referenced prices, citing to instances where wholesale auto dealer auction prices for used cars can serve as the basis for determining the sales price for other used cars and that prices for aluminum sold on the London Metal Exchange are used as a barometer for prices of aluminum in the world market. Although that might be true, for purposes of Commerce's regulations and practice, Commerce does not find those situations to support a change to the proposed regulation modifications. Both the Act and Commerce's regulation state that a benchmark should be based on transaction prices between private parties. The London Metal Exchange is a private company and auto dealers are also private parties. Thus, auction prices on the London Metal Exchange and auctions conducted by auto dealers are auctions conducted by private parties. Therefore, regardless of the percentage of the market accounted for by these auctions, these referenced auction prices are transaction prices between private parties and not government transactions from a government run auction.

One commenter stated that Commerce should not elaborate on how a government run auction would constitute a fair tier 1 benchmark because it may be very difficult for the agency to obtain all information associated with a particular auction. However, that commenter misinterpreted the language originally proposed within § 351.511(a)(2)(i). In order for an interested party to argue that prices from a government run auction should be used as a benchmark to measure whether a government provision of a good or service is for adequate remuneration in a CVD investigation or administrative review, that interested party must, at a minimum, provide documented evidence to demonstrate that the government run auction meets each of the criterion originally proposed under § 351.511(a)(2)(i). It is not Commerce's responsibility to demonstrate that these criteria are not met before discarding the use of a proposed benchmark based on government auction prices. Accordingly, Commerce does not find this statement supports a change to Commerce's proposed modification of the regulation.

For the reasons explained above, Commerce is not adopting the commenters' proposal to evaluate government auction-based benchmarks on a case-by-case basis and to give due regard for what these parties reference as ''expert opinions'' submitted by interested parties. However, Commerce will evaluate whether an interested party's proposed use of government auction prices as a benchmark meets the criteria under § 351.511(a)(2)(iii) based on the evidence on the case record.

Commerce has also addressed above the use of third-party opinions submitted by interested parties. Commerce is very cautious about the relevance it places on the use of third-party opinions or reports that are commissioned by interested parties in a case. As noted above, equally qualified economists may examine an identical issue and derive different conclusions. Commerce is also concerned that undue reliance on third-party reports and opinions commissioned in our CVD cases would reward the interested party that has the larger budget, which would raise a fairness issue in the administration of our cases.

In addition, with respect to an issue like the use of prices from a government auction, much of the data required for a complete statistical or economic analysis by third parties may not be publicly available, and access to that data will also be in the control of the government, an interested party in a CVD case. Therefore, as an interested party, a foreign government is in the position to control access to that data and may decide to only grant access to a third party that will work in the interest of the government and deny access to a third party that is working on behalf of other interested parties in a CVD case. In the alternative, an interested party foreign government may only release data to the public that advances its cause or position in a CVD case while withholding data from the public that would result in an outcome that would contradict or undermine the arguments and positions it is espousing in its comments made before Commerce in a CVD proceeding.

In addition, one commenter suggested that Commerce should modify this regulation to state that sales from competitively run government auctions will only be used if the government auction conforms to market-economy principles. Commerce has not adopted this suggestion because a general statement with respect to the government auction being consistent with ''market-economy principles'' provides less clarity and guidance as to the standard to be applied by the agency in its analysis of whether to consider using a government run auction as a benchmark. While current § 351.511(a)(2)(iii) states that where there were no in-country or world market benchmarks available, Commerce will assess whether the government price is consistent with market principles, the preamble to the *1998 CVD Regulations* provided a discussion to the methodologies that the agency would use to assess market principles. Based on the experience that Commerce has gained since 1998 in our analysis of the provision of a good or service under section 771(5)(E)(iv) of the Act, Commerce has determined that it is more appropriate to provide greater detail in the regulation and provide the criteria that Commerce will use in assessing a government run auction within the regulation itself.

Finally, one commenter stated that Commerce should modify criterion (C) within § 351.511(a)(2)(iii). That commenter stated that in some cases the provision of the good or service is not done by a national government

proposed policies for Canadian provinces to move to market-based systems of timber sales. Those proposed policies, however, were never adopted by the Department. The Department's analysis of a provincial stumpage system is not bound by proposed ideas that were never finalized, and which neither incorporated nor addressed the solicited comments'').

authority but by a subnational authority; thus, the use of the term ''country'' may be interpreted to mean that when the provision of the good or service is made by a subnational level government that the comparison addressed in (C) will be made based on country-wide data basis. To clarify this point as concerns competitively run government auctions, Commerce has changed the term ''country'' in the proposed regulation to ''jurisdiction'' in this final rule.

20. Commerce Has Added a New Provision to Proposed § 351.512, the Provision Covering the Purchase of Goods To Address the Exclusion of Certain Prices From Consideration as a Benchmark in Determining the Potential Benefit of a Subsidy

When Commerce issued its current CVD regulations in 1998, it designated § 351.512 as reserved.[205] Commerce explained that it did not have sufficient experience with respect to the government purchase of a good for MTAR at the time; thus, it concluded that it was not appropriate then to set forth a standard with respect to its treatment of these types of financial contributions.[206] More than 25 years later, the issue of a subsidy in the form of the government purchase for MTAR has come before Commerce in only a limited number of cases. Nonetheless, in these cases, Commerce has developed certain methodologies with respect to this type of financial contribution, especially where the government is both a provider and a purchaser of the good at issue. In addition, Commerce has observed differences between the treatment of an MTAR and an LTAR relating to the basis for the applicable price comparison. Accordingly, in the *Proposed Rule,* Commerce proposed a regulation providing guidance specifically on subsidies covering the purchase of a good for MTAR.[207] Upon consideration of the comments on this proposed regulation, Commerce has both codified the provision in this final rule and added certain language with respect to prices that might be excluded as potential benchmarks from Commerce's analysis in determining the benefit of a MTAR subsidy.

First, § 351.512(a)(1) addresses the benefit conferred from the government purchase of a good, which is derived from the standard in section 771(5)(E)(iv) of the Act. Under this provision, where a government or a public body purchases goods, a benefit exists to the extent that such goods were purchased for MTAR.

Next, § 351.512(a)(2) defines ''adequate remuneration'' within the context of an analysis of a government's purchase of a good. This standard for adequate remuneration for the purchase of a good is not as detailed as the definition for the provision of a good or service by a government under § 351.511(a)(2) because Commerce has had a much longer history and more experience in addressing LTAR claims. While Commerce offers parties a general standard in this final rule, it anticipates that its MTAR practice will continue to evolve with additional cases.

Under § 351.512(a)(2)(i), Commerce will measure the adequacy of remuneration by comparing the price paid to the firm for the good by the government to a market-determined price for that good based on actual transactions between private parties in the country in question or, if such transactions are not available, then to a world market price or prices for that good. In applying this standard, consistent with the Act, Commerce's preference will be to use actual transactions between private parties within the country in question.

Actual transactions in the country in question must be market-based and, therefore, would ordinarily consist of the sale of the investigated goods between private parties. In-country market-determined prices would also include import prices. Similar to the treatment of actual transactions in § 351.511, Commerce does not intend to adjust in-country prices to account for government distortion of the market. While Commerce recognizes that government involvement in a market may have some impact on the prices of the good, such distortion will normally be minimal unless the government constitutes a substantial portion of the market.

Where sufficient evidence indicates that the government's involvement in the market has significantly distorted actual transaction prices or that market-determined in-country prices are otherwise not available, § 351.512(a)(2)(i) states that Commerce will consider the use of world market prices as the comparison price for measuring the adequacy of remuneration. If there is useable information on the record for more than one world market price, Commerce will average the world market prices that are on the record absent record evidence that one or more of those world market prices are otherwise distorted.

This regulation differs from Commerce's treatment of world market prices under the LTAR regulation, § 351.511(a)(2)(ii), pursuant to which Commerce uses world market prices in analyzing the provision of goods or services for LTAR only when it is reasonable to conclude that the good in question is commercially available to the firm. Commerce has not adopted that standard for the government purchase of a good because section 771(5)(E) of the Act requires Commerce to assess benefit based upon the ''benefit to the recipient.'' The benefit analysis for the government purchase of a good is unrelated to whether the recipient of the benefit could purchase the good that it sold to the government.

Under § 351.512(a)(2)(ii), if there are no market-determined domestic prices or world market prices available, then Commerce could measure the adequacy of remuneration by examining any premium provided to domestic suppliers of the goods based on the government's procurement regulations and policies, those that are established in any bidding documents,[208] or any other methodology. This assessment could include comparing the costs of production of the producer obtaining the benefit, including a reasonable profit margin to the price that is paid by the government for the purchased goods.

Commerce recognizes that for certain products, such as enriched uranium, the primary purchasers in both the domestic and the world market are normally governments, government-owned entities, or government-controlled entities, or the purchase of such goods is highly controlled and regulated by the government.[209] In such markets Commerce will closely examine the bidding and purchase conditions in assessing whether the purchase price paid by the government is consistent with market principles, which may include an analysis of the costs of producing or processing that good.

Commerce received no objections to the benchmark methodology established within § 351.512(a)(1) and (a)(2)(i) and (ii) of the MTAR regulation. However, Commerce did receive comments requesting that Commerce (1) further

[205] *See, 1998 CVD Regulations* at 65412.

[206] *Id.,* 63 FR at 65379.

[207] *See Proposed Rule,* 89 FR at 57313–57314

[208] In *Aluminum Extrusions from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 75 FR 54302 (September 7, 2010), Commerce found that the Procurement Law provided an incentive to domestic producers in that the government will purchase a good from a domestic producer as long as the price does not exceed the lowest offered price for that good from foreign producers by more than 20 percent. In the Final Determination Commerce found the program not used.

[209] *See* Uranium Enrichment, World Nuclear Association (2022), available at *https://world-nuclear.org/information-library/nuclear-fuel-cycle/conversion-enrichment-and-fabrication/uranium-enrichment.aspx.*

illuminate the ''other methodologies'' it may use to assess whether the price paid by the government is consistent with market principles; (2) provide a non-exhaustive, illustrative list of examples of countervailable MTAR programs; (3) provide additional guidance on the type of information needed to support an MTAR allegation; (4) consider a provision for local content requirements (LCRs) and provide illustrative examples in the final regulations; (5) add language to § 351.512(a)(2)(ii) to capture instances of distortion not specifically contemplated in the *Proposed Rule* that disrupt the proposed benchmark hierarchy by adding the term ''or the Secretary deems such prices to be distorted,'' and (6) clarify situations in which a price will not be considered a market-determined price, such as when a price may be impacted due to government involvement or other distortive activity in the market.

With respect to the comment requesting Commerce to elaborate on the other methodologies it may use to determine whether a government price is consistent with market principles, as Commerce explained in the *Proposed Rule,* one methodology could be the comparison of the producer's costs of production, including a reasonable profit margin, to the price that is paid by the government for the purchased good.[210] Commerce does not believe it is necessary at this stage to explain additional methodologies for making this assessment. This analysis will be conducted on a case-by-case basis, and, as Commerce has explained, to date there have not been a large number of MTAR cases to cite as examples in this regard. Likewise, Commerce has determined that it would not be helpful to codify a complete list of examples of a countervailable MTAR in this regulation because both the Act and this regulation set forth the criteria that will be used to analyze whether a government purchase of a good would confer a countervailable benefit.

Nonetheless, because there have been so few cases involving MTAR allegations before Commerce, Commerce has concluded that it might be of assistance to highlight three cases for general guidance in understanding MTAR determinations which Commerce has made to date. First, in *Aluminum Extrusions,* Commerce determined that a government purchase of a good provided a countervailable benefit because the investigated country's procurement law provided a price incentive of up to 20 percent for domestic manufactures over the prices offered by foreign manufacturers.[211] Second, in *Low Enriched Uranium from France,* Commerce found a countervailable benefit based on the difference in the price the government paid for the purchase of LEU (low enriched uranium) from the respondent to import prices of LEU.[212] Finally, in *SC Paper from Canada,* Commerce used private land transactions to determine whether a government's purchase of land was for MTAR.[213]

With respect to local content requirements (LCRs), Commerce has declined to address LCRs in this regulation because subsidies that include LCRs can take the form of not only MTARs but also subsidies provided in the form of loans, grants, and tax incentives. Therefore, if LCRs were solely addressed under the MTAR regulation, it would suggest that Commerce could not address LCRs provided within the context of loans, grants or tax incentives. For an example of an LCR raised in an MTAR allegation, see the *Wind Towers from Canada* investigation.[214]

With respect to the suggestion that Commerce add language to § 351.512(a)(2)(ii) to capture instances of distortion not specifically contemplated in the *Proposed Rule,* the commenter raising this issue suggested that Commerce include language that it will measure the adequacy of remuneration by analyzing any premium in the request for bid or government procurement regulations provided to domestic suppliers of the good if Commerce determines that there are no market-determined domestic or world market prices available, ''or the Secretary deems such prices to be distorted.''

Commerce has not modified § 351.512(a)(2)(ii) to add the additional suggested step to Commerce's benchmark hierarchy. Commerce does not believe that it has ever determined in the context of an MTAR examination that when there were no non-distorted market-determined domestic or world market prices available, outstanding potential benchmarks on the record were otherwise distorted, and the commenter did not provide any citation to Commerce's making such a determination in past cases. Furthermore, Commerce sees no benefit in adding such a requirement to its normal analysis at this point. Indeed, adding such language would likely complicate Commerce's analysis in every case in which it determines that the potential benchmark domestic and world market prices are distorted by certain actions. One of the reasons Commerce is issuing these regulations is to make its process and procedures more transparent and less complicated to apply and enforce. Commerce has therefore not adopted that suggestion in the final rule.

Finally, Commerce has agreed to clarify some situations in which it might reject a benchmark price for an MTAR allegation. In determining if a government has purchased a good for MTAR, § 351.512(a)(2) states that Commerce will normally seek to measure the adequacy of remuneration by comparing the price paid to the firm for the good by the government with a market-determined price based on actual transactions, including imports, between private parties in the country in question. However, it also states that if market-determined prices for the good based on actual transactions in the country in question are unavailable, Commerce may measure the adequacy of remuneration using a world market price or prices for the good. As Commerce explained in the preamble to the *Proposed Rule,* ''If there is useable information on the record for more than one world market price, Commerce would average the world market prices that are on the record absent record evidence that one or more of those world market prices are otherwise distorted.'' [215]

In response to the *Proposed Rule,* certain commenters suggested that Commerce should expressly identify factors that would result in finding that a potential benchmark price derived from private market prices in the country or world market prices is distorted. One commenter went further and suggested that Commerce should indicate that even when a potential benchmark price is not distorted directly by government interference but instead through private market actions,

[210] *See Proposed Rule,* 89 FR at 57313, 57314.

[211] *See Aluminum Extrusions from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 75 FR 54302 (September 7, 2010) (*Aluminum Extrusions*).

[212] *See Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France;* 66 FR 65901 (December 21, 2001), and accompanying Issues and Decision Memorandum at Purchase at Prices that Constitute ''More Than Adequate Remuneration''.

[213] *See Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination;* 80 FR 63535 (October 20, 2015), and accompanying Issues and Decision Memorandum at GNS Purchase of Land for More than Adequate Remuneration (MTAR).

[214] *See Utility Scale Wind Towers from Canada: Final Affirmative Countervailing Duty Determinations and Final Negative Determination of Critical Circumstances,* 85 FR 40245 (July 6, 2020), and accompanying Issues and Decision Memorandum at Comment 4 and Comment 5.

[215] *See Proposed Rule,* 89 FR at 57313.

that price might also be unsuitable for consideration as a benchmark price for a MTAR analysis. Specifically, the commenter explained that there might be evidence of a limited number of private sellers of the goods or service in question in a particular country, such as in a monopoly or oligopoly; as a result, the prices derived from that country might be considered artificially too high or too low as a result of being set in a captive market. Further, the commenter suggested that if two or more competitors might establish price setting arrangements, or a foreign government has found that companies are guilty of collusion or other non-competitive behavior, such actions could result in setting prices for particular goods or services on nonmarket terms.

Upon consideration of the comments, Commerce has determined to revise proposed § 351.512(a)(2) to indicate that certain prices may be excluded from consideration as potential benchmark prices for purposes of an MTAR analysis under this provision. Commerce has numbered this new paragraph § 351.512(a)(2)(iii) and moved the paragraph covering use of ex-factory or ex-works prices to § 351.512(a)(2)(iv). This new paragraph, titled ''*Exclusion of certain prices,*'' states that in measuring the adequacy of remuneration, Commerce may exclude certain prices from its analysis if it determines that interested parties have demonstrated, with sufficient information, that prices from a country are likely impacted because of particular actions, including government laws or policies. Commerce is aware that many governments have mandatory domestic-content requirements, price controls, production mandates, or other policies that can impact potential benchmark prices. If interested parties place information on the record which Commerce determines shows that prices have likely been impacted by such actions, then Commerce may look to other potential benchmarks on the record in measuring the adequacy of remuneration.

In response to the suggestion that Commerce should consider potential price distortions from monopolies, oligopolies, price setting arrangements between private companies, collusion, and other anticompetitive actions, we note that, as a general matter, the countervailing duty law is focused on the actions of government entities and not on private-party behavior. Accordingly, Commerce has determined not to codify such a consideration, although Commerce may consider on a case-by-case basis whether parties have sufficiently demonstrated that such anticompetitive actions among private firms would likely impact benchmark prices for the purposes of an MTAR analysis. Commerce will not codify an analysis that it might later discover limits its authority or flexibility to consider whether certain potential benchmark prices are based on market principles or are otherwise impacted by anticompetitive behavior. Anticompetitive market conditions, including weak, ineffective or nonexistent enforcement of competition laws, could conceivably impact the appropriateness of a potential benchmark price, but in some countries a decision by a government or competition authority that certain private entities are engaged in anticompetitive conduct could be based on political or other considerations and not concerns about price distortion.

Accordingly, Commerce has not codified in the regulation a requirement that Commerce conduct an analysis of anticompetitive private actions that might impact potential benchmark prices. At the same time, the regulation does not prohibit parties from submitting information in that regard and arguing that a particular potential benchmark price has been impacted by such anticompetitive conduct. While not dispositive, if interested parties provide sufficient information on the record demonstrating that a foreign government, multilateral organization or other governing authority has concluded that prices in a particular country are distorted as a result of the above-suggested anticompetitive behavior and actions, Commerce may consider such evidence in the context of the totality of the information placed on the record, (including, for example, any evidence that such prices were, in fact, impacted by the alleged anticompetitive behavior), in determining if the potential benchmark or benchmarks are useable for purposes of its MTAR analysis.

With respect to § 351.512(a)(2)(iv), in measuring adequate remuneration under paragraph (a)(2)(i) or (ii) of this section, Commerce will use an ex-factory or ex-works comparison price and the price paid to the firm for the good by the government in order to measure the benefit conferred to the recipient within the meaning of section 771(5)(E) of the Act. Therefore, if necessary, Commerce will adjust the comparison price and the price paid to the firm by the government to remove all delivery charges, import duties, and taxes to derive an ex-factory or ex-works price. This is another important difference from Commerce's LTAR methodology, which uses delivered prices pursuant to § 351.511(a)(2)(iv). Under section 771(5)(E) of the Act, Commerce is required to determine the benefit of a subsidy based on the benefit conferred to the recipient. In an LTAR analysis under § 351.511, Commerce determines the price that the recipient would have paid for the good or service from a private party and that good must be available to the recipient. Therefore, for the good to be available to the recipient, the recipient must incur delivery charges and any taxes or import changes to take possession of the good.

However, in an MTAR analysis under section 771(5)(E) of the Act, Commerce's sole focus is the benefit that is provided to the recipient from the government purchase of the good. Any delivery charges or taxes are expenses that are ultimately incurred by the government as the purchaser of the goods and are not relevant to the revenue and benefit received by the MTAR subsidy recipient. Thus, the subsidy benefit conferred to the recipient in a MTAR analysis is solely the additional revenue (funds) received from the government, beyond what the market would have provided, for the purchase of that good. This is an important distinction between LTAR and MTAR benefit analyses under §§ 351.511 and 351.512.

Delivery charges could be considered the provision of a service; however, purchases of services by the government are not financial contributions under section 771(5)(D) of the Act. Thus, with respect to an MTAR analysis, delivery charges are also not countervailable subsidies under the CVD law. Including delivery charges within an MTAR analysis would potentially place Commerce in the position of finding countervailable the government purchase of services. Accordingly, for this reason as well, it is important that Commerce adjust the comparison price and the price paid to the firm by the government to remove all delivery charges in its MTAR analysis under § 351.512.

One commenter expressed concern about the use of ex-factory or ex-works prices in the regulation. That commenter stated that it was worried that foreign governments could manipulate the price paid for the purchase of the good by shifting some of the payment for the good into the payment of freight to a respondent. Therefore, that commenter suggested that Commerce include a provision stating that Commerce would evaluate delivery charges on government purchases to determine whether delivery charges are consistent with prevailing market conditions and that the agency would accordingly adjust the government and benchmark prices.

Commerce has not adopted this suggestion because the suggested language appears to be inconsistent with the express language of the Act. Sections 771(5)(D)(iv) and (E)(iv) of the Act provide explicitly that a government purchase for MTAR only relates to the government purchase of a good and not the government purchase of a service. Nonetheless, if Commerce, while investigating the government purchase of a good for MTAR, finds evidence on the record that a government may be engaging in possible price manipulation by switching funds from the payment of the good to other payments to a respondent, Commerce will conduct further analysis of the price the government paid for the good.

In the *Proposed Rule,* Commerce also proposed including in the regulation its treatment of how it calculates a benefit when the government is both a provider and purchaser of the good, such as with electricity in § 351.512(a)(3).[216] In that situation, Commerce would normally measure the benefit to the recipient firm by comparing the price at which the government provided the good to the price at which the government purchased the same good from the firm. Commerce has determined to codify that provision in the final rule. While Commerce has not had a large number of cases in which it determined the existence of subsidies in the form of the government purchasing a good for MTAR, it has had numerous cases where the government is both the provider and purchaser of a good, *e.g.,* the government both provided and purchased electricity from a respondent, in our investigations and administrative reviews.[217]

Section 771(5)(E) of the Act states that a benefit will normally be treated as conferred when there is a ''benefit to the recipient.'' In other words, section 771(5)(E) of the Act provides the standard for determining the existence and amount of a benefit conferred through the provision of a subsidy and reflects the ''benefit-to-the-recipient'' standard which ''long has been a fundamental basis for identifying and measuring subsidies under U.S. CVD practice.'' [218] Therefore, in situations where the government is acting on both sides of the transactions—both selling a good to, and purchasing that good from, a respondent—under § 351.512(a)(3), Commerce will measure the benefit to the respondent by determining the difference between the price at which the government is selling the good to the company and the price at which the government is purchasing that good from the company. In other words, under the ''benefit-to-the-recipient'' standard set forth within section 771(5)(E) of the Act, if a government provided a good to a company for three dollars and then purchased the identical good from the company for ten dollars, logic dictates that the benefit provided to the company by the government would be seven dollars.

Commenters both supported and opposed this regulatory provision. The commenters that opposed § 351.512(a)(3) expressed concerns that this regulation (1) is inconsistent with the ''prevailing market conditions'' standard under section 771(5)(E)(iv) of the Act; (2) is not based on the ''benefit-to-recipient'' standard established under section 771(5)(E) of the Act; (3) is inconsistent with a 2024 *Softwood Lumber* Binational Panel decision and the WTO Appellate Body Report—Canada—Feed-In Tariff Program; [219] and (4) compares a wholesale price (government purchase of electricity) to a retail price (government provision of electricity). After careful consideration of those comments, Commerce finalizes § 351.512(a)(3) with no changes.

There is, however, no support for the claim that the regulation is inconsistent with prevailing market conditions. The commenters that make that claim, focus specifically on the purchase of electricity. In the referenced cases, authorities are purchasing electricity from firms that are producing electricity from renewable resources such as biomass, and thus, given the increased production costs of producing electricity from renewable sources, the government needs to pay more for that electricity. However, the prevailing market condition in those cases is that there is no private, commercial market for this type of generated electricity because such a private market does not exist because of the market domination of cheaper electricity generated using cheaper methods of generation of electricity. The lack of a comparable private market is further confirmed by the fact that those firms that are generating electricity from renewable sources such as biomass are not choosing to displace their purchases of electricity with their own generated electricity but are selling this electricity to the government for a higher price than the price that they pay to purchase electricity. Electricity is a generic product in that it is an identical product regardless of how it is generated. Thus, this type of environment can only exist due to the presence of government subsidies or government mandates.

What Commerce understands these commenters to be suggesting is that a government can create its own artificial ''market'' environment based upon a government's ability to create laws and regulations and its ability to provide subsidies, and these types of actions and government subsidies can escape the remedies provided under the CVD law because this type of unnatural environment would not be created by private, commercial parties that are driven by market principles.[220] Commerce disagrees that such a conclusion of that situation is a correct understanding of the CVD law. Nothing in the Act or regulations anticipate that governments can avoid the disciplines of the CVD law through such artificial markets. Accordingly, the methodology established within § 351.512(a)(3) exists, in part, because the situations in which the type of ''actual market-determined prices'' exist addressed in

[216] *Id.,* 89 FR at 57314.

[217] *See, e.g., Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination,* 81 FR 53439 (August 4, 2016), and accompanying Issues and Decision Memorandum at 35–36; *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances,* 82 FR 51814 (November 8, 2017), and accompanying Issues and Decision Memorandum at 159–74; and *Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination,* 83 FR 39414 (August 9, 2018), and accompanying Issues and Decision Memorandum at 149–83.

[218] *See* SAA at 927.

[219] Article 1904 Binational Panel Decision, Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, USA–CAN–2017–1904–02 (May 6, 2024); Appellate Body Report, Canada—Feed-In-Tariff Program, WT/DS426/AB/R, adopted May 24, 2013.

[220] For example, similar to these parties' statements with respect to electricity, there may be a situation in which within a government's jurisdiction a steel mill is producing a steel product using an inefficient and more costly production process compared to its competitors. Because the product this mill produces is identical to the product produced by its competitors, the company cannot sell the product at a price that would cover its production costs. The government, however, may want to keep this company producing steel products because it is the largest employer in the area. Therefore, the government might enact a law and regulation whereby the government will purchase a share of the company's production at a high price so that the company can remain in operation producing this product. Under an argument similar to the statements made by the commenters on this issue, the government might claim that there is not a subsidy because it has created an artificial ''market'' for a product that is inefficiently and costly produced, and that product otherwise would not have been produced because there is no private market party that would purchase this product at a price that would allow the producer to cover its costs of production. Under that scenario, the government might allege that that there is no subsidy because these are the ''prevailing market conditions'' for that type of inefficiently produced product. Again, that is not a correct assessment of the CVD laws and trade remedies.

§ 351.512(a)(2) are not present in the artificial environment created by foreign governments.

Commerce also disagrees that a benefit in such an artificial environment would be treated as ''conferred'' where there is a benefit to the recipient as set forth within section 771(5)(E) of the Act. The benefit to the recipient standard is whether a firm (*i.e.,* recipient) pays less for its inputs (*e.g.,* money, a good, or service) than it otherwise would pay in the absence of the government program, or receives more revenues than it otherwise would earn.[221] The methodology established within § 351.512(a)(3) is based on the revenue that a firm receives from the government purchase of a good that it otherwise would not have received absent the government action and program. As Commerce explained in the *Proposed Rule,*[222] if a government provided a good to a company for three dollars while also purchasing that identical good from the company for ten dollars, both logic and the benefit-to-recipient standard dictates that the benefit provided to the company by the government is seven dollars.

Furthermore, Commerce rejects the argument that the administering authority is required to create, modify, and codify rules based upon a decision from a NAFTA Panel or the WTO Appellate Body. A chapter 19 NAFTA Panel decision is not precedential and not binding on any case but the one before it,[223] while WTO Panel and Appellate Body decisions are not binding on U.S. law, other than through the procedures set forth in sections 123 and 129 of the Uruguay Round Agreements Act.[224]

Certain commenters stated that the proposed methodology is faulty because it compares a wholesale price (price paid by government) to a retail price (price charged by the government). They posit that the price of electricity in the retail market will provide no useful information as to whether the purchase of electricity generated in the wholesale market has been made for MTAR. Further they argue that this methodology is not expressly conditioned on the consideration of ''product similarity, quantities sold, imported or auctioned; and other factors affecting comparability,'' as it would be under the criteria set forth in the LTAR regulation, § 351.511(a)(2)(i), for measuring adequacy of remuneration.

Asserting that the price that electricity is sold for in the retail market will provide no useful information in determining whether the purchase of electricity generated in the wholesale market has been made for MTAR is illogical. As part of their claims, the commenters state that the price paid to the recipient by the government for generated electricity is a ''wholesale price,'' while the price the recipient pays to the government for generated electricity is a ''retail price.'' In a functioning commercial market, a wholesale price is normally lower than a retail price. Thus, if the government purchase of the good is a ''wholesale price,'' while the price the government charges the recipient is a ''retail price,'' as claimed by these commenters, then the price paid by the government should logically be lower than the price the government charges the recipient for electricity. Therefore, if the ''wholesale price'' for electricity that is paid to the recipient by the government is higher than the ''retail price'' charged to the recipient for electricity, this fact would provide useful information to Commerce that the government purchase is for MTAR.

Furthermore, these parties' reliance on the language within the LTAR regulation at § 351.511(a)(2)(i) is misplaced. With respect to the language within that regulation regarding product ''similarity'' and ''comparability,'' the characteristics and properties of electricity do not change based upon how that electricity is generated. Moreover, Commerce has addressed above these ''similarity'' and ''comparability'' comments with respect to the issue of ''wholesale'' prices and ''retail'' prices. In addition, to the extent that the cited LTAR regulation relates to ''prevailing market conditions'' for electricity, Commerce has already addressed that concern above.

In addition, two more commenters suggested further modifications to the regulation. One commenter stated that the methodology set forth in § 351.512(a)(3) is too rigid and fails to account for adjustments that may be necessary to ensure a fair and accurate price comparison. That commenter stated that the provision should be revised to allow for the removal of selling, distribution, and other operational expenses incurred between the government's purchase and resale of the goods in question from any government sales price used as benchmark.

The other commenter stated that Commerce's methodology under this provision rests upon the assumption that the government sells goods at market-based prices and claimed that the fact that the price paid by the government is higher than the price it sells the good may, in fact, reflect the provision of a good for LTAR. Therefore, that commenter stated that Commerce should clarify that the exception provided under § 351.512(a)(3) will not apply in situations where the same input is investigated for both LTAR and MTAR purposes.

After consideration of these suggested modifications, Commerce has determined that these proposed modifications to § 351.512(a)(3) are not warranted.

Adjustments to benchmark prices for selling, distribution and operational expenses are adjustments that can be valid in an antidumping analysis, but are irrelevant for CVD purposes, and the commenter has not explained how such an adjustment would be consistent with Commerce's CVD practice or the CVD law in general. Furthermore, Commerce disagrees that the modifications to the regulation suggested by the second commenter are appropriate because the government provision of a good for LTAR and the government purchase of a good for MTAR are two different types of financial contributions under section 771(5A)(D) of the Act, and Commerce analyzes benefits separately for each type of financial contribution. If there is a benefit from the government provision of a good for LTAR, the benefit from that financial contribution will be quantified using the methodology set forth within Commerce's LTAR regulation at § 351.511; and if there is a benefit from a government purchase of a good then Commerce will quantify the benefit from that separate financial contribution using the methodology set forth within our MTAR regulation at § 351.512. In addition, adjusting the benchmarks as suggested by this party would be inconsistent with section 771(5A)(E) of the Act that requires the benefit from a government financial contribution be determined based upon the benefit to the recipient. Furthermore, the suggested adjustment would also be inconsistent with Commerce's general definition of a ''benefit'' that is set forth under § 351.503 of the CVD regulations.

Finally, § 351.512(b) addresses the timing of the receipt of the benefit from the government purchase of goods. Under § 351.512(b), Commerce will normally consider a benefit as having been received on the date on which the

[221] *See* § 351.503(b) and the Preamble to the *1998 CVD Regulations,* 63 FR at 65339.

[222] *See Proposed Rule,* 89 FR at 57314.

[223] *See* SAA at 926.

[224] *See* section 123 of the Uruguay Round Agreements Act (''Dispute settlement panels and procedures'') (19 U.S.C. 3533) and section 129 of the Uruguay Round Agreements Act (''Administrative action following WTO panel reports'') (19 U.S.C. 3538). *See also Corus Staal BV* v. *Department of Commerce,* 395 F.3d 1343 (Fed. Cir. 2005).

firm receives payment from the government for the good. Under § 351.512(c), Commerce will normally allocate (expense) the benefit to the year in which the benefit is considered to have been received under paragraph (b) of this section. However, if the purchase is for, or tied to, capital assets such as land, buildings, or capital equipment, the benefit will be allocated over time as provided in § 351.524(d)(2).

21. Commerce Made No Revisions to Proposed § 351.521, the Regulation Addressing Indirect Taxes and Import Charges on Capital Goods and Equipment (Export Programs)

Import substitution subsidies are defined as subsidies that are ''contingent upon the use of domestic goods over imported goods, alone or as 1 of 2 or more conditions,'' in section 771(5A)(C) of the Act. When Commerce published its current CVD regulations in 1998, Commerce held in reserve § 351.521 for import substitution subsidies.[225] However, in the years in which that term has been defined in the Act, Commerce has had no issues with addressing and quantifying import substitution subsidies without an applicable regulation. Accordingly, Commerce is deleting that reserved regulation as unnecessary in this final rule.

Instead, Commerce proposed new § 351.521, which would address Indirect Taxes and Import Charges on Capital Goods and Equipment (Export Programs).[226] Commerce has found that programs that provide for an exemption from or reduction of indirect taxes and import charges on capital goods and equipment to be countervailable export subsidies and has had to address such subsidies under existing regulations on the treatment of direct taxes (§ 351.509); treatment of indirect taxes and import charges (other than export programs) (§ 351.510); and remission or drawback of import charges upon export (§ 351.519).[227] However, none of these current regulations directly addresses programs that provide an exemption from indirect taxes and import charges for exporters that purchase capital goods or equipment.

A program that provides an exemption from indirect taxes and/or import duties for exporters that purchase capital equipment would not be addressed under the regulation for direct taxes (§ 351.509); nor would that program be addressed under § 351.510, which is only applicable to domestic subsidies. In addition, § 351.519 addresses duty drawback on inputs of raw materials that are consumed in the production of an exported product and thus would not be applicable to the exemption of indirect taxes and import charges provided on purchases of capital goods and equipment. Therefore, Commerce proposed this new regulation to explicitly address the exemption of indirect taxes and import charges on capital goods and equipment that are export-specific in the *Proposed Rule.*[228] In consideration of the comments on this regulation, Commerce has determined that no further modification is necessary to it, so Commerce is codifying that regulation as proposed in this final rule.

New § 351.521(a)(1) and (2) addresses the exemption or remission of indirect taxes and import charges and the deferral of indirect taxes and import charges. In the case of export subsidies which provide full or partial exemptions from or remissions of an indirect tax or an import charge on the purchase or import of capital goods and equipment, § 351.521(a)(1) provides that a benefit exists to the extent that the indirect taxes or import charges paid by a firm are less than they would have been but for the existence of the program (including firms located in customs territories designated as outside of the customs territory of the country). For the deferral of indirect taxes or import charges, the regulation provides that a benefit exists to the extent that appropriate interest charges are not collected. Under § 351.521(a)(2), a deferral of indirect taxes or import charges will normally be treated as a government-provided loan in the amount of the taxes or charges deferred, consistent with the methodology set forth in § 351.505; Commerce will use a short-term interest rate as the benchmark for deferrals that are a year in length or shorter; and for deferrals of more than one year, Commerce will use a long-term interest rate as the benchmark.

Under § 351.521(b), the timing of receipt of benefits for the recipient for the exemption from or remission of indirect taxes or import charges will be when the recipient firm would otherwise be required to pay the indirect tax or import charge, the date on which the deferred tax becomes due for deferral of taxes for one year or shorter, or the anniversary date of a deferral lasting for more than one year.

Finally, § 351.521(c) states that Commerce will allocate the benefit of a full or partial exemption, remission, or deferral of payment of import taxes or import charges to the year in which the benefit was considered received under § 351.521(b).

Commenters on this provision were all supportive of the new regulation, but one stated that Commerce should clarify in this regulation that export programs regarding indirect taxes and import charges on capital goods and equipment would normally be considered non-recurring subsidies, and the benefit from these subsidies would be allocated over time instead of expensed in the year of receipt.

Commerce understands the concerns of the commenter but finds no reason to make this type of clarification within this regulation because the regulation addressing the allocation of benefit to a particular time period, § 351.524, already explicitly states that Commerce will consider a subsidy to be non-recurring if the subsidy was provided for, or tied to, capital assets of a company.[229]

22. Commerce Is Removing the Regulation Regarding Green Light and Green Box Subsidies, § 351.522

In the *Proposed Rule,* Commerce proposed deleting the Green Light and Green Box subsidies provision found at current § 351.522 because the provisions are no longer relevant under U.S. law.[230] Commerce received no objections from the commenters to this change, and therefore is removing the regulation in this final rule. Under section 771(5B)(G)(i) of the Act, the Green Light provisions under subparagraphs (B), (C), (D) and (E) lapsed 66 months after the WTO Agreement entered into force, *circa* 2000 and 2001, as these provisions were not extended pursuant to section 282(c) of the URAA. Under section 771(5B)(G)(ii) of the Act, the provision for Green Box subsidies no longer applied at the end of the nine-year period beginning on January 1, 1995. Because the statutory authority to consider Green Light and Green Box subsidies ended over 20 years ago, Commerce has eliminated these obsolete provisions.

[225] *See 1998 CVD Regulations,* 63 FR at 65414.

[226] *See Proposed Rule,* 89 FR at 57314–57315.

[227] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination,* 78 FR 50379 (August 19, 2013), and accompanying Issues and Decision Memorandum at 9.

[228] *See Proposed Rule,* 89 FR at 57314–57315.

[229] *See* § 351.524(c)(2)(iii).

[230] *See Proposed Rule,* 89 FR at 57315.

23. Commerce Is Making Some Small Revisions to Proposed § 351.525, the Regulation Covering the Calculation of Ad Valorem Subsidy Rates and Attribution of Subsidies to a Product

Under section 701(a) of the Act, Commerce is required to investigate and quantify countervailable subsidies that are provided either directly or indirectly with respect to the manufacture, production, or export of merchandise subject to a CVD investigation or administrative review. The calculation and attribution rules that are set forth under § 351.525 are the primary tools used to quantify the subsidies that are being provided either directly or indirectly to the manufacture, production, and exportation of subject merchandise.

When Commerce developed the current attribution rules for cross-owned companies 25 years ago, it had limited experience with the attribution of subsidies between affiliated companies. The practice of requiring information from cross-owned companies involved in the supply of an input product, a holding or parent company, or the production of subject merchandise evolved slowly for Commerce, and this practice led to the development of some of the attribution rules that are currently codified under § 351.525. It was essentially not until 1993 when Commerce had investigations on steel products from various countries [231] that the agency began to attribute to a respondent the subsidies that were provided to companies that were related to the respondent through cross-ownership.[232] In those investigations, Commerce required ''complete responses for all related companies that conducted either of the following types of financial transactions: (a) Any transfer of funds (*e.g.,* grants, financial assets) or physical assets to the respondent, the benefits of which were still employed by the producer of the subject merchandise during the POI; or (b) Any assumption of debt or other financial obligation of the respondent (*e.g.,* loan payments, dividend payments, wage compensation) that the respondent would have had to pay during the POI.'' [233] Therefore, collecting subsidy information from parent companies and affiliated input suppliers was a relatively recent practice in 1998 when Commerce first attempted to develop and codify a set of attribution rules.

In the ensuing years, Commerce has developed a detailed practice with respect to the treatment of cross-owned companies and the attribution to respondents of subsidies received by cross-owned companies. Based on this experience, Commerce proposed revising its attribution rules that are currently codified under § 351.525(b)(6) in the *Proposed Rule*.[234] After consideration of the comments on this issue, Commerce is codifying the revisions as proposed, with some small modifications, in this final rule.

As an initial matter, cross-ownership is defined under current § 351.525(b)(6)(vi), and Commerce has not modified that paragraph in this final rule, except for moving it to § 351.525(b)(6)(vii) in light of changes to other provisions.[235]

Next, § 351.525(b)(6)(iii) addresses holding or parent companies. Commerce has deleted the section that states that if a holding company merely serves as a conduit for the transfer of the subsidy from a government to a subsidiary, Commerce will attribute the subsidy solely to the products sold by the subsidiary. This language became redundant in light of revisions to the attribution section on the transfer of subsidies between corporations with cross-ownership, as described below. Notably, no commenter objected to this modification of the holding company or parent company attribution rule.

The Cross-Owned Input Producer Attribution Rule

With respect to the cross-ownership attribution rule for input suppliers, § 351.525(b)(6)(iv), Commerce made several changes to provide greater clarity with respect to the analysis of when an input is ''primarily dedicated'' to the production of a downstream product. In addition, Commerce has found that the examples provided in the preamble of the *1998 CVD Regulations* (semolina to pasta; trees to lumber; and plastic for automobiles) [236] have not provided much guidance with respect to many of the input products that Commerce has encountered in its CVD cases. Moreover, the analysis of whether an input is primarily dedicated has been an issue in recent CIT holdings.[237] Therefore, Commerce has codified several factors that it will consider in its analysis of whether an input is primarily dedicated.

In § 351.525(b)(6)(iv)(A), Commerce added language to explicitly state that the attribution rule applies only to cross-owned corporations that produce the input, as opposed to cross-owned companies that procure the input from non-cross-owned companies and then provide that input to the respondent. To provide further clarity, Commerce has changed the title of this attribution regulation from ''input supplier'' to ''input producer.'' The definition of an ''input'' under this attribution regulation covers the creation or generation of by-products resulting from the production operations of the cross-owned input producer. With these changes to the regulation, Commerce is not intending to change its current practice that a primarily dedicated input does not have to be used directly in the production of subject merchandise but may be used as an input at earlier stages of production.

One commenter opposed the modification of ''input supplier'' to

[231] *See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37218 (July 9, 1993).

[232] Under § 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets.

[233] *See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37218 (July 9, 1993).

[234] *See Proposed Rule,* 89 FR at 57315–57320.

[235] Commerce notes that the standard set forth in the regulation is that cross-ownership will normally be met when there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. While the regulatory standard of control will normally be met by a majority ownership, cross-ownership is defined based on whether one company exercises control of another company to a degree where one corporation can use or direct the assets of another corporation in essentially the same ways it can use its own assets. Cross-ownership may also be based on a large minority voting interest, a ''golden share,'' and other corporate relationships such as common interlocking board members and corporate officers that administer the daily operations of a corporation. In addition, Commerce's experience since the promulgation of the cross-ownership standard in 1998 has shown that other factors, such as certain familial relationships, may, in particular circumstances, warrant a finding of cross-ownership, with or without a majority voting ownership interest. *See Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination,* 72 FR 60642 (October 25, 2007). Commerce has also found the absence of cross-ownership even when one corporation held the majority ownership interest in another corporation because that corporation, even with majority voting rights was precluded by a creditors' agreement from exercising control over certain critical corporate decisions within the second corporation. A finding of cross-ownership is an entity-specific determination.

[236] *See 1998 CVD Regulations,* 63 FR at 65401 (providing examples of when it may be appropriate to attribute the subsidies received by an input supplier to the production of cross-owned corporations producing the downstream product—situations where the purpose of the subsidy provided to the input producers is to benefit both the input and downstream product.).

[237] *See, e.g., Kaptan Demir Celik Endustrisi Ve A.S.* v. *United States,* Court No. 21–00565, Slip-Op 23–62 (CIT April 26, 2023) (*Kaptan* v. *United States*) at 13–16; *Nucor Corporation* v. *United States,* Court No. 21–00182, Slip Op. 22–116 (CIT October 5, 2022) (*Nucor Corp.* v. *United States*) at 23–24; and *Gujarat Fluorochemicals Ltd.* v. *United States,* 617 F. Supp. 3d 1328, 1330 (CIT 2023) (*Gujarat* v. *United States*).

''input producer'' in the regulation. That commenter stated that the modifications to this cross-owned attribution rule for input producers could create a loophole to avoid the attribution of subsidies whereby a cross-owned input supplier can first provide the input to a cross-owned supplier that then will provide the input to the cross-owned respondent/producer. While this type of cross-owned transaction is covered by the input producer rule, Commerce has made a small modification to proposed § 351.525(b)(6)(iv)(A) to clarify that transactions involving a cross-owned input producer that provides the input to a cross-owned supplier that then provides the input to the cross-owned producer fall within the cross-owned input producer regulation. The final language in § 351.525(b)(6)(iv)(A) now states: ''If there is cross-ownership between an input producer that supplies, *either directly or indirectly,* a downstream producer and the production of the input product is primarily dedicated . . . .''

On the other hand, a commenter that supported the revisions to § 351.525(b)(6)(iv)(A) recommended that Commerce consider including subsidies to upstream input suppliers even if those suppliers are not cross-owned with the subject merchandise producer. This commenter stated that in the stainless-steel industry, for example, many producers in foreign countries are receiving subsidized nickel for stainless steel production which distorts the market and provides those foreign producers with an unfair competitive advantage.

While Commerce agrees with the commenter that the described stainless-steel industry situation described is concerning, that type of subsidization is more properly addressed under other provisions of the regulations and the Act, such as the upstream subsidies provision at § 351.523 and sections 701(e) and 771A of the Act; where the supplier is a state-owned enterprise, under sections 771(5)(D)(iii) and (E)(iv) of the Act that address the government provision of a good or service; or under the ''entrusts or directs a private party'' provision at 771(5)(B)(iii) of the Act.

The Primarily Dedicated Input Provision

Section 351.525(b)(6)(iv)(B) sets forth several criteria or factors that Commerce will review when determining whether an input is primarily dedicated to the production of downstream products. First, Commerce will determine whether the input could be used in the production of a downstream product, including the production of subject merchandise. Then, under the additional criteria, in no particular hierarchy, Commerce may consider (1) whether the input is a link in the overall production chain; (2) whether the input provider's business activities are focused on providing the input to the downstream producer; (3) whether the input is a common input used in the production of a wide variety of products and industries; (4) whether the downstream producers in the overall production chain are the primary users of the inputs produced by the input producer; (5) whether the inputs produced by the input producer are primarily reserved for use by the downstream producer until the downstream producer's needs are met; (6) whether the input producer is dependent on the downstream producers for the purchases of the input product; (7) whether the downstream producers are dependent on the input producer for their supply of the input; (8) the coordination, nature, and extent of business activities between the input producer and the downstream producers whether directly between the input producer and the downstream producers or indirectly through other cross-owned corporations; and (9) other factors deemed relevant by Commerce based upon the case-specific facts. The analysis of the facts on the record of whether an input is primarily dedicated is always guided by the statutory mandate of addressing and including countervailable subsidies provided either directly or indirectly to the manufacture or production of subject merchandise as required under section 701(a) of the Act.

Whether an input product is primarily dedicated is a highly fact-intensive analysis of all the information on the record; such information is usually business proprietary and thus cannot be discussed in Commerce's public determinations. The fact that the data, and Commerce's analysis, usually rely on business proprietary information makes it a complicated process with respect to distinguishing specific determinations of ''primarily dedicated'' from one another. For some complicated input issues, just a few small differences in the facts on the record may be the deciding factor that render an input primarily dedicated or not. However, Commerce has concluded that the criteria set forth within § 351.525(b)(6)(iv)(B) will provide additional clarity to the public and the courts with respect to Commerce's analysis of whether an input product is primarily dedicated to a downstream product.

Commerce received comments both in support and in opposition of the criteria within § 351.525(b)(6)(iv)(B). Commenters that opposed the list of primarily dedicated criteria stated that the list of factors was ''too long,'' and they took issue with it not being hierarchical and including a ''catch-all'' provision, which they stated made the other factors irrelevant. One of the commenters stated that the list has factors that are redundant and place too much emphasis on the relationship between the input producer and the producer of subject merchandise instead of the nature of the input. Another commenter suggested that Commerce condense these factors into one factor such as ''the share of the input producer's sale of the input that are supplied to the downstream producer.'' Finally, another commenter stated that Commerce should continue to analyze the primarily dedicated issue on a case-by-case basis.

After consideration of the comments on this regulatory provision, Commerce disagrees that the list of factors within § 351.525(b)(6)(iv)(B) is too long. The list of factors set forth in that regulation is based upon criteria that Commerce provided to the court in recent litigation of the issue of primarily dedicated inputs.[238] In addition, Commerce has not put these factors in hierarchical order because whether inputs are primarily dedicated can, in many instances, be a complicated issue in which evidence on the record will indicate that certain of the factors may be more relevant than others, which may change based on case-specific facts. Moreover, given the wide array of inputs and corporate and business relationships between cross-owned companies, a strict hierarchy of criteria or factors could prevent Commerce from adequately addressing subsidies conferred directly or indirectly on the production or manufacture of subject merchandise as required under section 701(a) of the Act. Because of the complicated nature of the primarily dedicated issue, Commerce has also included within § 351.525(b)(6)(iv)(B) the ability to review other factors deemed relevant based upon case-specific facts.

Commerce disagrees that the list of factors in the regulation places too great an emphasis on the relationship between the cross-owned input producer and the producer of subject merchandise. The attribution rule for

[238] *See, e.g., Kaptan* v. *United States,* Slip-Op 23–62 at 13–16; *Nucor Corp.* v. *United States,* Slip Op. 22–116 at 23–24; and *Gujarat* v. *United States,* 617 F. Supp. 3d at 1330.

input products was developed because Commerce was concerned that a government would both directly provide subsidies to the downstream producer and provide production assistance to that downstream producer by subsidizing cross-owned companies that produce inputs required by that downstream producer. Therefore, while the nature of the input is important in the agency's primarily dedicated analysis, it is also important to analyze the nature of the relationship between the cross-owned input producer and the cross-owned downstream producer because it is that relationship that dictates the provision of that input.

Commerce has also determined that condensing the factors within § 351.525(b)(6)(iv)(B) into the single factor of ''the share of the input producer's sales of the input that are supplied to the downstream producer'' is too limited and could obfuscate the purpose of the input producer attribution regulation. For example, one might observe that an input producer provides a critical input to the production of the downstream product and that the cross-owned input provider is the sole supplier of that input to the cross-owned downstream producer. However, the sales of that input to the downstream producer might account for only a small share of the input producers' total sales of the input. Under the lone factor consideration proposed by this commenter, Commerce would find this critical input not to be primarily dedicated, while under a more comprehensive consideration of multiple factors, Commerce might find the reverse. Therefore, consideration of the proposed one lone factor would not be sufficiently informative, either with respect to the purpose of the input producer regulation or to the issues of whether an input product is primarily dedicated.

Likewise, Commerce, will continue to consider the factors set forth in § 351.525(b)(6)(iv)(B) and will not go back to deciding whether an input is primarily dedicated to the production of the downstream product on a case-by-case basis, without consideration of those factors, as suggested by one commenter. A major impetus behind the agency's codification of the factors for analyzing primarily dedicated inputs within § 351.525(b)(6)(iv)(B) is recent court decisions that have taken umbrage with Commerce's case-by-case approach for our analysis of whether an input is primarily dedicated. To go back to a case-by-case approach would fail to address some of the criticism raised by the courts with respect to Commerce's primarily dedicated analysis.

In addition, under the strict CVD deadlines in the Act, Commerce has limited time in which to make its initial decisions as to whether an input is primarily dedicated. Indeed, Commerce must make these complicated decisions in an investigation or administrative review within days of receipt of the information on cross-owned companies because the agency must provide foreign respondents with explicit instructions as to which cross-owned input producers will be required to provide full questionnaire responses. Delays in making these cross-owned input producer decisions adversely impact Commerce' ability to remain in compliance with the statutory deadlines established by Congress. Therefore, having criteria in the regulation provides clarity to the interested parties regarding Commerce's preliminarily dedicated analysis and assists the agency in its decision-making process, which will help to ensure that all statutory deadlines are met in a more efficient manner.

Thus, Commerce continues to believe that the codification of these criteria or factors in § 351.525(b)(6)(iv)(B) is appropriate and ensures consistency in the agency's analysis of whether an input is primarily dedicated. In addition, Commerce has determined that the codification of these criteria or factors provides clarity to both the interested parties and the courts with respect to the issue and analysis of whether an input is primarily dedicated.

In addition, one commenter expressed its concerns about the revised language in § 351.525(b)(6)(iv)(B), stating that Commerce expanded the input provider rule by providing a more extensive definition of ''primarily dedicated'' to include within the definition inputs that merely ''could be used in the production of a downstream product including subject merchandise, regardless of whether the input is actually used for the production of subject merchandise.'' This commenter stated that this modification, in effect, addresses upstream subsidies without complying with the statutory provisions for upstream subsidies set forth within the Act. The party suggested that Commerce should incorporate a more definitive limiting principle based not on whether the input product ''could'' be used to produce a downstream product including the subject merchandise but that the input product must actually be used to produce the downstream product.

Commerce finds that this description of the regulation misconstrues the original, non-modified language within § 351.525(b)(6)(iv). The original language of the regulation only referenced ''cross-ownership between an input supplier and a downstream producer, and the production of the input product is primarily dedicated to production of the downstream product.'' The original language in the regulation did not require that the input product be related to the production of downstream products that include subject merchandise, only that the input has to be used to produce downstream products. While Commerce has effectively administered the regulation to ensure that the subject merchandise was included as one of the downstream products, the original language could be interpreted otherwise. Therefore, to remove the ambiguity in the original regulation, Commerce has modified it to state that the input is one that could be used in the production of subject merchandise. Thus, the new language has been inserted into the regulation to restrict the application of this attribution rule, not to expand the scope of this attribution regulation. In the *Proposed Rules,* we used the phrase ''could be used in the production of a downstream product including subject merchandise, regardless of whether the input is actually used for the production of subject merchandise.'' For clarity in the final rule we have shortened the language to simply state ''could be used in the production of a downstream product including subject merchandise.''

Commerce notes that it has continued to include the term ''could be used'' rather than the commenter's suggested term ''actually used,'' because in Commerce's examination of a ''primarily dedicated'' input, Commerce will examine whether the input is one that is normally used to produce subject merchandise. If the input is not an input that is normally used to produce subject merchandise, then the input would not be ''primarily dedicated.'' Commerce has retained the phrase ''could be used'' specifically instead of ''actually used'' because of the agency's long-standing practice that it does not trace the use of a subsidy. It has also retained that phrase, more importantly, because of concerns of potential manipulation to avoid countervailing duties.

For example, one can imagine a situation in which a respondent purchased an input from both a cross-owned producer and from a non-crossed-owned company, and yet claims in its reporting to Commerce that it only ''actually uses'' the inputs purchased from the non-cross-owned company to produce subject merchandise that is exported to the United States. It might be true, but it also might not be true,

and in either case it might be difficult, if not impossible, to verify. Using the term ''could be used,'' rather than ''actually used'' therefore addresses that potential for manipulation.

In addition, the modifications made to the input producer regulation do not relate to the provision of upstream subsidies. As the preamble of the *1998 CVD Regulations* states, input products provided by a cross-owned producer that are not primarily dedicated to the downstream products would not fall within the cross-owned attribution rule but would be addressed under the upstream subsidies provision of the statute.[239] The modifications to this regulation do not change that policy.

Finally, one commenter suggested that Commerce should add clarifying language to the regulation to define the production of an input as including the generation or creation of an input as a by-product. The agency does not see a need to include this type of clarification within the regulatory language, as the regulatory language is expansive enough to include by-products and this preamble sufficiently and explicitly explains that the production of an input would also include inputs that are by-products of the cross-owned company's production process.

Cross-Owned Providers of Utility Products

Since the publication of the original attribution rules in 1998, Commerce has increasingly faced more complex cross-ownership issues and corporate structures. Moreover, the transactions between these cross-owned corporate entities and their provision of ''inputs'' as defined and addressed within the CVD regulations have multiplied with increased complexities. Therefore, with over 25 years of experience in addressing transactions between cross-owned companies since the publication of the 1998 attribution rules, Commerce has concluded that it is appropriate now to codify an additional attribution rule to cover the provision of certain inputs that are more than just input products used in the manufacture or production of downstream products; specifically cross-owned providers of electricity, natural gas or similar utility goods. Commerce proposed this addition to the regulation in the *Proposed Rule,*[240] and, after consideration of comments on this provision, Commerce is now codifying it as part of the final rule.

Under § 351.525(b)(6)(v), titled ''Providers of utility products,'' if there is cross-ownership between a company providing electricity, natural gas or other similar utility product and a producer of subject merchandise, Commerce will attribute subsidies received by that provider to the combined sales of that provider and the sales of products sold by the producer of subject merchandise if at least one of the following two conditions is met: a substantial percentage, normally defined as 25 percent or more, of the production of the electricity, natural gas, or other similar utility product by the cross-owned utility provider is provided to the producer of subject merchandise; or the producer of subject merchandise purchases 25 percent or more of its electricity, natural gas, or other similar utility product from the cross-owned provider. Commerce has concluded that the criteria for determining whether an input product is primarily dedicated to the production of downstream products is not particularly useful for utility products such as electricity and natural gas. Among other considerations, electricity and natural gas are not physical inputs into the production of downstream products but have emerged as goods or services that can effectively subsidize the production or manufacture of certain products. Therefore, a consistent standard of analysis for the attribution of utility products provided by a cross-owned corporation will assist the agency in effectuating the requirements of section 701(a) of the Act.

This regulation focuses on the provision of utility products between cross-owned companies to provide both clarity to the public and consistency of treatment among Commerce's cases. With the codification of this standard, Commerce recognizes that in most economies, providers of goods such as electricity and natural gas are government-regulated public utilities, and manufacturers require utility goods and services to conduct their operations. In Commerce's view, a utility company providing 25 percent of its output to one company indicates a significant level of dependency and dedication to one customer, and a company that purchases 25 percent of its energy needs from one supplier has also become engaged in a significant supplier relationship. Therefore, Commerce has established a 25 percent threshold for attributing subsidies received by the cross-owned utility company and the producer of subject merchandise.

However, if the cross-owned utility company is an authority and there is an allegation that the government is providing the electricity or natural gas for LTAR or that the private cross-owned utility company is entrusted or directed to provide electricity or natural gas for LTAR, Commerce will normally analyze these types of allegations under § 351.511, its regulation on the provision of a good or service.

In response to the *Proposed Rule,* Commenters both supported and opposed the attribution of subsidies provided to cross-owned providers of utility products in the regulation.

One of the commenters opposing the provision stated that Commerce should not implement this rule and should instead apply the primarily dedicated standard used for inputs used in the production of a downstream product.

Commerce disagrees with the application of the primarily dedicated standard to utility products and services because that standard is neither relevant nor informative to the agency's analysis of a cross-owned utility provider. The criteria used for an input producer address a physical input that is incorporated into a downstream product. Normally, utility goods such as electricity, while necessary for the manufacturing or production process of a manufactured good, are not physical inputs into that merchandise. Therefore, the factors set forth within § 351.525(b)(6)(v) for a primarily dedicated analysis are not instructive for the analysis as to whether subsidies provided to a cross-owned utility provider should be attributed to producers of the subject merchandise.

Other commenters opposing the provision stated that the 25 percent threshold will limit Commerce's flexibility, and they suggested that Commerce should address cross-owned utility providers instead on a case-by-case basis.

Commerce disagrees with this suggestion. The purpose of this new attribution regulation for cross-owned utility providers is to provide both clarity to the public with respect to the agency's treatment of cross-owned utility providers and to provide more consistency in Commerce's treatment of cross-owned utility providers. Going back to analyzing cross-owned utility providers on a case-by-case basis would undermine both of those policy and administrative goals. In addition, the 25 percent threshold for a utility good provides useful regulatory guidance that will assist Commerce in determining which cross-owned companies need to provide full questionnaire responses, a decision that needs to be made in mere days given the strict CVD deadlines in the Act. Moreover, the new attribution rule for cross-owned utility providers will effectively and efficiently implement the statutory mandate under section 701(a) of the Act that Commerce

[239] *See 1998 CVD Regulations,* 63 FR at 65401.

[240] *See Proposed Rule,* 89 FR at 57317.

investigate the subsidies that are conferred, directly or indirectly, on the production and manufacture of subject merchandise.

In response to concerns which some commenters expressed, Commerce recognizes that it is possible that after a CVD order has been put in place a respondent may attempt to avoid the application of this regulation by attempting to reduce the amount of electricity provided or purchased to a level below the 25 percent threshold. Accordingly, to prevent this type of potential avoidance of the application of this attribution regulation, in reviewing record documents in its proceedings, Commerce will be sensitive to these potential types of provision and consumption changes after the issuance of a CVD order, and it also recommends that other interested parties in its proceedings be sensitive to those potential concerns as well.

One of the commenters supporting the regulation suggested that Commerce codify the language in the preamble that if the cross-owned utility provider is an authority and there is an allegation that the utility good or service is provided for LTAR or there is an allegation of entrustment or direction, Commerce will analyze the provision of the utility good or service under § 351.511, the regulation on the provision of a good or service.

Commerce sees no need to make this an additional regulatory provision under our attribution regulations as this standard is already explicitly addressed under Commerce's LTAR regulation at § 351.511, the government provision of a good or service.

Finally, one of the commenters supporting the regulation for providers of utility products recommended that Commerce create a separate regulatory provision for cross-owned freight service providers using the same 25 percent threshold used for cross-owned providers of utility products.

Commerce has not adopted this recommendation. Since the implementation of the *1998 CVD Regulation*s that included the attribution rules for cross-owned companies, while Commerce has investigated hundreds of different subsidies related to the production or manufacture of merchandise that is covered in a CVD investigation, the agency has rarely, if ever, had allegations related to the subsidization of freight services other than those covered under the statutory provision of a government good or service. Therefore, Commerce does not see a need to promulgate an attribution rule to cover the provision of freight services from cross-owned companies. However, Commerce does recognize that if a cross-owned freight service provider transferred a subsidy to the cross-owned producer/respondent, the transfer of that subsidy could fall under § 351.525(b)(6)(vi), the attribution rule for the transfer of a subsidy between companies with cross-ownership.

Other Service Providers

While the proposed, and now final, regulation addressed only the attribution of subsidies for cross-owned utility product providers, in the *Proposed Rule* Commerce acknowledged that it retains the authority to include subsidies received by certain cross-owned companies that are not utility product providers when it concludes the specific facts on the record warrant such inclusion.[241]

For example, Commerce has at times had to determine whether to include subsidies received by cross-owned companies that provide land, employees, and manufacturing facilities, including plants and equipment, to the producer of subject merchandise. In that situation, if the record reflects that in order to manufacture or produce merchandise that is subject to an investigation or administrative review the cross-owned company requires a manufacturing facility and equipment, land upon which to place its manufacturing facilities, and/or employees, Commerce may find that government subsidies provided to those cross-owned companies are providing, directly or indirectly, subsidies to the manufacture and production of subject merchandise as set forth within section 701(a) of the Act. In that case, Commerce might determine it appropriate to attribute the subsidies received by that provider to the combined sales of that provider and the sales of products sold by the producer of subject merchandise.

Likewise, there may be situations in which Commerce determines that it is appropriate to include subsidies received by certain cross-owned service providers in its calculations. The preamble to the *1998 CVD Regulations* refers to the situation in which a government provides a subsidy to a non-producing subsidiary such as a financial subsidiary and notes that consistent with Commerce's treatment of holding companies, the agency would attribute a subsidy to a non-producing subsidiary to the consolidated sales of the corporate group.[242] Commerce normally does not include cross-owned general service providers in the attribution of subsidies.[243] Where cross-owned service providers provide critical inputs into the manufacture and production of subject merchandise,[244] Commerce may include cross-owned service providers in the attribution of subsidies. In all cases, whether to include subsidies provided by cross-owned service providers in the attribution of subsidies is a case-specific determination.

For example, if there is cross-ownership with a company providing R&D, tolling, or engineering services directly related to the production or assembly of subject merchandise, Commerce may determine that it is appropriate to attribute subsidies received by the service provider to the combined sales of that provider and the producer of subject merchandise. In the case of a cross-owned company performing R&D for the respondent company, Commerce might determine to include the subsidies provided by the government to that cross-owned R&D service provider. Similarly, if the respondent company has a cross-owned toller that assembles or manufactures the subject merchandise which is subsequently sold or exported by the respondent, Commerce might include subsidies provided by the government to that cross-owned toller.[245] With respect to engineering services, while Commerce will not include subsidies to companies that provide only general engineering services to a respondent, the agency might include subsidies to those service providers if the services are directly related to the manufacture, production or export of subject merchandise. For example, in *Fabricated Structural Steel from Canada,* Commerce included cross-owned companies that provided engineering drafting services because these services were critical to the production and manufacture of subject merchandise.[246] While the revisions to § 351.525(b)(6) do not include subsidies to cross-owned providers of services or

[241] *See Proposed Rule,* 89 FR at 57317–57318.

[242] *See 1998 CVD Regulations,* 63 FR at 65402.

[243] *See, e.g., Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination,* 77 FR 17410 (March 26, 2012), and accompanying Issues and Decision Memorandum at Comment 22.

[244] For the purposes here, Commerce is using the term ''input'' as defined in § 351.503(b) and the *1998 CVD Regulations,* 63 FR at 65359, where the term ''input'' is defined as money, a good, or a service.

[245] *See Certain Fabricated Structural Steel from Canada: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 84 FR 33232 (July 12, 2019), and accompanying preliminary decision memorandum at section VI. Subsidies Valuation.

[246] *Id.*

subsidies to cross-owned providers of land, employees, and manufacturing facilities, the agency may attribute such subsidies in its CVD calculations where supported by the record.

Transfer of a Subsidy

Under the language for the transfer of subsidies (formerly § 351.525(b)(6)(v), now § 351.525(b)(6)(vi)), if a cross-owned corporation receives a subsidy and transfers it to a producer of subject merchandise, Commerce will attribute the subsidy only to products produced by the recipient of the transferred subsidy. Moreover, when the cross-owned corporation that transferred the subsidy could fall under two or more of the attribution rules under § 351.525(b)(6), the transferred subsidy will be attributed solely to the recipient of the transferred subsidy as set forth under § 351.525(b)(6)(vi). With these revisions to the transfer attribution rule, as proposed in the *Proposed Rule* [247] and codified in this final rule, Commerce clarifies that when a cross-owned corporation transfers a subsidy, that subsidy will be attributed only to the recipient of the subsidy.

In addition, the agency amended the title of § 351.525 in the *Proposed Rule* from ''Transfer of subsidy between corporations with cross-ownership producing different products'' to ''Transfer of subsidy between corporations with cross-ownership'' to indicate that the transfer of a subsidy can be from any cross-owned corporation, not just from a cross-owned corporation that is a manufacturer.

General Questionnaire Reporting Requirements

In the preamble to the *Proposed Rules,* Commerce set forth our normal practice for general questionnaire reporting requirements for cross-owned corporations. We are making no changes to the reporting requirements. We are providing these instructive guidelines to provide clarity to the public and to ensure consistency across our cases. For cross-owned corporations covered by § 351.525(b)(6)(iv), Commerce will normally only request information or a questionnaire response for input producers that provide the input to the producer of subject merchandise during the POI or POR. Similarly, for cross-owned corporations that covered by § 351.525(b)(6)(v), Commerce will normally only request information or a questionnaire response for cross-owned utility companies that provided electricity, natural gas or other utility products to the producer of subject merchandise during the POI or POR. In addition, for corporations producing subject merchandise under § 351.525(b)(6)(ii) that were cross owned during the POI and POR, they must provide information and a questionnaire response covering the AUL of a firm's renewable physical assets even if one or more did not export subject merchandise to the United States during the POI or POR. Due to the ease of switching export shipments of subject merchandise between cross-owned corporations producing the subject merchandise and the potential for evasion of a CVD order, Commerce will analyze subsidies conferred to all cross-owned corporations producing subject merchandise and will calculate one CVD rate for these cross-owned entities. Commerce will also attribute subsidies provided during the AUL to all holding or parent companies that are cross owned with the producer of subject merchandise during the POI or POR. Finally, information on the transfer of non-recurring subsidies from a cross-owned company during the AUL must be reported, even if the company that transferred the subsidy to the producer of subject merchandise is no longer cross-owned during the POI or POR or has ceased operations.

Non-Attribution of Subsidies to Plants or Factories and General Standing for Finding Subsidies Tied

In the *Proposed Rule,* Commerce proposed two additions to the attribution rules under § 351.525(b) to codify two longstanding Commerce practices with respect to the attribution of subsidies to plants and factories and the tying of a subsidy.[248] Commerce is now finalizing those changes as proposed. Under § 351.525(b)(8), Commerce will not tie or attribute a subsidy on a plant- or factory-specific basis. Under § 351.525(b)(9), a subsidy will normally be determined to be tied to a product or market when the authority providing the subsidy (1) was made aware of, or otherwise had knowledge of, the intended use of the subsidy and (2) acknowledged that intended use of the subsidy prior to, or current with, the bestowal of the subsidy. Commerce is also modifying § 351.525(b)(1) to reflect references to the above additions of paragraphs (8) and (9) to the regulation.

In the preamble to the *1998 CVD Regulations,* Commerce rejected comments proposing a regulation to allow the agency to tie or attribute subsidies on a plant- or factory-specific basis.[249] Commerce's practice from at least the publication of the *1998 CVD Regulations,* over 25 years ago, has been consistent—subsidies will not be attributed or tied on a plant- or factory-specific basis. Commerce is now codifying that practice in its regulations.

Commerce's approach to tying goes back to 1982. In *Certain Steel Products from Belgium,* Commerce stated that it determines that a grant is ''tied when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy.'' [250] When Commerce examines whether a subsidy is tied to a product or market, it has consistently used this test that will now be codified in § 351.525(b)(9).

Under this regulatory provision, Commerce will continue to carefully examine all claims that a subsidy is tied to a product or market, based on the case-specific facts on the record. To support a claim that a subsidy is tied, the documents on the record must demonstrate, in accordance with § 351.525(b)(9), that the authority providing the subsidy explicitly acknowledged the intended purpose of the subsidy prior to, or concurrent with, the bestowal of the subsidy. Because the authority and the respondent company have access to all the program-specific documentation related to the bestowal of a subsidy, the authority and the respondent company will be required to submit these documents to support any claim that a subsidy is tied. In general, these documents include all application documents submitted by the respondent company to the authority providing the subsidy and all the subsidy approval documents from that authority. A mere claim that a subsidy is tied to a product or market, absent the submission of supporting documents, will not be sufficient.

Because interested parties other than the respondent government and company may not have access to documents related to the application and approval of the subsidy, such interested parties may make arguments that a subsidy is tied to a product or market based on information that is reasonably available to them. The tying of R&D subsidies raises a number of difficult and challenging issues due to the complex and highly technical nature of certain R&D projects. Therefore, in general, the documents submitted to support a tying claim for R&D subsidies

[247] *See Proposed Rule,* 89 FR at 57318.

[248] *Id.,* 89 FR at 57318–57319.

[249] *See 1998 CVD Regulations,* 63 FR at 65404.

[250] *See Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Belgium,* 47 FR 39304, 39316–17 (September 7, 1982).

must clearly set forth the products that are the focus of the R&D project.

Finally, as Commerce noted in the preamble to the *1998 CVD Regulations,* if subsidies that are allegedly tied to a particular product are in fact provided to the overall operations of a company, Commerce will continue to attribute the subsidy to all products produced by the company.[251]

The tying standard finalized in these regulations was initially developed in 1982 based on the conclusions of the Steel Issues Group, an interagency group whose deliberations were based on governing legislation and related administrative proceedings.[252] In the *1982 Subsidies Appendix*[253] Commerce explained that a subsidy is ''tied'' when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy. Commerce has applied this standard ever since and is codifying it in these final regulations.[254] In reaching this conclusion, the Steel Issues Group considered multiple sources to determine that the definition or identification of the intended purpose of a subsidy should be the primary consideration in determining if a subsidy is tied and how that subsidy should be allocated.[255]

With respect to the codification of these regulations, one commenter expressed concerns as to the attribution regulation regarding subsidies to plants and factories and suggested that Commerce tie subsidies to plants and factories when an authority provides a subsidy to a specific plant or factory that does not produce subject merchandise.

In 1998, Commerce expressed concern that if subsidies were to be tied to a particular plant or factory, interested parties could use that methodology in an attempt to escape the payment of appropriate countervailing duties by selling the production of a subsidized plant or factory domestically, while exporting from an unsubsidized factory.[256] This commenter did not address this long-standing concern regarding manipulation of payment of countervailing duties through the use of tying subsidies to a firm's individual plants or factories. In addition, Commerce has had a consistent long-standing practice codified in 1998 that it will only tie subsidies on a product- or market-specific basis.[257] Notably, the commenter did not claim that Commerce should tie a subsidy to a specific plant or factory when that plant or factory produces only subject merchandise, nor did the commenter provide statutory or regulatory support for its request that Commerce change its long-standing position on this issue. Accordingly, Commerce has made no modifications to its regulation in this regard and will not expand the concept of typing subsidies on a plant- or factory-specific basis.

Another commenter suggested that Commerce should add a second tying standard in the regulation that would apply to the government provision of a good or service. Under this proposed second tying standard, the government provision of a good or service would be tied to a particular market or product if the authority providing the subsidy could have reasonably been expected to know the intended use of the subsidy. This party stated that it was proposing this special tying standard for the provision of a good or service because it was concerned that government authorities could exploit a loophole, wherein they would choose not to specify their knowledge of the use of the subsidy in order to avoid tying in a CVD proceeding.

Commerce has not adopted this proposal for the following reasons. First, since Commerce developed its tying standard in 1982, the agency has only found subsidies to be tied based upon actual documentation that a subsidy is tied to a particular product or market. The documentation normally relied upon by Commerce were applications and approval documents for the conferred subsidy. Actual documentation for tying was required because Commerce wanted documented evidence that a subsidy is tied to help alleviate concerns that a respondent party was attempting to avoid the application of countervailing duties by making unsupported and *ad hoc* claims that a subsidy was tied to non-subject merchandise. In addition, Commerce required documented evidence because the agency did not want to be in a position of having to guess the intent of the authority providing the subsidy.

Second, Commerce believes that creating a second standard for tying that does not require actual documentation creates a much larger loophole in our practice than the loophole the party is suggesting that Commerce close.

Finally, the commenter provided no legal justification for creating two different and potentially conflicting standards for tying a subsidy to a particular product or market, especially where one standard is solely based upon the type of financial contribution.

Limiting the Number of Examined Cross-Owned Companies

In addition to the other changes Commerce made to § 351.525(b), Commerce also proposed to add text that would stipulate that when record information and resource availability supported limiting the number of cross-owned corporations examined, Commerce could do so before conducting a subsidy attribution analysis under any subsidy attribution provisions.[258] Specifically, proposed § 351.525(b)(1) stated that the Secretary ''may determine to limit the number of cross-owned corporations examined under this section based on record information and resource availability.''

Commerce explained in the preamble to the *Proposed Rule* that it has determined in past cases that a limitation of examination was warranted when a respondent had a large number of cross-owned input suppliers and examination of each of those input suppliers would have been unduly burdensome based on the record information and available resources.[259]

Commerce received several comments on this addition to the regulation from domestic industries and law firms asserting that Commerce's limitation of

[251] *See 1998 CVD Regulations,* 63 FR at 65400.

[252] Richard Herring & Brien Stonebreaker, *Evolution of Countervailing Duties (CVD) Regulations and Methodology in the United States,* 30 Int'l Trade L. & Reg. 1 (2024) (*CVD Evolution*).

[253] The *1982 Subsidies Appendix* was published as Appendix 2—Methodology attached to the *Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Belgium,* 47 FR 39304, 39317 (September 7, 1982).

[254] *See CVD Evolution* at 5–9. The *1998 CVD Regulations,* 63 FR at 65402–03, subsequently provided further discussion of the fungibility of money and the attribution and tying of subsidies.

[255] *CVD Evolution* at 5 and 9. As explained in *CVD Evolution,* the Steel Issues Group considered several sources in determining the correct approach to the tying of subsidies, including then section 771(5) of the Act defining a subsidy as being provided ''directly or indirectly'' on the manufacture, production and exportation of merchandise imported into the United States and the legislative history to the Trade Agreements Act of 1979 (Public Law 96–39, 93 Stat. 144, 96th Congress (July 26, 1979)), including the Senate Report (Senate Report of the Committee on Finance, Trade Agreements Act of 1979, S. Rep. No. 96–249 (July 17, 1979), at 85–86) and the House Report (House of Representatives Report of the Committee on Ways and Means, Trade Agreements Act of 1979, H.R. Rep. No. 96–317 (July 3, 1979) at 74–75). It also considered *Viscose Rayon Stable Fiber from Sweden,* in which Commerce determined that government grants were provided specifically to develop the production of modal fiber, and, therefore, the benefits were allocated to the production of modal fiber and not to all products produced by the respondent as the fungibility of money would have supported. *See Viscose Rayon Stable Fiber from Sweden; Final Results of Administrative Review of Countervailing Duty Order,* 46 FR 60486 (December 10, 1981) (*Viscose Rayon Stable Fiber from Sweden*)).

[256] *See 1998 CVD Regulations,* 63 FR at 65404.

[257] *See* current § 351.525(b)(4) and (5).

[258] *See Proposed Rule,* 89 FR 57318–57319.

[259] *Id.,* 89 FR at 57319.

examination cross-owned companies was unnecessary, overly broad, and would likely result in inaccurate overall *ad valorem* subsidy rates because Commerce could not account for all countervailable benefits received by cross-owned companies if it limited the companies examined. Two commenters expressed concerns that respondents could avoid countervailable duties by separately incorporating dozens of affiliates and cross-owned entities assuming Commerce will excuse many of them on resource constraint grounds. Another commenter stated that such a limitation would be tantamount to allowing certain subsidies to go unremedied. That commenter asserted that Commerce could now consider transnational subsidy allegations after changes made to its regulations in March 2024, so it is even more important for Commerce to ensure that subsidies granted to all possible cross-owned entities are reflected in Commerce's CVD calculations. Yet another commenter claimed that the proposed change was not necessary because there are already restrictions on what entities Commerce considers to be cross-owned companies, and section 777A(c)(2) of the Act allows Commerce to limit the number of respondents it reviews in the first place.

In addition, several of the domestic industries commenting on this issue claimed that limiting the number of cross-owned entities examined would be inconsistent with the Act. One commenter noted that sections 701 and 775 of the Act instruct Commerce to countervail specific subsidies provided ''directly or indirectly'' to subject merchandise, including subsidies discovered during a proceeding, and not examining all of the cross-owned input suppliers would violate these provisions. Another commenter stated that section 777A(c)(2) of the Act may allow Commerce to limit respondents selected but does not further limit the cross-owned affiliates of a producer who may have subsidies which can be attributed to the producer.

Three commenters argued that if Commerce kept the limitation language they would prefer to be deleted in the regulation, the agency should also codify criteria on how it would select cross-owned companies for examination. They pointed to Commerce's current respondent selection methodology, which is now being codified at § 351.109(c), as an example, and stated that Commerce should add additional clarification about the factors that Commerce will consider when determining which cross-owned corporations to examine. In that regard, one commenter requested that Commerce permit parties to submit public information regarding subsidies to each cross-owned company in question to ensure large subsidies provided to certain cross-owned entities are not left unexamined and take into consideration how significant an input is to the production of the subject merchandise when selecting cross-owned input suppliers or utility suppliers to examine.

Finally, one commenter suggested that if Commerce continues to retain this limitation language in the regulation, it should adopt a rebuttable presumption that unexamined cross-owned entities receive subsidies at a rate attributable to subject merchandise that is an average of the rates calculated with respect to examined cross-owned entities.

Response

After consideration of the comments on this issue, Commerce has determined to make no change to the proposed regulation. Some commenters downplayed Commerce's resource constraints, but in some cases Commerce lacks the resources to review every cross-owned entity in a given segment or proceeding. In fact, Commerce is sometimes faced with dozens of cross-owned entities to examine in CVD proceedings, but the public may be unaware of that fact if the names and number of cross-owned input suppliers, for example, are proprietary. For this reason, Commerce presumes that those commenters downplaying Commerce's resource constraints were unaware of such factual scenarios.

Commerce is tasked by Congress to be the administrator of the CVD law. Commerce disagrees with certain commenters that because the Act expressly allows Commerce to select respondents when the number of potential respondents is too large to examine, the Act does not also permit Commerce to limit examination of certain transactions or entities when resource constraints and the record supported such a limitation. Indeed, it is common for Commerce to limit the number of transactions [260] or affiliated parties reviewed in a case when the facts on the record warrant such limitation.[261] This should not be surprising to anyone who practices before Commerce—it is the normal authority given to a Federal agency in charge of administering an administrative proceeding.

Furthermore, the Act reflects that Commerce anticipated that Commerce could limit the number of cross-owned companies examined. By recognizing in section 777A(c)(2) of the Act that it may not be ''practicable'' for Commerce to examine every potential respondent ''because of the large number of exporters or producers involved in an investigation or review,'' Congress clearly appreciated that Commerce has limited resources and therefore some restrictions must be necessary at times when the burden is too large for the task at hand. In certain, but not all, cases, this becomes an issue when Commerce is faced with a large number of cross-owned entities.

When Commerce examines cross-owned entities, such as cross-owned input suppliers, it must essentially conduct an additional, complete, investigation of the cross-owned entity or entities, including issuing questionnaires and supplemental questionnaires to examine the subsidies received by the cross-owned entities for purposes of attributing the subsidies received by the cross-owned entities to the respondent company. When Commerce has fully developed the record in this regard, it must then analyze the information and consider which of the attribution methodologies is appropriate for effectuating the purpose of identifying the subsidies to the production and exportation of the subject merchandise. Moreover, the inclusion of cross-owned entities in Commerce's analysis expands Commerce's verification obligations, increasing the resources that Commerce must devote to fulfilling its statutory obligations regarding verification.

Commerce acknowledges that a general statement in the regulation that Commerce may limit the number of cross-owned corporations based on record information and resource availability does not provide guidance

[260] *See, e.g., 4th Tier Cigarettes from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Negative Determination of Critical Circumstances,* 85 FR 44281 (July 22, 2020), and accompanying issues and decision memorandum at 1 (explaining that ''Commerce limited home market sales reporting requirements to two sales channels'').

[261] *See, e.g., Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Determination,* 80 FR 79564 (December 22, 2015), and accompanying preliminary decision memorandum at 2 (stating that ''given the large number of NLMK's cross-owned affiliated input suppliers of scrap, it was not practicable to examine each of them. As such we determined to limit our examination to NLMK's two largest suppliers of scrap during the period of investigation'').

on how Commerce will select those entities. Commerce agrees that it should take into consideration how significant an input is to the production of the subject merchandise when identifying cross-owned input suppliers or other cross-owned entities that meet the criteria for attribution of subsidies (*i.e.,* parent companies, producers of subject merchandise) and also agrees that as a normal practice, similar to its respondent selection methodology, Commerce should try to identify the biggest and most relevant cross-owned entities as part of that process. However, every case is factually different, as is every product, and in some cases the cross-owned input suppliers that provide the most important input might not also be the largest cross-owned input suppliers. Accordingly, Commerce disagrees that at this time Commerce should codify the process by which it will identify cross-owned entities in every case or provide a list of criteria that would either be too general to be useful or omit material criteria. Instead, the agency will explain its methodology on the record of each unique case in which it determines that the information before it and resource limitations will prevent Commerce from examining every cross-owned entity.

In response to the comment that Commerce should allow domestic industries in every case the opportunity to place public information on the administrative record regarding the subsidization of each cross-owned company in question to ensure that large subsidies are not left unexamined, that suggestion presumes that all of the cross-owned companies are publicly identified and that there is a reasonable number of cross-owned companies to allow for such an analysis. If, for example, there are 30 or 40 cross-owned companies, one can expect that the domestic industry would request that Commerce allow them an extensive amount of time to gather subsidy information. Commerce's investigations and reviews are restricted by statutory deadlines that cannot be met if Commerce sets forth procedures in the regulations that would lead to lengthy extensions. Accordingly, Commerce has determined not to codify a requirement in the regulation that allows interested parties to submit publicly available subsidy information on the cross-owned entities in every case. Instead, Commerce will determine whether to allow such a procedure on a case-by-case basis, and when it does, will likely need to convey to the interested parties that they only have a limited amount of time in which to submit such information.

Finally, Commerce has determined not to adopt a rebuttable presumption suggested by one commenter that unexamined cross-owned entities receive subsidies at a rate attributable to subject merchandise that is an average of the rates calculated with respect to examined cross-owned entities. Although Commerce has limited the number of cross-owned entities that it has reviewed in past cases, it has not done so with frequency, and thus lacks enough experience in limiting review of such entities to serve as the basis for such a presumption.

Trading Companies

Commerce is finalizing § 351.525(c), which pertains to trading companies, as proposed.[262] When Commerce first codified its trading company practice in 1998, trading companies were not selected as respondents in Commerce's investigations or administrative reviews. However, when Commerce started using CBP import data to identify the largest producers/exporters of subject merchandise for purposes of selecting respondents, Commerce discovered that in many cases, the largest exporters were trading companies. Commerce used the 1998 trading company regulation to cumulate the subsidies provided to the trading company with those provided to the producers from which the trading company has sourced the subject merchandise that it exported to the United States but did not set forth a detailed methodology.[263] To provide consistency and clarity with respect to its cumulation methodology when a trading company is selected as a respondent, Commerce is now adding this methodology to the trading company regulation as proposed.

In § 351.525(c)(i) through (iii), Commerce has included language stating that when the producer of subject merchandise exports through a trading company, Commerce will pro-rate the subsidy rate calculated for the trading company by using the ratio of the producer's total exports of subject merchandise to the United States sold through the trading company to the producer's total exports of subject merchandise to the United States and add the resultant rate to the producer's calculated subsidy rate. If the producer exports subject merchandise to the United States through more than one trading company, this calculation would be performed for each trading company and added, or cumulated, to the producer's calculated subsidy rate. This modification to the regulation provides consistency in the application of the trading company regulation and provides clarity to the public with respect to this practice.[264]

Commerce received a comment requesting that we modify the proposed language for this provision. The commenter suggested that in situations where the trading company is cross-owned with the producer of the subject merchandise, the Secretary should use a trading company ratio of one to cumulate the subsidies provided to the trading company instead of pro-rating the subsidy rate calculated for the trading company by using the ratio of the producer's total exports of subject merchandise to the United States sold through the trading company divided by the producer's total exports of subject merchandise to the United States. The commenter stated that the use of a trading company ratio of one would be consistent with Commerce's obligation pursuant to section 701(a) of the Act to establish an *ad valorem* rate equal to the countervailable subsidies conferred on the subject merchandise.

Commerce has not adopted this suggestion because the use of a trading company ratio of one would, in fact, be inconsistent with Commerce's obligation pursuant to section 701(a) of the Act to establish an *ad valorem* rate equal to the countervailable subsidies conferred on the manufacture, production, and export of subject merchandise because the full amount of the calculated subsidies conferred upon the trading company would be cumulated or added onto the subsidy

[262] *See Proposed Rule,* 89 FR at 57319.

[263] Commerce's practice of cumulating subsidies provided to trading companies with the subsidies provided to the producer of subject merchandise began in 1984 with the *Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods from Korea,* 49 FR 46776, 46777 (November 28, 1984). When Commerce codified this practice in Commerce's current CVD regulations in 1998, Commerce did not set forth a detailed methodology but stated that the subsidy benefits provided to trading companies would be cumulated with the subsidy benefits provided to the producer of the subject merchandise. *See 1998 CVD Regulations,* 63 FR at 65404. The preamble to the trading company regulation did not provide guidance as to how these subsidy benefits were to be cumulated. *Id.* While this approach provided Commerce with some flexibility as to how the subsidy benefits provided to trading companies were to be cumulated with the subsidy benefits conferred to the producer of subject merchandise, this lack of clarity in the language of the regulation also led to inconsistencies in the application of the methodology.

[264] *See, e.g., Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2019,* 87 FR 20821 (April 8, 2022), and accompanying Issues and Decision Memorandum at Comment 6.

rate calculated for the producer/respondent.

For example, assume that a producer/respondent exports all its subject merchandise to the United States through four cross-owned trading companies, one-fourth (25 percent) of its exports go through each of the four cross-owned trading companies, and each of the four trading companies has a calculated subsidy rate of two percent. Therefore, because each cross-owned trading company has a calculated subsidy rate of two percent, every export of subject merchandise to the United States by the producer/exporter through any of these trading companies would be subsidized by two percent at the trading company level.

Under the methodology that Commerce is codifying under this regulation, the agency in determining the trading company subsidy rate that will be cumulated (added onto) the producer's rate will be determined by pro-rating the subsidy rate calculated for the trading company by using the ratio of the producer's total exports of subject merchandise to the United States sold through the trading company divided by the producer's total exports of subject merchandise to the United States. Thus, in the example above, because 25 percent of the producer's exports of subject merchandise to the United States is exported through each of the four cross-owned trading companies, Commerce will calculate 0.25 of the two percent subsidy rate calculated for each of the four trading companies ($2.00 \times 0.25 = 0.50$). It will then take this pro-rated subsidy amount of 0.50 calculate for each of the four trading companies and add each of the amounts onto the producer's CVD rate. Adding the calculated 0.50 subsidy rate four times to account for each of the trading companies will derive a total of two percent that will be cumulated (added) onto the producer's calculated subsidy rate to reflect the additional subsidies conferred on the exports of subject merchandise to the United States at the trading company level. This calculation methodology that Commerce is codifying in this regulation accurately calculates the level of trading company subsidies.

Under the proposal to use a ratio of one for this calculation, the full amount of the calculated subsidy rate for each of the four cross-owned trading companies would be cumulated and added onto the subsidy rate even though each of the four cross-owned trading company only exported 25 percent of the producer's total exports of subject merchandise to the United States. Instead of the correct ratio used by Commerce under this regulation, which is 0.25 percent, the proposal by this commenter to use a ratio of one assumes that each of the four trading companies exported 100 percent of the producer's exports of subject merchandise to the United States. This ratio would result in the full two percent subsidy rate calculated for each of the four trading companies to be separately added onto the producer's subsidy rate. Thus, the calculation proposed by this commenter would be: two multiplied by one, plus two multiplied by one, plus two multiplied by one, plus two multiplied by one, equals eight, ($2 \times 1 + 2 \times 1 + 2 \times 1 + 2 \times 1 = 8$). Therefore, under this party's proposed methodology, Commerce would add an additional subsidy rate of eight percent onto the producer/respondent's subsidy rate instead of the accurate two percent because each of the four cross-owned trading companies had an individual subsidy rate that was calculated at two percent. In other words, although the CVD rate determined for each entity was two percent, in the end under the proposed calculation, Commerce would have to cumulate those rates four times because there were four trading companies and would thus apply an additional eight percent subsidy rate onto the calculated producer's subsidy instead of the accurately calculated two percent rate. Such a calculation is inconsistent with the directive of section 701(a) of the Act to establish an *ad valorem* rate equal to the countervailable subsidies conferred on the subject merchandise. Accordingly, Commerce has not adopted this proposal in the final rule.

That commenter also claims that pro-rated ratios for attribution under this regulation are contrary to the well-established concept of control of corporate decisions between cross-owned companies, as the trading company (exporter) and producer should be considered the same corporate entity. However, the comment appears to be based on a misinterpretation of the attribution rules set forth in § 351.525. The paragraph of that regulation addressing corporations with cross-ownership, § 351.525(b)(6), specifies specific criteria for the types of cross-owned companies that would fall within this cross-ownership subsection of our attribution regulation; and the attribution regulations are clear that not all cross-owned companies, even cross-owned input producers, would fall within § 351.525(b)(6).[265]

More importantly, Commerce's trading company regulation and methodology is not part of the cross-owned attribution rules found at § 351.525(b)(6) because the attribution of subsidies conferred upon trading companies is not based upon cross-ownership; instead, it is based upon the requirements set forth within section 701(a) of the Act that Commerce must determine the amount of countervailable subsidies conferred upon the manufacture, the production, and the exportation of subject merchandise. Therefore, Commerce's trading company regulation is derived from the statutory requirement to determine the amount of countervailable subsidies on the exportation of subject merchandise and was not derived from the concept of cross-ownership. Indeed, Commerce first implemented its trading company methodology in 1984,[266] a full decade before contemplating the attribution of subsidies from affiliated or cross-owned companies.

Ad Valorem Subsidy Rate in Countries With High Inflation

With respect to § 351.525(d), Commerce has observed instances where the country whose imports were the subject of investigation or review was experiencing high inflation during either the POI or POR or had experienced levels of high inflation during the AUL period of the firm's renewable physical assets when the government had provided large non-recurring subsidies such as equity infusions to the respondent company. In those cases, Commerce addressed the high inflation rate to prevent distortions in the calculated *ad valorem* subsidy rate. However, the agency's treatment of high inflation has been inconsistent. For example, in cases on *CTL Plate from Mexico* in 2000, 2001, and 2004,[267] *Turkish Pasta*[268] in 2001, *Steel Wire*

[265] *See, e.g., 1998 CVD Regulations,* at 63 FR 65401.

[266] *See Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Korea,* 49 FR 46776 (November 28, 1984).

[267] *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Administrative Review,* 65 FR 13368 (March 13, 2000) (*CTL Plate from Mexico 2000*), and accompanying Issues and Decision Memorandum at 3–4*; see also Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Administrative Review,* 66 FR 14549 (March 13, 2001) (*CTL Plate from Mexico 2001*), and accompanying Issues and Decision Memorandum at 5–6*; and Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Administrative Review,* 69 FR 1972 (January 13, 2004) (CTL Plate from Mexico 2004) (*CTL Plate from Mexico 2004*), and accompanying Issues and Decision Memorandum at 4.

[268] *See Certain Pasta from Turkey: Final Results of Countervailing Duty Administrative Review,* 66

Continued

Rod from Turkey [269] in 2002, *Cold-Rolled Steel from Brazil* [270] in 2002, and *CTL Plate from Mexico Reviews* [271] in 2004, Commerce made adjustments to its subsidy calculations to account for periods of high inflation but did not do so in *Honey from Argentina* [272] in 2004 and *Biodiesel from Argentina* [273] in 2017.[274] Therefore, to clarify its practice and to improve consistency as to when the agency will adjust its subsidy calculations for high inflation, Commerce proposed new paragraph § 351.525(d) in the *Proposed Rule* to provide that Commerce would normally adjust its subsidy calculations for when inflation is higher than 25 percent per annum during the relevant period.[275] Commerce received only comments in support of this provision, so is now codifying it in this final rule. Commerce has used a variety of methodologies to account for high inflation and § 351.525(d) will allow for any of them to be used in the appropriate context. Consistent with *Steel Wire Rod from Turkey,* Commerce is defining ''high inflation'' as an annual inflation rate above 25 percent.

In *Steel Wire Rod from Turkey,* the annual inflation rate in Turkey exceeded 25 percent during the POI. Therefore, to prevent any distortions in its calculated subsidy rate due to the high level of inflation, Commerce adopted a methodology to adjust for inflation during the POI. Adjusting the subsidy benefits and the sales figures for inflation neutralizes any potential distortion in Commerce's subsidy calculations caused by high inflation and the timing of the receipt of the subsidy. To calculate the *ad valorem* subsidy rates for each program Commerce indexed the benefits received in each month and the sales made in each month to the last year of the POI/POR to calculate inflation-adjusted values for benefits and the relevant sales denominators. In these high inflation calculation adjustments, Commerce used the changes in the Wholesale Price Index for Turkey as reported in the IMF's International Financial Statistics. In other cases where a country was experiencing high inflation, the agency used government-published indexes that are used by companies to adjust their accounting records on a monthly basis in its analysis.[276]

Commerce has also investigated non-recurring subsidies, normally the provision of equity, where the provision of the subsidy occurred during a period within the AUL in which the country experienced high inflation. The issue before Commerce in those cases was how to account for the periods of high inflation to accurately calculate the benefit. In *Cold-Rolled Steel from Brazil,* Commerce found that from 1984 through 1994, Brazil experienced persistent high inflation.[277] There were no long-term fixed-rate commercial loans made in domestic currencies during those years with interest rates that could be used as discount rates. Commerce determined that the most reasonable way to account for the high inflation in the Brazilian economy through 1994, given the lack of an appropriate Brazilian currency discount rate, was to convert values of the equity infusions provided in Brazilian currency into U.S. dollars.[278] If the date of receipt of the equity infusion was provided, Commerce applied the exchange rate applicable on the day the subsidies were received or, if that date was unavailable, the average exchange rate in the month the subsidies were received.[279] Then Commerce applied as the discount rate a contemporaneous long-term dollar lending rate in Brazil.[280] Therefore, for Commerce's discount rate, it used data for U.S. dollar loans in Brazil for long-term, non-guaranteed loans from private lenders, as published in the World Bank Debt Tables: External Finance for Developing Countries.[281]

In three reviews of *CTL Plate from Mexico,* Commerce determined, based on information from the Government of Mexico (GOM), that Mexico experienced significant inflation from 1983 through 1988 and significant, intermittent inflation during the period 1991 through 1997.[282] In accordance with past practice, because Commerce found significant inflation in Mexico and because the respondent AHMSA adjusted for inflation in its financial statements, Commerce made adjustments, where necessary, in each of those reviews to account for inflation in the benefit calculations.[283] Because Mexico experienced significant inflation during only a portion of the 15-year allocation period, had Commerce either indexed for the entire period or converted the non-recurring benefits into U.S. dollars at the time of receipt (*i.e.,* dollarization) for use in Commerce's calculations, such actions would have inflated the benefit from these infusions by adjusting for inflationary as well as non-inflationary periods. Thus, in the *CTL Plate from Mexico* [284] reviews, Commerce used a loan-based methodology instead to reflect the effects of intermittent high inflation.

The methodology Commerce used in the *CTL Plate from Mexico* reviews assumed that, in lieu of a government equity infusion/grant, a company would have had to take out a 15-year loan that was rolled over each year at the prevailing nominal interest rate. The benefit in each year of the 15-year period equaled the principal plus interest payments associated with the loan at the nominal interest rate prevailing in that year. Because Commerce assumed that an equity infusion/grant given was equivalent to a

FR 64398 (December 13, 2001), and accompanying Issues and Decision Memorandum at 3.

[269] *See Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Turkey,* 67 FR 55815 (August 30, 2002), and accompanying Issues and Decision Memorandum at 3 (*Steel Wire Rod from Turkey*).

[270] *See Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from Brazil,* 67 FR 621128 (October 3, 2002), and accompanying Issues and Decision Memorandum (*Cold-Rolled Carbon Steel Flat Products from Brazil*) at 7.

[271] *See CTL Plate from Mexico 2000* Issues and Decision Memorandum at 3–4; *see also CTL Plate from Mexico 2001* Issues and Decision Memorandum at 5–6; and *CTL Plate from Mexico 2004* Issues and Decision Memorandum at 4.

[272] *See Honey from Argentina: Final Results of Countervailing Duty Administrative Review,* 69 FR 29518 (May 24, 2004) (*Honey from Argentina*), and accompanying Issues and Decision Memorandum (making no adjustments to account for high inflation).

[273] *See Biodiesel from the Republic of Argentina: Final Affirmative Countervailing Duty Determination,* 82 FR 53477 (November 16, 2017) (*Biodiesel from Argentina*), and accompanying Issues and Decision Memorandum (making no adjustments to account for high inflation).

[274] Neither *Honey from Argentina* nor *Biodiesel from Argentina* reference high inflation in Argentina, although the companion antidumping cases completed at the same time made adjustments to account for high inflation. *See Honey from Argentina: Final Results of Antidumping Duty Administrative Review,* 69 FR 30283 (May 27, 2004), and accompanying Issues and Decision Memorandum at Comment 4; *see also Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 83 FR 8837 (March 1, 2018), and accompanying Issues and Decision Memorandum at Comment 6.

[275] *See Proposed Rule,* 89 FR at 57319–57320.

[276] *See, e.g., Final Affirmative Countervailing Determination; Steel Wheels from Brazil,* 54 FR 15523, 15526 (April 18, 1989).

[277] *See, e.g., Cold-Rolled Carbon Steel Flat Products from Brazil* at 7.

[278] *Id.*

[279] *Id.*

[280] *Id.*

[281] *Id.*

[282] *See CTL Plate from Mexico 2000* Issues and Decision Memorandum at 3–4; *see also CTL Plate from Mexico 2001* Issues and Decision Memorandum at 5–6; and *CTL Plate from Mexico 2004* Issues and Decision Memorandum at 4.

[283] *See CTL Plate from Mexico 2000* Issues and Decision Memorandum at 3–4; *see also CTL Plate from Mexico 2001* Issues and Decision Memorandum at 5–6; and *CTL Plate from Mexico 2004* Issues and Decision Memorandum at 4.

[284] *See CTL Plate from Mexico 2000* Issues and Decision Memorandum at 3–4; *see also CTL Plate from Mexico 2001* Issues and Decision Memorandum at 5–6; and *CTL Plate from Mexico 2004* Issues and Decision Memorandum at 4.

15-year loan at the current rate in the first year, a 14-year loan at current rates in the second year and so on, the benefit after the 15-year period would be zero, just as with Commerce's grant amortization methodology. Because nominal interest rates were used, the effects of inflation were already incorporated into the benefit. The use of this methodology had been upheld by the Federal Circuit in *British Steel III*.[285] Commerce used the loan-based methodology in the *CTL Plate from Mexico* reviews, described above, for all non-recurring, peso-denominated grants received since 1987.

It is Commerce's intent that § 351.525(d) will provide enhanced consistency in the treatment of economies experiencing high inflation. To implement this methodology for countries experiencing high inflation during the POI or POR, Commerce normally will follow the methodology used in *Steel Wire Rod from Turkey*. For cases where the high inflation occurred during the AUL period at the time of a provision of equity or other nonrecurring subsidies, Commerce may rely on the methodology employed in *CTL Plate from Mexico* or *Cold-Rolled Steel from Brazil*.

24. Commerce has Made Certain Revisions to Proposed § 351.526, the Regulation Covering Subsidy Extinguishment From Changes in Ownership

Under current § 351.526, Commerce may consider a program-wide change to lower the cash deposit rate from the subsidy rate that was calculated for the firm during the POI or POR in establishing an estimated countervailing duty cash deposit rate if certain conditions are met. While program-wide changes that result in the adjustment of the cash deposit rate are extremely rare, Commerce has eliminated the program-wide change regulation because it treats differently the interests of the interested parties by providing an avenue only for respondent-interested parties to lower the cash deposit rate but no comparable avenue for the U.S. industry, a situation that Commerce has concluded is fundamentally unfair and at odds with the neutral application of the countervailing duty law. Moreover, nothing in the Act requires the practice of recognizing a program-wide change for this purpose. Indeed, section 705(c)(1)(B)(ii) of the Act indicates that the cash deposit rate shall be based on the estimated countervailable subsidy rate and makes no reference to exceptions for changes of any sort to such subsidy programs.

The only comments Commerce received on this change supported the elimination of the program-wide change regulation. Furthermore, in deleting the program-wide changes regulation, Commerce is not seeking to change its practice with respect to determining when an investigated program is terminated. Commerce will maintain its long-standing practice to find a program to be terminated only if the termination is effectuated by an official act, such as the enactment of a statute, regulation, or decree, or the termination date of the program is explicitly set forth in the statute, regulation, or decree that established the program.[286]

Moreover, Commerce will continue its practice of investigating terminated programs that potentially provided a benefit during the POI or POR. For example, if Commerce was reviewing a company during a POR with a calendar year of 2023, but during the underlying CVD investigation Commerce found that a program providing grants for the purchase of capital equipment was terminated in 2016, Commerce might still include this terminated program in the 2023 administrative review if the AUL, and therefore the benefit stream of the grant, lasted to or beyond the review period. Depending on the AUL, under this practice Commerce would continue to include that program in all future administrative reviews until the non-recurring benefit was fully allocated.

In the place of the removed § 351.526, Commerce proposed adding a new regulation that would address subsidy extinguishment from changes in ownership.[287] After considering comments on this regulation, Commerce has determined to finalize it with some revisions. Section 771(5)(f) of the Act provides that a change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not, by itself, require a determination that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction. The SAA explains that ''the term 'arm's-length transaction' means a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties.'' [288] In addition, the SAA states that ''[s]ection 771(5)(F) is being added to clarify that the sale of a firm at arm's length does not automatically, and in all cases, extinguish any prior subsidies conferred'' because the ''issue of the privatization of a state-owned firm can be extremely complex and multifaceted.'' [289]

Consistent with the Act and SAA, and against a broader background of domestic litigation and WTO dispute settlement findings, in 2003 Commerce published a modification to its change-in-ownership methodology (*CIO Modification Notice*) for sales by a government to private buyers (*i.e.,* privatizations).[290] In a subsequent CVD proceeding in 2004 involving pasta from Italy, Commerce extended that methodology to address sales by a private seller to a private buyer (private-to-private sales).[291] The agency has implemented the methodology set forth in *Pasta From Italy* in numerous CVD proceedings since.

Commerce is now codifying that methodology in § 351.526(a), which establishes the presumption that non-recurring subsidies continue to benefit a recipient in full over an allocation period determined consistent with Commerce's regulations,[292] notwithstanding an intervening change in ownership. However, under § 351.526(b), the recipient is able to rebut the presumption of the existence

[285] *British Steel plc* v. *United States,* 127 F.3d 1471 (Fed. Cir. 1997) (*British Steel III*).

[286] *See Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 83 FR 35212 (July 25, 2018), and accompanying Issues and Decision Memorandum at ''Likelihood of Continuation or Recurrence of a Countervailable Subsidy'' (''[I]n order to determine whether a program has been terminated, we will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program. Commerce normally expects a program to be terminated by means of the same legal mechanism used to institute it. Where a subsidy is not bestowed pursuant to a statute, regulation or decree, Commerce may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence that was not part of a broader government program.'').

[287] *See Proposed Rule,* 89 FR at 5732–57322.

[288] *See* SAA at 258.

[289] *Id.* (''While it is the Administration's intent that Commerce retain the discretion to determine whether, and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable subsidies, Commerce must exercise this discretion carefully through its consideration of the facts of each case and its determination of the appropriate methodology to be applied.'').

[290] *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act,* 68 FR 37125 (June 23, 2003) (*CIO Modification Notice*).

[291] *See Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review,* 69 FR 70657 (December 7, 2004) (*Pasta from Italy*), and accompanying Issues and Decision Memorandum at 2–5.

[292] *See* § 351.524.

of the subsidy by demonstrating with sufficient evidence that a change in ownership occurred in which the seller sold all (or substantially all) of its company assets, retained no control of the company and its assets, and, in the case of government-to-private sales, that the sale was either at an arm's length transaction for fair market value, or, in the case of a private-to-private sale, was an arm's-length transaction and no one demonstrated that the sale was not for fair market value.

Section 351.526(b)(2) and (3) set forth the factors Commerce considers in determining whether the transactions at issue were conducted at arm's-length and for fair market value. In determining if the transactions were for fair market value, proposed § 351.526(b)(3)(ii) sets forth a non-exhaustive list of considerations including (1) whether the seller performed or obtained an objective analysis in determining the appropriate sales price and implemented recommendations pursuant to an objective analysis for maximizing its return on the sale; (2) whether the seller imposed restrictions on foreign purchasers or purchasers from other industries, overly burdensome or unreasonable bidder qualification requirements, or any other restrictions that artificially suppressed the demand for or the purchase price of the company; (3) whether the seller accepted the highest bid reflecting the full amount that the company or its assets were actually worth under the prevailing market conditions and whether the final purchase price was paid through monetary or close equivalent compensation; and (4) whether there were price discounts or other inducements in exchange for promises of additional future investment that private, commercial sellers would not normally seek and, if so, whether such committed investment requirements were a barrier to entry or in any way distorted the value that bidders were willing to pay.

Section 351.526(b)(4) states that Commerce will not find the presumption of continued benefits during the POR to be rebutted if an interested party has demonstrated that, at the time of the change in ownership, the broader market conditions necessary for the transaction price to accurately reflect the subsidy benefit were not present or were severely distorted by government action or inaction such that the transaction price was meaningfully different from what it would have been absent the distortive government action or inaction. Section 351.526(b)(i) and (ii) provide that Commerce may consider certain fundamental conditions and legal and fiscal incentives provided by the government in reaching this determination.

Finally, § 351.526(c) addresses the situation in which an interested party has rebutted the presumption of continued benefits during the POR. In that case, the full amount of pre-transaction subsidy benefits, including the benefits of any concurrent subsidy meeting certain criteria, would be found to be extinguished and therefore not countervailable. Under § 351.526(c)(2), concurrent subsidies would be defined as ''subsidies given to facilitate, encourage, or that are otherwise bestowed concurrent with a change in ownership.'' The same provision provides three criteria that Commerce normally will consider in determining if the value of a concurrent subsidy has been fully reflected in the fair market value prices of an arm's-length change in ownership and is therefore fully extinguished.

Commerce received multiple comments on this regulation, including those that agreed with codifying Commerce's existing practice in this area in full, as proposed. One commenter noted that establishing a rebuttable presumption that non-recurring subsidies continue to provide a benefit over the allocation period notwithstanding changes in ownership through government-to-private or private-to-private sales is an effective way to address the issue, since respondents are in the best position to provide the information needed to show whether or not recipients continue to benefit from a subsidy after a change in ownership.

Another commenter suggested that Commerce should clarify certain procedural requirements for parties seeking to challenge Commerce's baseline presumption. Noting concerns regarding respondents' questionnaire responses, the commenter suggested that Commerce should clarify that the agency will not consider extinguishment arguments in the absence of timely disclosure in the initial questionnaire of a relevant change in ownership and an intent to challenge the baseline presumption, followed by complete responses to the change-in-ownership appendix from both the respondent and the foreign government. The commenter stated that this denial of consideration of extinguishment arguments should apply in that situation whether or not Commerce has found any non-recurring subsidies in previous segments of the proceeding.

This commenter also suggested that to address situations in which the foreign government undertakes a program of debt forgiveness in order to make otherwise non-viable assets viable and thereby enable the acquisition and continued operation of production capacity that would otherwise have been forced to exit the market, Commerce should add a fourth enumerated incentive, as § 351.526(b)(4)(ii)(D), for ''the forgiveness or modification of debts or other liabilities by government-owned or directed financial institutions.''

A third commenter stated that Commerce should modify § 351.526(c)(1) to clarify that finding that a program has been extinguished does not affect whether a program is countervailable prior to the change in ownership and therefore the program should still be countervailed and attributed to sales made prior to the change in ownership.

For concurrent subsidies, another commenter stated that Commerce should modify the identified criteria regarding extinguishment to address subsidies bestowed prior to initiation of the bidding process instead of prior to a sale because basing a determination for concurrent subsidies on whether the subsidy was bestowed prior to sale would allow parties to manipulate the analysis based on when the sale occurred.

A fifth commenter stated that the rebuttal presumption, articulated in § 351.526(a)(1) that Commerce will presume that non-recurring subsidies continue to benefit a recipient in full over an allocation period . . . notwithstanding an intervening change in ownership—is not required by Act and should be more specifically restricted by distinguishing between transactions involving a government-to-private sale or a private-to-private sale. That commenter stated that private-to-private sales do not require the same scrutiny, since those transactions are more than likely to be at arm's length. Thus, when a party has demonstrated that it has satisfied § 351.526(b)(1), by showing that (i) the seller retains no control of the company or assets, and (ii) the sale was at arm's length, the commenter stated that Commerce's inquiry should end. According to the commenter, this approach is consistent with § 351.526(b)(1)(ii), which states that the burden should be on the petitioning party with sufficient evidence that the sale was not for fair market value. The commenter stated that this approach should be reflected in Commerce's ''Change-in-ownership

appendix'' and any other practice that addresses change in ownership.

Finally, a sixth commenter expressed concerns that the non-exhaustive factors Commerce may consider in analyzing market distortion's effect on the presumption of continued benefits articulated in § 351.526(b)(4), are overly broad and ill-defined. That commenter suggested that Commerce should promulgate a more detailed standard to define the level of ''severely distorted'' and what constitutes a ''properly functioning market.'' Further, that commenter expressed concerns about any arbitrary interpretation of distortion from country to country based on each country's regulatory environment.

Response

As an initial matter, some of the comments Commerce received on this regulation were similar to the comments Commerce received when promulgating its *CIO Modification Notice,* and therefore Commerce refers the public to that notice, as well, for an in-depth discussion of this methodology.[293]

With respect to the specific comments on the regulation as proposed, Commerce agrees in part with the comment that the agency should clarify that it will not consider extinguishment arguments in the absence of timely disclosure in the initial questionnaire of a relevant change in ownership and an intent to challenge the baseline presumption followed by complete responses to the change-in-ownership appendix from both the respondent and the foreign government and should apply this denial of consideration of extinguishment arguments whether or not Commerce has found any non-recurring subsidies in previous segments of the proceeding. Specifically, Commerce agrees with the general principle that it is important that other interested parties in a case have adequate time to evaluate the information and claims in such a rebuttal to defend their interests, including demonstrating under § 351.526(b)(5) that certain market distortions exist. Accordingly, Commerce has added a provision to § 351.526(b)(4) that makes clear that the agency will normally require that such rebuttals be included in a respondent's initial questionnaire response.

Commerce emphasizes, however, that there may be instances where such a requirement is not appropriate, in recognition of the fact that the provision of complete information regarding complex changes in ownership, including a full response to the change-in-ownership appendix that forms part of Commerce's current standard questionnaire, can be a very resource-intensive exercise. Consider the hypothetical example of an investigation where none of the subsidy programs under investigation at the time of the initial questionnaire responses were non-recurring subsidies provided prior to a change in ownership and, therefore, a change in ownership during the AUL would normally be irrelevant to Commerce's analysis of subsidy benefits during the POI. If Commerce were to subsequently initiate on and include new subsidy allegations involving non-recurring subsidies in that investigation after the deadline for the respondent's initial questionnaire response, it would normally be appropriate to allow the respondent additional time to provide its rebuttal in light of the new potential relevance of a change in ownership. Similar situations may arise involving administrative reviews. Under those and similar circumstances, Commerce would consider what alternative deadlines for such a rebuttal are appropriate with a view to ensuring that all interested parties have an opportunity to present relevant evidence and fully defend their interests. Finally, to accommodate the addition of this new deadline to the regulations at § 351.526(b)(4), we have moved the market distortions that appeared at § 351.526(b)(4) in the proposed regulations to a new paragraph at § 351.526(b)(5).

Commerce disagrees that adding § 351.526(b)(4)(ii) to explicitly address situations in which the government undertakes a program of debt forgiveness in order to make otherwise non-viable assets viable and thereby enables the acquisition and continued operation of production capacity that would otherwise have been forced to exit the market is necessary. First, the regulation already makes clear that the factors noted in § 351.526(b)(4)(i) and (ii) are not exhaustive, and, as such, parties are free to include other considerations in their arguments that they can demonstrate are relevant under this provision. Second, the relevance of the types of debt forgiveness to which this commenter refers may be more appropriately considered as a concurrent subsidy under § 351.526(c)(2) depending on the particular facts and circumstances of the change in ownership.[6] Finally, for over 20 years Commerce has applied the basic methodology set forth in the *Proposed Rule,* and that experience has not suggested that commenter's expressed concerns are a significant or recurring problem. Accordingly, Commerce has determined that such a change to the regulation is neither necessary nor appropriate.

With respect to the comment that Commerce should modify proposed § 351.526(c)(1) to clarify that a finding that a program has been extinguished does not affect whether a program is countervailable prior to the change in ownership, Commerce has concluded that the regulation is sufficiently clear in this regard. However, for the sake of additional certainty, Commerce notes here that, if a subsidy program was countervailable prior to the change in ownership, that benefit (*i.e.,* the benefit generated prior to the change in ownership) would still be countervailed and attributable to sales made prior to the change in ownership under the language of § 351.526(c)(1).

One commenter raised a concern that basing a determination on whether a concurrent subsidy was bestowed ''prior to sale'' would allow parties to manipulate this analysis based on its consideration of when the sale occurred and that this could also permit the provision of a subsidy after the completion of the bidding process but before the finalized sale has occurred. Commerce disagrees and concludes that the language of § 351.526(c)(2) is sufficiently flexible and robust to address the scenarios of concern that this commenter raises. In particular, the provisions in § 351.526(c)(2)(i) and (iii) ensure that all concurrent subsidies are reflected in the transaction price. Moreover, Commerce's experience does not suggest that the commenter's concern here is a significant or recurring problem.

Moreover, Commerce disagrees with the commenter that stated that private-to-private sales should not require the same scrutiny as government-to-private sales, since the former transactions are more than likely to be at arm's length. According to this commenter, when a party has demonstrated that it has satisfied § 351.526(b)(1) by showing that (i) the seller retains no control of the company or assets, and (ii) the sale was at arm's length, Commerce's inquiry should end, or at least that the burden should be on the petitioning party to provide sufficient evidence that the sale was not for fair market value. In practice, according to this commenter, this should mean that the respondent company or government should not be required to provide information which speaks to whether a private-to-private transaction was at fair market value.

Commerce does not agree with the commenter's conclusions in this regard.

[293] *See CIO Modification Notice,* 68 FR at 37125.

As Commerce explained in response to similar comments in the *CIO Modification Notice,*[294] in the normal course of an investigation or review, Commerce will usually issue a questionnaire that solicits basic information about a change in ownership, as well as the broader market conditions in which that transaction took place. In instances where a party (normally the respondent company) wishes to rebut the baseline presumption that non-recurring subsidies continue to benefit a recipient in full over an allocation period in light of an intervening change in ownership, that party will need to provide a response to Commerce's change in ownership questionnaire. Accordingly, as much of the necessary information to analyze such a fact-intensive transaction (regardless of whether it is government-to-private or a private-to-private) is in the possession of the respondent company and/or government, that company or government will necessarily bear the burden of providing the necessary information, as is the case with most factual questions that Commerce must consider in the course of a countervailing duty proceeding.

Commerce's methodology does make an importance distinction between government-to-private sales and private-to-private sales, however, in that for the latter type of transaction, where a party has demonstrated the seller sold its ownership of all or substantially all of a company or its assets, retaining no control of the company or its assets, and the sale was an arm's-length transaction, the onus is on the petitioner to demonstrate based on the information provided by the respondent and government, in addition to information the petitioner might otherwise place on the record, that the transaction was not for fair market value.

Commerce also disagrees that the standards articulated in § 351.526(b)(4), which includes the non-exhaustive factors Commerce may consider in analyzing market distortion's effect on the presumption of continued benefits, are overly broad and ill-defined and require a more detailed standard to define the level of ''severely distorted'' and what constitutes a ''properly functioning market.'' Commerce responded to similar concerns 20 years ago in the *CIO Modification Notice,* stating that ''[w]ith regard to the comment that the facts we have listed as potentially relevant are too broad, we disagree,'' because Commerce believed that it was ''important to leave room for flexibility in this analysis and not to circumscribe artificially or prematurely the nature of the factors that could be found to distort a market.'' [295] Commerce explained that ''such distortions can be specific to the unique circumstances of particular countries or markets, and it is especially difficult for the Department to foresee at this time all of the factors that may be relevant to this analysis, particularly without obtaining more experience in this area.'' [296] Therefore, Commerce stated that it intended ''that this analysis will be conducted on a case-by-case basis, and that we will be able to refine such analysis over time building on our accumulated experience.'' [297]

Commerce acknowledged in the *CIO Modification Notice* that there are no perfect markets, and therefore Commerce must, on a case-by-case basis, focus only on distortions that might make a meaningful impact. Commerce explained that it recognized ''that perfect markets seldom exist outside of economics textbooks,'' and that it did not ''intend to 'fail' a privatization merely because the broader environment in which it took place did not perfectly conform to some market paradigm.'' [298] Instead, it explained that it would ''be balanced and realistic'' in its analysis, ''focusing on those severe distortions that would have a meaningful impact on the transaction in question.'' [299]

Based on the 20 years of experience which Commerce has had in applying the factors set forth in the *CIO Modification Notice,* including the factors that can inform a market distortions analysis, Commerce finds that the analysis and stated expectations it set forth then remain sound and still applicable today. While the number of proceedings in which parties have attempted to make a market distortions claim during the intervening period have been relatively few, they have shown that the level of detail and particularity characterizing Commerce's list of broader market distortion factors continue to strike the appropriate balance between being too narrow (such that the factors are largely in applicable to the circumstances in a given country across the more than 20 countries for which Commerce currently maintains a CVD order) and too broad (such that parties are confused about the type of evidence that might be relevant in a given case). Accordingly, Commerce has concluded no further narrowing or broadening of the criteria in the regulation is necessary or appropriate at this time.

25. The Elimination of § 351.502(e) is Not Economically Significant or Major

One commenter to Commerce's *Proposed Rule* stated that while the proposed regulations were deemed significant for the purposes of E.O. 12866, the elimination of § 351.502(e) should also be considered economically significant because it is likely to result in ''an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of [the Office of Information and Regulatory Affairs (OIRA)] for changes in gross domestic product),'' the standard established in Executive Orders 12866 and 14094.[300]

In addition, that commenter also expressed a concern that Commerce did not address whether it regards the elimination of § 351.502(e) as major for purposes of the Congressional Review Act (CRA),[301] and asserted that it would be major because many farms and businesses could be impacted in substantial and predictable ways.

Response

Commerce does not determine whether rules are significant under E.O. 12866 or major for purposes of the CRA. Such decisions are made by the Office of Management and Budget's (OMB) OIRA.

OIRA determined that the *Proposed Rule* was significant but did not determine that it was either economically significant or major. Because OIRA determined that the *Proposed Rule* was significant, it went through interagency review pursuant to E.O. 12866, but because it was not determined to be economically significant no regulatory impact analysis was required and OMB's Circular A–4 was not implicated.

To date, no party has provided any information to Commerce that would call into question these determinations. In particular, Commerce has been provided with no data that suggests that the elimination of § 351.502(e) would cause any significant economic impact to American farmers and small business. This comports with OIRA's determinations in two of our recent regulatory packages which also addressed the calculation and application of AD and CVD duties to producers, exporters, and importers; the

[294] *Id.,* 68 FR at 37129.

[295] *Id.* at 37135.

[296] *Id.*

[297] *Id.*

[298] *Id.*

[299] *Id.*

[300] *See* E.O. 12866, ''*Regulatory Planning and Review,*'' 58 FR 51735 (1993); and E.O. 14094, ''*Modernizing Regulatory Review,*'' 88 FR 21879 (2023).

[301] *See Congressional Review Act,* 5 U.S.C. 801 (1996).

same entities impacted by the *Proposed Rule.* In the *Scope and Circumvention Regulations* [302] and more recently in the *RISE Regulations,*[303] OIRA determined that both regulatory packages were significant but did not determine that they were economically significant or major.

25. Commerce Was Not Required to do an Analysis of Indirect Costs Under the RFA With Respect to the Elimination of § 351.502(e)

A commenter expressed concerns that Commerce did not engage in a more thorough Regulatory Flexibility Act (RFA) analysis, particularly involving indirect costs to small business entities, in its removal of § 351.502(e).[304] The commenter asserted that Commerce must quantify and consider indirect impacts on American small businesses and that the removal of the provision was not procedural in nature and would not lead to ''streamlined procedures,'' as asserted by Commerce, because certain procedures involving agricultural subsidies might now become more complex as a result of the proposed change.

Response

The RFA does not require an analysis of indirect costs. Commerce has certified to the Small Business Administration that the proposed regulations will not have a significant economic impact on a substantial number of small entities. As discussed above, the removal of the agricultural exception does not present a policy change with respect to the analysis of specificity for foreign government subsidy programs that are provided to the foreign agricultural sector. Commerce's treatment and the standard for both *de jure* and *de facto* specificity for foreign government subsidy programs within the agricultural sector remain identical before and after the removal of this provision. Thus, the specificity analysis of agricultural-related subsidy allegations will continue to be assessed within the statutory standard enacted under section 771(5)(D) of the Act and the change is procedural in nature. Even if the change were not technically procedural, in practice Commerce's analysis of agricultural subsidies has not changed since the regulation was issued, and therefore removing the provision would have no impact on any entity, large or small.

Summary of Changes From the Proposed to Final Rule

Commerce has made the following changes to the proposed regulatory text:

Commerce revised § 351.104(a)(7) with two changes. First, Commerce replaced ''Commerce'' with ''the Department.'' Second, in response to comments regarding consistency within the regulation, Commerce is modifying the language to reflect that preliminary and final issues and decision memoranda issued in investigations and administrative reviews before the implementation of ACCESS may be cited in full in submissions before Commerce without placing the memoranda on the record.

Commerce removed references to examples of units to which a cash deposit rate or assessment rate may be applied under §§ 351.107(c)(1) and 351.212(b)(ii).

Commerce made several revisions to proposed 351.108. First, Commerce revised the title of § 351.108 to clarify that the section applies to entities exporting merchandise from nonmarket economies in antidumping proceedings. Second, Commerce made substantive changes to § 351.108(a) by adding paragraphs (a)(1), (2), and (3). The regulation at § 351.108(a)(1) defines the nonmarket economy entity, paragraph (a)(2) defines the nonmarket economy entity rate, and paragraph (a)(3) details that if Commerce determines that an entity in a third country is owned or controlled by the non-market economy government and that entity exports subject merchandise from the nonmarket economy (directly or indirectly) to the United States, Commerce may determine to assign that entity the nonmarket economy entity rate. Third, Commerce added § 351.108(b)(2) to detail Commerce's analysis when it determines that a nonmarket economy government controls an entity located in a third country that exports subject merchandise from the nonmarket economy to the United States. Fourth, Commerce clarified under § 351.108(c) that it will rely on information provided in a separate rate application or certification when determining whether an entity is wholly owned by foreign entities incorporated and headquartered in a market economy. Fifth, Commerce added language to § 351.108(d) to clarify that if no separate rate or certification is submitted timely, Commerce may apply the nonmarket economy entity rate to an entity's merchandise subject to the AD order. Commerce also made several smaller revisions to the language of proposed § 351.108 to further clarify the terminology of the regulations. Lastly, as a result of these revisions, Commerce renumbered the paragraphs of § 351.108(b)(1).

Commerce added language to proposed § 351.109(c)(v) to further clarify that it may select an additional respondent for examination if such a selection will not inhibit or impede the timely completion of that segment of the proceeding.

Commerce modified proposed § 351.301(b)(2) to further clarify that the submitter must provide a written explanation describing how the provided factual information rebuts, clarifies, or corrects the factual information on the record.

Commerce also added language to proposed § 351.301(c)(3) to clarify that in investigations, administrative reviews, new shipper reviews and changed circumstances reviews, Commerce may issue a schedule with alternative deadlines if it determines that parties do not have sufficient time to submit factual information on the record.

Commerce made smaller revisions to § 351.308(i)(2) to clarify that the Secretary will normally apply the highest calculated above de-minimis countervailing duty rate if it finds that the application of an adverse inference is warranted.

Commerce added paragraph (f)(4) to proposed § 351.401. The regulation at § 351.401(f)(4) provides exceptions to Commerce's treatment of affiliated parties as a single entity in AD proceedings. Commerce will normally not treat the parties as a single entity if the affiliated parties in question do not produce merchandise similar or identical to subject merchandise and are input suppliers, sellers of the foreign like product in the home market, or affiliated entities for which Commerce determines that treating those parties as a single entity would be otherwise inappropriate based on record information.

Commerce modified proposed § 351.404(g)(2) to clarify that the paragraph is applicable when the special rule for certain multinational corporations is applied.

Commerce modified proposed § 351.405(b)(3) to clarify that Commerce considers the criteria under paragraphs (b)(3)(i) through (iv) when selecting sources for selling, general and administrative expenses as well profit in calculating construct value.

Commerce revised proposed § 351.408(b). First, Commerce created a new paragraph (b)(1)(i) to clarify that it

[302] *Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 85 FR 49472, 49492–49493 (2020) (*Scope and Circumvention Regulations*).

[303] *See RISE Final Rule,* 89 at 29870–71.

[304] *See Regulatory Flexibility Act,* 5 U.S.C 601 (1980).

will measure economic comparability to determine whether countries are at a level of economic development comparable to the nonmarket economy at issue by placing a primary emphasis on *per capita* GDP. Second, Commerce added paragraph (b)(1)(ii) to provide that, where such additional analysis is needed, Commerce will consider additional factors in determining whether countries are at a level of economic development comparable to the nonmarket economy at issue. Commerce will provide its reasonings for relying on additional factors, where such analysis is needed. Third, Commerce also created a new paragraph (b)(1)(iii) to notify parties that an annual listing of comparable economies will be available on Commerce's website. Fourth, Commerce further clarified at § 351.408(b)(2) that it will consider whether countries are a significant producer of merchandise comparable to subject merchandise consistent with the statutory directive under sections 773(c)(2)(A) and 773(c)(4)(B) of the Act. Lastly, Commerce included new language under § 351.408(b)(3) to explain that Commerce will consider the totality of the information on the record in selecting a surrogate country if more than one economically comparable country produces comparable merchandise. That new paragraph provides that the additional criteria for consideration includes the availability, accessibility, and quality of data from those countries and the similarity of products manufactured in the potential surrogate countries in comparison to the subject merchandise.

Commerce revised proposed § 351.511(a)(2). Commerce removed references to competitively run government auctions from § 351.511(a)(2)(i) and placed those references instead in § 351.511(a)(2)(iii), as well as the proposed criteria for determining if auction prices are consistent with market principles.

Commerce added a new § 351.512(a)(2)(iii) that provides that Commerce may exclude certain prices from a particular country if Commerce finds that certain actions, including government laws or policies, likely impact such prices, and moved proposed § 351.512(a)(2)(iii) to a new § 351.512(a)(2)(iv).

Commerce also modified proposed § 351.525(b)(iv)(A) and (B). With respect to § 351.525(b)(iv)(A), Commerce added language to its attribution analysis to clarify that an input producer can supply, either directly or indirectly, a downstream producer. Under § 351.525(b)(iv)(B), Commerce deleted certain language under its primarily dedicated analysis. Specifically, Commerce deleted the phrase ''regardless of whether the input is actually used for the production of subject merchandise.''

Commerce also added language to proposed § 351.526(b)(4) to provide a deadline to rebut the presumption of subsidy continuation notwithstanding a change in ownership. The regulation provides that information to rebut the presumption of subsidy continuation must be timely filed as part of the respondent's or government's initial questionnaire response.

Lastly, Commerce also made minor modifications to §§ 351.502(e), 351.503(b)(3), 351.505(c)(2) and (e)(2), 351.509(b)(1), and 351.511(a)(2)(iii)(C).

Classifications

Executive Order 12866

The Office of Management and Budget has determined that this final rule is significant for purposes of Executive Order 12866.

Executive Order 13132

This final rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132 of August 4, 1999, 64 FR 43255 (August 10, 1999)).

Paperwork Reduction Act

This final rule does not contain a collection of information subject to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

The Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the rule would not have a significant economic impact on a substantial number of small business entities. A summary of the need for, objectives of, and legal basis for this rule is provided in the preamble of both the proposed rule and this final rule and is not repeated here. Comments received regarding this certification did not provide information that undermines the certification. Thus, a Final Regulatory Flexibility Analysis is not required and has not been prepared.

Congressional Review Act

Pursuant to 5 U.S.C. 804(2), the Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget has determined that this rule is not major.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: December 9, 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.

For the reasons stated in the preamble, the U.S. Department of Commerce amends 19 CFR part 351 as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*

■ 2. Revise the heading to subpart A to read as follows:

Subpart A—Scope, Definitions, the Record of Proceedings, Cash Deposits, Nonmarket Economy Antidumping Rates, All-Others Rate, and Respondent Selection

* * * * *

■ 3. In § 351.104, revise paragraphs (a)(2)(iii) and (a)(7) to read as follows:

§ 351.104 Record of proceedings.

(a) * * *

(2) * * *

(iii) In no case will the official record include any document that the Secretary rejects as untimely filed or any unsolicited questionnaire response unless the response is a voluntary response accepted under § 351.109(h) (see § 351.302(d)).

* * * * *

(7) *Special rules for public versions of documents originating with the Department with no associated ACCESS barcode numbers.* Public versions of documents originating with the Department in other segments or proceedings under paragraph (a)(6)(iii) through (xii) of this section but not associated with an ACCESS barcode number, including documents issued before the implementation of ACCESS, must be submitted on the record in their entirety to be considered by the Secretary in its analysis and determinations and are subject to the timing and filing restrictions of § 351.301. Preliminary and final issues

and decision memoranda issued by the Secretary in investigations and administrative reviews and not associated with an ACCESS barcode number, including those issued before the implementation of ACCESS, pursuant to §§ 351.205, 210 and 213 may be cited in full without placing the memoranda on the record.

* * * * *

■ 4. Revise § 351.107 to read as follows:

§ 351.107 Cash deposit rates; producer/exporter combination rates

(a) *Introduction.* Sections 703(d)(1)(B), 705(d), 733(d)(1)(B), and 735(c) of the Act direct the Secretary to order the posting of cash deposits, as determined in preliminary and final determinations of antidumping and countervailing duty investigations, and additional provisions of the Act, including section 751, direct the Secretary to establish a cash deposit rate in accordance with various reviews. This section covers the establishment of cash deposit rates and the instructions which the Secretary issues to U.S. Customs and Border Protection to collect those cash deposits.

(b) *In general.* The Secretary will instruct U.S. Customs and Border Protection to suspend liquidation of merchandise subject to an antidumping duty or countervailing duty proceeding and apply cash deposit rates determined in that proceeding to all imported merchandise for which a cash deposit rate was determined by the Secretary in proportion to the estimated value of the merchandise as reported to U.S. Customs and Border Protection on an *ad valorem* basis.

(c) *Exceptions*—(1) *Application of cash deposit rates on a per-unit basis.* If the Secretary determines that the information normally used to calculate an *ad valorem* cash deposit rate is not available or the use of an *ad valorem* cash deposit rate is otherwise not appropriate, the Secretary may instruct U.S. Customs and Border Protection to apply the cash deposit rate on a per-unit basis.

(2) *Application of cash deposit rates to producer/exporter combinations.* The Secretary may instruct U.S. Customs and Border Protection to apply a determined cash deposit rate only to imported merchandise both produced by an identified producer and exported by an identified exporter if the Secretary determines that such an application is appropriate. Such an application is called a producer/exporter combination.

(i) *Example.* Exporter A exports to the United States subject merchandise produced by Producers W, X, and Y. In such a situation, the Secretary may establish a cash deposit rate applied to Exporter A that is limited to merchandise produced by Producers W, X, and Y. If Exporter A begins to export subject merchandise produced by Producer Z, that cash deposit rate would not apply to subject merchandise produced by Producer Z.

(ii) *In general.* The Secretary will instruct U.S. Customs and Border Protection to apply a cash deposit rate to a producer/exporter combination or combinations when the cash deposit rate is determined as follows:

(A) Pursuant to a new shipper review, in accordance with section 751(a)(2)(B) of the Act and § 351.214;

(B) Pursuant to an antidumping investigation of merchandise from a nonmarket economy country, in accordance with sections 733 and 735 of the Act and §§ 351.205 and 210, for merchandise exported by an examined exporter;

(C) Pursuant to scope, circumvention, and covered merchandise segments of the proceeding, in accordance with §§ 351.225(m), 351.226(m) and 351.227(m), when the Secretary makes a segment-specific determination on the basis of a producer/exporter combination; and

(D) Pursuant to additional segments of a proceeding in which the Secretary determines that the application of a cash deposit rate to a producer/exporter combination is warranted based on facts on the record.

(3) *Exclusion from an antidumping or countervailing duty order*—(i) *Preliminary determinations.* In general, in accordance with sections 703(b) and 733(b) of the Act, if the Secretary makes an affirmative preliminary antidumping or countervailing duty determination and the Secretary preliminarily determines an individual weighted-average dumping margin or individual net countervailable subsidy rate of zero or *de minimis* for an investigated exporter or producer, the exporter or producer will not be excluded from the preliminary determination or the investigation. However, the Secretary will not instruct U.S. Customs and Border Protection to suspend liquidation of entries or collect cash deposits on the merchandise produced and exported from the producer/exporter combinations examined in the investigation and identified in the **Federal Register**, as the investigated combinations will not be subject to provisional measures under sections 703(d) or 733(d) of the Act.

(ii) *Final determinations.* In general, in accordance with sections 705(a), 735(a), 706(a), and 736(a) of the Act, if the Secretary makes an affirmative final determination, issues an antidumping or countervailing duty order and determines an individual weighted-average dumping margin or individual net countervailable subsidy rate of zero or *de minimis* for an investigated producer or exporter, the Secretary will exclude from the antidumping or countervailing duty order only merchandise produced and exported in the producer/exporter combinations examined in the investigation and identified in the **Federal Register**. An exclusion applicable to a producer/exporter combination shall not apply to resellers. Excluded producer/exporter combinations may include transactions in which the exporter is both the producer and exporter, transactions in which the producer's merchandise has been exported to the United States through multiple exporters individually examined in the investigation, and transactions in which the exporter has sourced from multiple producers identified in the investigation.

(iii) *Example.* If during the period of investigation, Exporter A exports to the United States subject merchandise produced by Producer X, based on an examination of Exporter A the Secretary may determine that the dumping margins with respect to the examined merchandise are *de minimis.* In that case, the Secretary would normally exclude only subject merchandise produced by Producer X and exported by Exporter A. If Exporter A began to export subject merchandise produced by Producer Y, that merchandise would be subject to the antidumping duty order.

(4) *Certification requirements.* If the Secretary determines that parties must maintain or provide a certification in accordance with § 351.228, the Secretary may instruct U.S. Customs and Border Protection to apply a cash deposit requirement that is based on the facts of the case and effectuates the administration and purpose of the certification.

(d) *The antidumping duty order cash deposit hierarchies*—(1) *In general.* If the Secretary has not previously established a combination cash deposit rate under paragraph (c)(2) of this section for the producer and exporter in question, the following will apply:

(i) *A market economy country proceeding.* In a proceeding covering merchandise produced in a market economy country:

(A) If the Secretary has established a current cash deposit rate for the exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the cash deposit rate established for the exporter to entries of the subject merchandise;

(B) If the Secretary has not established a current cash deposit rate for the exporter, but the Secretary has established a current cash deposit rate for the producer of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the cash deposit rate established for the producer of the subject merchandise to entries of the subject merchandise; and

(C) If the Secretary has not established a current cash deposit rate for either the producer or the exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the all-others rate determined in the investigation to entries of the subject merchandise, pursuant to section 735(c) of the Act and § 351.109(f).

(ii) *A nonmarket economy country proceeding.* In a proceeding covering merchandise originating from a nonmarket economy country:

(A) If the Secretary has established a current separate cash deposit rate for the exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the cash deposit rate for the exporter to entries of the subject merchandise;

(B) If the Secretary has not established a current separate cash deposit rate for an exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the cash deposit rate determined by the Secretary for the nonmarket economy entity to entries of the subject merchandise, pursuant to § 351.108(b); and

(C) If the entries of subject merchandise were resold to the United States through a third-country reseller, the Secretary will normally instruct U.S. Customs and Border Protection to apply the current separate cash deposit rate applicable to the nonmarket economy country exporter (or the applicable producer/exporter combination, if warranted) that supplied the subject merchandise to the reseller to those entries of the subject merchandise.

(2) *Exception.* If the Secretary determines that an application of cash deposit rates other than that described in paragraph (d)(1) of this section to particular producers or exporters is warranted, the Secretary may instruct U.S. Customs and Border Protection to use an alternative methodology in applying those cash deposit rates to entries of subject merchandise.

(e) *The countervailing duty order cash deposit hierarchy*—(1) *In general.* If the Secretary has not previously established a combination cash deposit rate under paragraph (c)(2) of this section for the producer and exporter in question and the exporter and producer have differing cash deposit rates, the following will apply:

(i) If the Secretary has established current cash deposit rates for both the producer and the exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the higher of the two rates to the entries of subject merchandise;

(ii) If the Secretary has established a current cash deposit rate for the producer but not the exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the producer's cash deposit rate to entries of subject merchandise;

(iii) If the Secretary has established a current cash deposit rate for the exporter but not the producer of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the exporter's cash deposit rate to entries of subject merchandise; and

(iv) If the Secretary has not established current cash deposit rates for either the producer or the exporter of the subject merchandise, the Secretary will instruct U.S. Customs and Border Protection to apply the all-others rate determined in the investigation pursuant to section 705(c)(5) of the Act and § 351.109(f) to the entries of subject merchandise.

(2) *Exception.* If the Secretary determines that an application of cash deposit rates other than that described in paragraph (e)(1) of this section to particular producers or exporters is warranted, the Secretary may instruct U.S. Customs and Border Protection to use an alternative methodology in applying those cash deposit rates to the entries of subject merchandise.

(f) *Effective dates for amended preliminary and final determinations and results of review upon correction of a ministerial error.* If the Secretary amends an agency determination in accordance with sections 703, 705(e), 733 and 735(e) of the Act and § 351.224 (e) through (g):

(1) If the Secretary amends a preliminary or final determination in an investigation for a ministerial error and the amendment increases the dumping margin or countervailing duty rate, the new cash deposit rate will be effective to entries made on or after the date of publication of the amended determination;

(2) If the Secretary amends a preliminary or final determination in an investigation for a ministerial error and the amendment decreases the dumping margin or countervailing duty rate, the new cash deposit rate will be retroactive to the date of publication of the original preliminary or final determination, as applicable;

(3) If the Secretary amends the final results of an administrative review pursuant to a ministerial error, the effective date of the amended cash deposit rate will be retroactive to entries following the date of publication of the original final results of administrative review regardless of whether the antidumping duty margin or countervailing duty rate increases or decreases; and

(4) If the Secretary amends the final results of an investigation or administrative review pursuant to litigation involving alleged or disputed ministerial errors, the effective date of the amended cash deposit rate may differ from the effective dates resulting from the application of paragraphs (f)(1) through (3) of this section and normally will be identified in a **Federal Register** notice.

■ 5. Add § 351.108 to subpart A to read as follows:

§ 351.108 Rates for entities exporting merchandise from nonmarket economies in antidumping proceedings

(a) *Introduction*—(1) *The nonmarket economy entity.* When the Secretary determines that a country is a nonmarket economy country in an antidumping proceeding pursuant to section 771(18) of the Act, the Secretary may determine that all entities located in that nonmarket economy country are subject to government control and thus part of a single, government-controlled entity, called the nonmarket economy entity.

(2) *The nonmarket economy entity rate.* All merchandise from the nonmarket economy exported to the United States and subject to an antidumping proceeding by entities in the nonmarket economy determined by the Secretary on the basis of record information to be part of the government-controlled entity may be assigned the antidumping cash deposit or assessment rate applied to the government-controlled entity. That rate is called the nonmarket economy entity rate.

(3) *Entities in third countries owned or controlled by the nonmarket economy government.* If a nonmarket economy government has direct ownership or control, in whole or in part, of an entity located in a third country and that entity exports subject merchandise to the United States, the Secretary may determine on the basis of record information that such an entity is part of the government-controlled entity and assign that entity the nonmarket economy entity rate.

(b) *Separate rates.* An entity exporting merchandise to the United States from a nonmarket economy may receive its own rate, separate from the nonmarket economy entity rate, if the Secretary determines that the exporter has demonstrated that it operates certain activities sufficiently independent from nonmarket economy government control to justify the application of a separate rate. In determining whether an entity operates certain activities sufficiently independent from government control to receive a separate rate, the Secretary will normally consider the following:

(1) *Nonmarket economy government ownership and control in the nonmarket economy*—(i) *Government control through ownership.* When a nonmarket economy government, at a national, provincial, or other level, holds an ownership share of an entity located in the nonmarket economy, either directly or indirectly, the level of ownership and other factors may indicate that the government exercises or has the potential to exercise control over an entity's general operations. No separate rate will be applied when the nonmarket economy government either directly or indirectly holds:

(A) A majority ownership share (over fifty percent ownership) of an entity; or

(B) An ownership interest in the entity of fifty percent or less and any one of the following criteria applies:

(*1*) The government's ownership share provides it with a disproportionately larger degree of influence or control over the entity's production, commercial, and export decisions than the ownership share would normally entail, and the Secretary determines that the degree of influence or control is significant;

(*2*) The government has the authority to veto the entity's production, commercial and export decisions;

(*3*) Officials, employees, government-appointed or government-controlled labor union members, representatives of the government, or their family members have been appointed as officers or managers of the entity, members of the board of directors, or other governing authorities in the entity that have the ability to make or influence production, commercial and export decisions for the entity; or

(*4*) The entity is obligated by law or its foundational documents, such as articles of incorporation, or other *de facto* requirements to maintain one or more officials, employees, government-appointed or government-controlled labor union members, or representatives of the government as officers or managers, members of the board of directors, or other governing authorities in the entity that have the ability to make or influence production, commercial and export decisions for the entity.

(ii) *Absence of de jure government control.* If an entity demonstrates that neither § 351.108(b)(1)(i)(A) nor (B) applies to the entity, the entity must then demonstrate that the government has no control in law (*de jure)* of the entity's export activities. The following criteria may indicate the lack of government *de jure* control of the entity's export activities:

(A) The absence of a legal requirement that one or more officials, employees, government-appointed or government-controlled labor union members, or representatives of the government serve as officers or managers of the entity, members of the board of directors, or other governing authorities in the entity that make or influence export activity decisions;

(B) The absence of restrictive stipulations by the government associated with an entity's business and export licenses;

(C) Legislative enactments decentralizing government control of entities; and

(D) Other formal measures by the government decentralizing control of companies.

(iii) *Absence of de facto government control.* If the entity demonstrates that § 351.108(b)(1)(i)(A) and (B) and (b)(1)(ii) do not apply to the entity, the entity must then demonstrate that the government has no control in fact (*de facto*) of the entity's export activities. The following criteria may indicate *de facto* government control of the entity's export activities:

(A) Whether the entity maintains or must maintain one or more officials, employees, representatives of the government, or their family members as officers or managers, members of the board of directors, or other governing authorities in the entity which have the ability to make or influence export activity decisions;

(B) Whether export prices are set by or are subject to the approval of a government agency;

(C) Whether the entity has authority to negotiate and sign contracts and other agreements without government involvement;

(D) Whether the entity has autonomy from the government in making decisions regarding the selection of its management;

(E) Whether the entity retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses; and

(F) Whether there is any additional evidence on the record suggesting that the government has direct or indirect influence over the entity's export activities.

(2) *Nonmarket economy government ownership or control of an entity located in a third country.* If the Secretary determines that a nonmarket economy government owns or controls, in whole or in part, an entity located in a third country, the Secretary may determine on the basis of record information that the entity should be assigned the nonmarket economy entity rate or that the entity should be granted a separate rate.

(c) *Entities wholly owned by foreign entities incorporated and headquartered in a market economy.* In general, if the Secretary determines based on information submitted in a separate rate application or certification that an entity exporting merchandise subject to a nonmarket economy country antidumping proceeding is wholly owned by a foreign entity and both incorporated and headquartered in a market economy country or countries, then the Secretary will consider the entity independent from control of the nonmarket economy government and an analysis under paragraph (b) of this section will not be necessary.

(d) *Separate rate applications and certifications.* In order to demonstrate separate rate eligibility, an entity subject to a nonmarket economy country antidumping proceeding will be required to timely submit a separate rate application, as made available by the Secretary, or a separate rate certification, as applicable. If no separate rate application or certification is timely submitted, the Secretary may apply the nonmarket economy entity rate to merchandise exported to the United States and subject to the nonmarket economy country antidumping proceeding. In filing a separate rate application or certification, the following applies:

(1) In an antidumping investigation, the entity will normally file a separate rate application on the record of the investigation no later than twenty-one days following publication of the notice of initiation in the **Federal Register**;

(2) In a new shipper review or an administrative review in which the entity has not been previously assigned a separate rate, the entity will normally file a separate rate application on the record no later than fourteen days following publication of the notice of initiation in the **Federal Register**. In both new shipper reviews and administrative reviews, documentary evidence of an entry of subject

merchandise for which liquidation was suspended during the period of review must accompany the separate rate application.

(3) In an administrative review, if the entity has been previously assigned a separate rate in the proceeding, no later than fourteen days following publication of the notice of initiation in the **Federal Register**, the entity will instead file a certification on the record in which the entity certifies that it had entries of subject merchandise for which liquidation was suspended during the period of review and that it otherwise continues to meet the criteria for obtaining a separate rate. If the Secretary determined in a previous segment of the proceeding that certain exporters and producers should be treated as a single entity for purposes of the antidumping proceeding, then a certification filed under this paragraph must identify and certify that that the certification applies to all of the companies comprising that single entity.

(e) *Examined respondents and questionnaire responses.* Entities that submit separate rate applications or certifications and are subsequently selected to be an examined respondent in an investigation or review by the Secretary must fully respond to the Secretary's questionnaires and participate in the antidumping proceeding in order to be eligible for separate rate status.

■ 6. Add § 351.109 to subpart A to read as follows:

§ 351.109 Selection of examined respondents; single-country subsidy rate; calculating an all-others rate; calculating rates for unexamined respondents; voluntary respondents.

(a) *Introduction.* Sections 777A(c)(2) and 777A(e)(2)(A) of the Act provide that when the Secretary determines in an antidumping or countervailing duty investigation or administrative review that it is not practicable to determine individual dumping margins or countervailable subsidy rates for all potential respondents, the Secretary may determine individual dumping margins or countervailable subsidy rates for a reasonable number of exporters or producers using certain criteria set out in the Act. This section sets forth those criteria, describes the methodology the Secretary generally applies to select examined producers and exporters, and provides the means by which the Secretary determines the ''all-others rate'' set forth in sections 705(c)(5) and 735(c)(5) of the Act, separate rates in nonmarket economy antidumping proceedings, and review-specific margins or rates in administrative reviews. This section also addresses the treatment of voluntary respondents in accordance with section 782(a) of the Act.

(b) *Examining each known exporter or producer when practicable.* In an investigation or administrative review, the Secretary will determine, where practicable, an individual weighted-average dumping margin or individual countervailable subsidy rate for each known exporter or producer of the subject merchandise.

(c) *Limiting exporters or producers examined*—(1) *In general.* If the Secretary determines in an investigation or administrative review that it is not practicable to determine individual dumping margins or countervailable subsidy rates because of the large number of exporters or producers involved in the investigation or review, the Secretary may determine individual margins or rates for a reasonable number of exporters or producers, In accordance with sections 777A(c)(2) and 777A(e)(2)(A) of the Act, the Secretary will normally limit the examination to either a sample of exporters or producers that the Secretary determines is statistically valid based on record information or exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the Secretary determines can be reasonably examined.

(2) *Limiting examination to the largest exporters or producers.* In general, if the Secretary determines to limit the number of exporters or producers for individual examination, otherwise known as respondents, based on the largest volume of the subject merchandise from the exporting country that the Secretary determines can be reasonably examined, the Secretary will apply the following methodology:

(i) *Selecting the data source to determine the largest exporters or producers of subject merchandise.* The Secretary will normally select respondents based on data for entries of subject merchandise made during the relevant time period derived from U.S. Customs and Border Protection. If the Secretary determines that the use of the U.S. Customs and Border Protection data source is not appropriate based on record information, the Secretary may use another reasonable means of selecting potential respondents in an investigation or review including, but not limited to, the use of quantity and value questionnaire responses derived from a list of possible exporters of subject merchandise.

(ii) *Selecting the largest exporters or producers of subject merchandise based on volume or value.* The Secretary will normally select the largest exporters or producers based on the volume of imports of subject merchandise. However, the Secretary may determine at times that volume data are unreliable or inconsistent, depending on the product at issue. In those situations, the Secretary may instead select the largest exporters of subject merchandise based on the value of the imported products instead of the volume of the imported products.

(iii) *Determining whether the number of exporters or producers is too large to make individual examination of each known exporter or producer of subject merchandise practicable.* The Secretary will determine on a case-specific basis whether the number of exporters or producers is too large to make individual examination of each known exporter or producer of subject merchandise practicable based on the potential exporters or producers identified in a petition, the exporters or producers identified in the data source considered in paragraph (c)(1) of this provision, or the exporters or producers for which an administrative review is requested. In determining whether the number of exporters or producers is too large to make individual examination of each known exporter or producer of subject merchandise practicable, the Secretary will normally consider:

(A) The amount of resources and detailed analysis which will be necessary to examine each potential respondent's information;

(B) The current and future workload of the office administering the antidumping or countervailing duty proceeding; and

(C) The Secretary's overall current resource availability.

(iv) *Determining the number of exporters or producers that can be reasonably examined.* In determining the number of exporters or producers (respondents) that can be reasonably examined on a case-specific basis, the Secretary will normally:

(A) Consider the total and relative volumes (or values) of entries of subject merchandise during the relevant period for each potential respondent derived from the data source considered in paragraph (c)(2) of this section;

(B) Rank the potential respondents by the total volume (or values) of entries into the United States during the relevant period; and

(C) Determine the number of exporters or producers the Secretary can reasonably examine, considering resource availability and statutory requirements, and select the exporters or producers with the largest volume (or

values) of entries consistent with that number.

(v) *Selecting additional respondents for examination.* Once the Secretary has determined the number of exporters or producers that can be reasonably examined and has selected the potential respondents for examination, the Secretary will issue questionnaires to those selected exporters or producers. If a potential respondent does not respond to the questionnaires or elects to withdraw from participation in the segment of the proceeding soon after filing questionnaire responses, or the Secretary otherwise determines early in the segment of the proceeding that a selected exporter or producer is no longer participating in the investigation or administrative review or that the exporter's or producer's sales of subject merchandise are not *bona fide,* the Secretary may select the exporter or producer with the next largest volume or value of entries to replace the respondents initially selected by the Secretary for examination if the Secretary determines that such a selection will not inhibit or impede the timely completion of that segment of the proceeding.

(d) *Waiver for certain selected respondents.* The Secretary may waive individual examination of an exporter or producer selected to be an examined respondent if both the selected respondent and the petitioner file waiver requests for that selected respondent no later than five days after the Secretary has selected respondents. If the Secretary provides such a waiver and previously selected the waived respondent in accordance with paragraph (c)(2) of this section, the Secretary may select the respondent with the next largest volume or value of entries for examination to replace the initially selected respondent.

(e) *Single country-wide subsidy rate.* In accordance with 777A(e)(2)(B) of the Act, in limiting exporters or producers examined in countervailing duty proceedings, including countervailing duty investigations under sections 703(d)(1)(A)(ii) and 705(c)(5)(B) of the Act, the Secretary may determine, in the alternative, a single country-wide subsidy rate to be applied to all exporters and producers.

(f) *Calculating the all-others rate.* In accordance with sections 705(c)(1)(B), 705(c)(5), 735(c)(1)(B)(i), and 735(c)(5) of the Act, if the Secretary makes an affirmative antidumping or countervailing duty determination, the Secretary will determine an estimated all-others rate as follows:

(1) *In general.* (i) For an antidumping proceeding involving a market economy country, the all-others rate will normally equal the weighted average of the estimated weighted-average dumping margins established for the individually investigated exporters or producers, excluding any zero and *de minimis* margins and any margins determined entirely under section 776 of the Act.

(ii) For a countervailing duty proceeding, the all-others rate will normally equal the weighted average of the countervailable subsidy rates established for the individually investigated exporters and producers, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776 of the Act.

(2) *Exceptions to the general rules for calculating the all-others rate.* The Secretary may determine not to apply the general rules provided in paragraph (f)(1) of this section:

(i) If the Secretary determines that only one individually investigated exporter or producer has a calculated weighted-average dumping margin or countervailable subsidy rate that is not zero, *de minimis,* or determined entirely under section 776 of the Act, the Secretary may apply that weighted-average dumping margin or countervailable subsidy rate as the all-others rate.

(ii) If the Secretary determines that weight-averaging calculated dumping margins or countervailable subsidy rates established for individually investigated exporters or producers could result in the inadvertent release of proprietary information among the individually investigated exporters or producers, the Secretary may apply the following analysis:

(A) First, the Secretary will calculate the weighted-average dumping margin or countervailable subsidy rate for the individually investigated exporters or producers using their reported data, including business proprietary data;

(B) Second, the Secretary will calculate both a simple average of the individually investigated exporters' or producers' dumping margins or countervailable subsidy rates and a weighted- average dumping margin or countervailable subsidy rate using the individually investigated exporters' or producers' publicly-ranged data; and

(C) Third, the Secretary will compare the two averages calculated in paragraph (f)(2)(ii)(B) of this section with the weighted-average margin or rate determined in paragraph (f)(2)(ii)(A) of this section. The Secretary will apply, as the all-others rate, the average calculated in paragraph (f)(2)(ii)(B) of this section which is numerically the closest to the margin or rate calculated in paragraph (f)(2)(ii)(A) of this section.

(iii) If the estimated weighted average dumping margins or countervailable subsidy rates established for all individually investigated exporters and producers are zero, *de minimis,* or determined entirely under section 776 of the Act, the Secretary may use any reasonable method to establish an all-others rate for exporters and producers not individually examined, including averaging the estimated weighted average dumping margins or countervailable subsidy rates determined for the individually investigated exporters and producers.

(3) *A nonmarket economy country entity rate is not an all-others rate.* The all-others rate determined in a market economy antidumping investigation or countervailing duty investigation may not be increased in subsequent segments of a proceeding. The rate determined for a nonmarket economy country entity determined in an investigation is not an all-others rate and may be modified in subsequent segments of a proceeding if selected for examination.

(g) *Calculating a rate for unexamined exporters and producers.* In determining a separate rate in an investigation or administrative review covering a nonmarket economy country pursuant to § 351.108(b), a margin for unexamined exporters and producers in an administrative review covering a market economy country, or a countervailable subsidy rate for unexamined exporters and producers in a countervailing duty administrative review, the Secretary will normally apply the methodology set forth in paragraphs (f)(1) and (2) of this section. If the Secretary determines that weight-averaging calculated dumping margins or countervailable subsidy rates established for individually investigated exporters or producers could result in the inadvertent release of proprietary information among the individually examined exporters or producers, then the Secretary may establish a separate rate, review-specific margin, or countervailable subsidy rate using a reasonable method other than the weight-averaging of dumping margins or countervailable rates, such as the use of a simple average of the calculated dumping margins or countervailable subsidy rates.

(h) *Voluntary respondents*—(1) *In general.* If the Secretary limits the number of exporters or producers to be individually examined under sections 777A(c)(2) or 777A(e)(2)(A) of the Act, the Secretary may choose to examine voluntary respondents (exporters or producers, other than those initially

selected for individual examination) in accordance with section 782(a) of the Act.

(2) *Acceptance of voluntary respondents.* The Secretary will determine, as soon as practicable, whether to examine a voluntary respondent individually. A voluntary respondent accepted for individual examination under paragraph (h)(1) of this section will be subject to the same filing and timing requirements as an exporter or producer initially selected by the Secretary for individual examination under sections 777A(c)(2) or 777A(e)(2)(A) of the Act, and, where applicable, the use of the facts available under section 776 of the Act and § 351.308.

(3) *Requests for voluntary treatment.* (i) An interested party seeking treatment as a voluntary respondent must so indicate by including as a title on the first page of the first submission, ''Request for Voluntary Respondent Treatment.''

(ii) If multiple exporters or producers seek voluntary respondent treatment and the Secretary determines to examine a voluntary respondent individually, the Secretary will select voluntary respondents in the chronological order in which complete requests were filed correctly on the record.

(4) *Timing of voluntary respondent submissions.* The deadlines for voluntary respondent submissions will generally be the same as the deadlines for submissions by individually investigated respondents. If there are two or more individually investigated respondents with different deadlines for a submission, such as when one respondent has received an extension and the other has not, voluntary respondents will normally be required to file their submissions with the Secretary by the earliest deadline of the individually investigated respondents.

■ 7. In § 351.204:

■ a. Revise the section heading and paragraphs (a), (c), and (d); and

■ b. Remove paragraph (e).

The revisions read as follows:

§ 351.204 Period of investigation; requests for exclusions from countervailing duty orders based on investigations conducted on an aggregate basis.

(a) *Introduction.* Because the Act does not specify the precise period of time that the Secretary should examine in an antidumping or countervailing duty investigation, this section sets forth rules regarding the period of investigation (''POI''). In addition, this section covers exclusion requests in countervailing duty investigations conducted on an aggregate basis.

* * * * *

(c) *Limiting exporters or producers examined and voluntary respondents.* Once the Secretary has initiated the antidumping or countervailing duty investigation, the Secretary may determine that it is not practicable to examine each known exporter or producer. In accordance with § 351.109(c), the Secretary may select a limited number of exporters or producers to examine. Furthermore, in accordance with section 782(a) of the Act and § 351.109(h), the Secretary may determine to examine voluntary respondents.

(d) *Requests for exclusions from countervailing duty orders based on investigations conducted on an aggregate basis.* When the Secretary conducts a countervailing duty investigation on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and investigate requests for exclusion to the extent practicable. An exporter or producer that desires exclusion from an order must submit:

(1) A certification by the exporter or producer that it received zero or *de minimis* net countervailable subsidies during the period of investigation;

(2) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was *de minimis* during the period of investigation;

(3) If the exporter is not the producer of subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or *de minimis* net countervailable subsidies during the period of investigation; and

(4) A certification from the government of the affected country that the government did not provide the exporter (or the exporter's supplier) or producer with more than *de minimis* net countervailable subsidies during the period of investigation.

■ 8. In § 351.212 revise paragraph (b)(1) to read as follows:

§ 351.212 Assessment of antidumping and countervailing duties; provisional measures deposit cap; interest on certain overpayments and underpayments.

* * * * *

(b) * * *

(1) *Antidumping Duties*—(i) *In general.* If the Secretary has conducted a review of an antidumping duty order under § 351.213 (administrative review), § 351.214 (new shipper review), or § 351.215 (expedited antidumping review), the Secretary normally will calculate an assessment rate for each importer of subject merchandise covered by the review by dividing the dumping margin found on the subject merchandise examined by the estimated entered value of such merchandise for normal customs duty purposes on an *ad valorem* basis. If the resulting assessment rate is not zero or *de minimis,* the Secretary will then instruct U.S. Customs and Border Protection to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

(ii) *Assessment on a per-unit basis.* If the Secretary determines that the information normally used to calculate an *ad valorem* assessment rate is not available or the use of an *ad valorem* rate is otherwise not appropriate, the Secretary may instruct U.S. Customs and Border Protection to assess duties on a per-unit basis.

* * * * *

■ 9. In § 351.213, revise paragraph (f) to read as follows:

§ 351.213 Administrative review of orders and suspension agreements under section 751(a)(1) of the Act.

* * * * *

(f) *Limiting exporters or producers examined and voluntary respondents.* Once the Secretary has initiated an antidumping or countervailing duty administrative review, the Secretary may determine that it is not practicable to examine each known exporter or producer. In accordance with § 351.109(c), the Secretary may select a limited number of exporters or producers to examine. Furthermore, in accordance with section 782(a) of the Act and § 351.109(h), the Secretary may determine to examine voluntary respondents.

* * * * *

■ 10. In § 351.214, revise the section heading and paragraphs (l)(1) introductory text and (l)(3)(iii) to read as follows:

§ 351.214 New shipper reviews under section 751(a)(2)(B) of the Act; expedited reviews in countervailing duty proceedings.

* * * * *

(l) * * *

(1) *Request for review.* If, in a countervailing duty investigation, the Secretary limited the number of exporters or producers to be individually examined under section 777A(e)(2)(A) of the Act, an exporter that the Secretary did not select for individual examination or that the Secretary did not accept as a voluntary respondent (see § 351.109(h)) may request a review under this paragraph

(l). An exporter must submit a request for review within 30 days of the date of publication in the **Federal Register** of the countervailing duty order. A request must be accompanied by a certification that:

* * * * *

(3) * * *

(iii) The Secretary may exclude from the countervailing duty order in question any exporter for which the Secretary determines an individual net countervailable subsidy rate of zero or *de minimis* (see § 351.107(c)(3)(ii)), provided that the Secretary has verified the information on which the exclusion is based.

* * * * *

■ 11. In § 351.301, revise paragraphs (b)(2), (c)(1), and (c)(3)(i) and (ii) to read as follows:

§ 351.301 Time limits for submission of factual information.

* * * * *

(b) * * *

(2) If the factual information is being submitted to rebut, clarify, or correct factual information on the record, the submitter must provide a written explanation identifying the information which is already on the record that the factual information seeks to rebut, clarify or correct, including the name of the interested party that submitted the information and the date on which the information was submitted. The submitter must also provide a written explanation describing how the factual information provided under this paragraph rebuts, clarifies, or corrects the factual information already on the record.

(c) * * *

(1) *Factual information submitted in response to questionnaires.* During a proceeding, the Secretary may issue to any person questionnaires, which includes both initial and supplemental questionnaires. The Secretary will not consider or retain in the official record of the proceeding unsolicited questionnaire responses, except as provided under § 351.109(h)(2), or untimely filed questionnaire responses. The Secretary will reject any untimely filed or unsolicited questionnaire response and provide, to the extent practicable, written notice stating the reasons for rejection (see § 351.302(d)).

* * * * *

(3) * * *

(i) *Antidumping and countervailing duty investigations.* (A) All submissions of factual information to value factors of production under § 351.408(c) in an antidumping investigation are due no later than 60 days before the schedule date of the preliminary determination.

(B) All submissions of factual information to measure the adequacy of remuneration under § 351.511(a)(2) in a countervailing duty investigation are due no later than 45 days before the scheduled date of the preliminary determination.

(C) If the Secretary determines that interested parties will not have sufficient time to submit factual information under the deadlines set forth in paragraph (c)(3)(i)(A) or (B) because of circumstances unique to a given segment of a proceeding, the Secretary may issue a schedule with alternative deadlines for parties to submit factual information on the record.

(ii) *Administrative reviews, new shipper reviews, and changed circumstances reviews.* (A) All submissions of factual information to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2) in administrative reviews, new shipper reviews and changed circumstances reviews are due no later than 60 days before the scheduled date of the preliminary results of review.

(B) If the Secretary determines that interested parties will not have sufficient time to submit factual information under the deadlines set forth in paragraph (c)(3)(ii)(A) of this section because of circumstances unique to a given segment of a proceeding, the Secretary may issue a schedule with alternative deadlines for parties to submit factual information on the record.

* * * * *

■ 12. In § 351.302, revise paragraph (d)(1)(ii) to read as follows:

§ 351.302 Extension of time limits; return of untimely filed or unsolicited material.

* * * * *

(d) * * *

(1) * * *

(ii) Unsolicited questionnaire responses, except as provided for voluntary respondents under § 351.109(h)(2).

* * * * *

■ 13. In § 351.306, revise paragraph (a)(3) to read as follows:

§ 351.306 Use of business proprietary information.

(a) * * *

(3) An employee of U.S. Customs and Border Protection directly involved in conducting an investigation regarding negligence, gross negligence, or fraud relating to an antidumping or countervailing duty proceeding;

* * * * *

■ 14. In § 351.308, add paragraphs (g) through (i) to read as follows:

§ 351.308 Determinations on the basis of the facts available.

* * * * *

(g) *Partial or total facts available.* In accordance with section 776(a) of the Act, if the Secretary determines to apply facts available, regardless of the use of an adverse inference under section 776(b) of the Act, the Secretary may apply facts available to only a portion of its antidumping or countervailing duty analysis and calculations, referred to as partial facts available, or to all of its analysis and calculations, referred to as total facts available, as appropriate on a case-specific basis.

(h) *Segment-specific dumping and countervailable subsidy rates.* If the Secretary has determined dumping margins or countervailable subsidy rates in separate segments of the same proceeding in which the Secretary is applying facts available, in accordance with section 776(c)(2) of the Act the Secretary may apply those margins or rates as facts available without being required to conduct a corroboration analysis.

(i) *Selection of adverse facts available.* If the Secretary determines to apply adverse facts available, in accordance with sections 776(d)(1), (2), and (3) of the Act, the following applies:

(1) In an antidumping proceeding, the Secretary may use a dumping margin from any segment of the proceeding as adverse facts, including the highest dumping margin available. The Secretary may use the highest dumping margin available if the Secretary determines that such an application is warranted after evaluating the situation that resulted in an adverse inference;

(2) In a countervailing duty segment of the proceeding, in accordance with the hierarchy set forth in paragraph (j) of this section, the Secretary may use a countervailing subsidy rate applied to the same or similar program in a countervailing duty proceeding involving the same country or, if there is no same or similar program, use a countervailing subsidy rate from a proceeding that the Secretary determines is reasonable to use. The Secretary will normally apply the highest calculated above-*de minimis* countervailing duty rate available if the Secretary determines that such an application is warranted after evaluating the situation that resulted in an adverse inference; and

(3) In applying adverse facts available, the Secretary will not be required to:

(i) Estimate what a countervailable subsidy or dumping margin would have

been if an interested party that was found to have failed to cooperate under section 776(b)(1) of the Act had cooperated; or

(ii) Demonstrate that the countervailable subsidy rate or dumping margin used by the Secretary as adverse facts available reflects an alleged ''commercial reality'' of the interested party.

* * * * *

■ 15. In § 351.309, revise paragraphs (c)(2) and (d)(2) to read as follows:

§ 351.309 Written argument.

* * * * *

(c) * * *

(2) The case brief must present all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results, including any arguments presented before the date of publication of the preliminary determination or preliminary results. As part of the case brief, parties are requested to provide the following:

(i) A table of contents listing each issue;

(ii) A table of authorities, including statutes, regulations, administrative cases, dispute panel decisions and court holdings cited; and

(iii) A public executive summary for each argument raised in the brief. Executive summaries should be no more than 450 words in length, not counting supporting citations.

(d) * * *

(2) The rebuttal brief may respond only to arguments raised in case briefs, should identify the arguments raised in case briefs, and should identify the arguments to which it is responding. As part of the rebuttal brief, parties are requested to provide the following:

(i) A table of contents listing each issue;

(ii) A table of authorities, including statutes, regulations, administrative cases, dispute panel decisions and court holdings cited; and

(iii) A public executive summary for each argument raised in the rebuttal brief. Executive summaries should be no more than 450 words in length, not counting supporting citations.

* * * * *

■ 16. In § 351.401, revise paragraph (f) to read as follows:

§ 351.401 In general.

* * * * *

(f) *Treatment of affiliated parties in antidumping proceedings*—(1) *In general.* In an antidumping proceeding under this part, the Secretary will normally treat two or more affiliated parties as a single entity if the Secretary concludes that there is a significant potential for manipulation of prices, production, or other export decisions.

(2) *Significant potential for manipulation.* In identifying a significant potential for the manipulation of price, production or other export decisions, the factors the Secretary may consider for all affiliated parties include:

(i) The level of common ownership;

(ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and

(iii) Whether operations are intertwined, such as through the sharing of sales and export information; involvement in production, pricing, and other commercial decisions; the sharing of facilities or employees; or significant transactions between the affiliated parties.

(3) *Additional considerations for affiliated parties with access to production facilities in determining the significant potential for manipulation.* In determining whether there is a significant potential for manipulation, if the Secretary determines that affiliated parties have, or will have, access to production facilities for similar or identical products, the Secretary shall consider if any of those facilities would require substantial retooling in order to restructure manufacturing priorities.

(4) *Exceptions.* If the following affiliated parties do not produce similar or identical products to the subject merchandise or export subject merchandise to the United States, the Secretary will normally not treat those parties as part of a single entity for purposes of the Secretary's calculations under this provision:

(i) Input suppliers;

(ii) Sellers of the foreign like product in the home market; and

(iii) Affiliated entities for which the Secretary determines that treating those parties as a single entity would be otherwise inappropriate based on record information.

* * * * *

■ 17. In § 351.404, add paragraph (g) to read as follows:

§ 351.404 Selection of the market to be used as the basis for normal value.

* * * * *

(g) *Special rule for certain multinational corporations.* In the course of an antidumping investigation, if the Secretary determines that the factors listed in section 773(d) of the Act are present, the Secretary will apply the special rule for certain multinational corporations and determine the normal value of the subject merchandise by reference to the normal value at which the foreign like product is sold in substantial quantities from one or more facilities outside the exporting country. In making a determination under this provision, the following will apply:

(1) Interested parties alleging that the Secretary should apply the special rule for certain multinational corporations must submit the allegation in accordance with the filing requirements set forth in § 351.301(c)(2)(i).

(2) If the Secretary determines that the non-exporting country at issue is a nonmarket economy country and, in accordance with § 351.408, normal value would be determined using a factors of production methodology if the special rule for certain multinational corporations was applied, the Secretary will not apply the special rule for certain multinational corporations.

■ 18. In § 351.405, revise paragraph (a) and add paragraph (b)(3) to read as follows:

§ 351.405 Calculation of normal value based on constructed value.

(a) *Introduction.* In certain circumstances, the Secretary may determine normal value by constructing a value based on the cost of manufacturing, selling, general and administrative expenses and profit. The Secretary may use constructed value as the basis for normal value when: neither the home market nor a third country market is viable; sales below the cost of production are disregarded; sales outside the ordinary course of trade or sales for which the prices are otherwise unrepresentative are disregarded; sales used to establish a fictitious market are disregarded; no contemporaneous sales of comparable merchandise are available; or in other circumstances where the Secretary determines that home market or third country prices are inappropriate. (See section 773(e) and (f) of the Act.) This section clarifies the meaning of certain terms and sets forth certain information which the Secretary will normally consider in determining a constructed value.

(b) * * *

(3) Under section 773(e)(2)(B)(iii) of the Act, the Secretary will normally consider the following criteria in selecting sources for selling, general and administrative expenses, as well as profit, in calculating constructed value:

(i) The similarity of the potential surrogate companies' business operations and products to the examined producer's or exporter's business operations and products;

(ii) The extent to which the financial data of the surrogate company reflects

sales in the home market and does not reflect sales to the United States;

(iii) The contemporaneity of the surrogate company's data to the period of investigation or review; and

(iv) The extent of similarity between the customer base of the surrogate company and the customer base of the examined producer or exporter.

■ 19. In § 351.408, revise paragraph (b) to read as follows:

§ 351.408 Calculation of normal value of merchandise from nonmarket economy countries.

* * * * *

(b) *Selecting surrogate countries*—(1) *Determining comparable economies.* The Secretary is directed by sections 773(c)(2)(B) and 773(c)(4)(A) of the Act to select surrogate countries which are at a level of economic development comparable to that of the nonmarket economy country at issue.

(i) *Measuring economic comparability.* In determining whether market economy countries are at a level of economic development comparable to the nonmarket economy at issue, the Secretary will place primary emphasis on *per capita* gross domestic product (GDP).

(ii) *Additional considerations in determining economic comparability.* When the Secretary determines that such an analysis is warranted, the Secretary may consider additional factors in determining whether certain market economy countries are at a level of economic development comparable to the nonmarket economy at issue. If the Secretary considers additional factors in its analysis, the Secretary will identify those factors and provide the reason it considered those factors along with the list of comparable market economies issued under paragraph (b)(1)(iii) of this section.

(iii) *Annual listing of comparable economies.* On an annual basis, the Secretary will determine market economies comparable to individual nonmarket economies and list those market economies on the Secretary's website.

(2) *Determining significant producers of comparable merchandise.* In selecting a surrogate country from those countries which the Secretary determines are economically comparable, the Secretary will consider, in accordance with section 773(c)(2)(A) and (c)(4)(B) of the Act, those countries that are significant producers of merchandise comparable to the subject merchandise.

(3) *Selecting between surrogate countries which are economically comparable and significant producers of comparable merchandise.* If more than one economically comparable country produces comparable merchandise, the Secretary will consider the totality of the information on the record in selecting a surrogate country. Among the criteria the Secretary may consider in selecting a surrogate country are the availability, accessibility, and quality of data from those countries and the similarity of products manufactured in the potential surrogate countries in comparison to the subject merchandise.

* * * * *

■ 20. In § 351.502:

■ a. Revise paragraphs (d) and (e); and

■ b. Remove paragraphs (f) and (g).

The revisions read as follows:

§ 351.502 Specificity of domestic subsidies.

* * * * *

(d) *Disaster relief.* The Secretary will not regard disaster relief including pandemic relief as being specific under section 771(5A)(D) of the Act if such relief constitutes general assistance available to anyone in the area affected by the disaster.

(e) *Employment assistance.* The Secretary will not regard employment assistance programs as being specific under section 771(5A)(D) if such assistance is provided solely with respect to employment of general categories of workers such as those based on age, gender, disability, long-term unemployment, veteran, rural or urban status and is available to everyone hired within those categories without any industry or enterprise restrictions.

■ 21. In § 351.503, add paragraph (b)(3) to read as follows:

§ 351.503 Benefit.

* * * * *

(b) * * *

(3) *Contingent liabilities and assets.* For the provision of a contingent liability or asset not otherwise addressed under a specific rule identified under paragraph (a) of this section, the Secretary will treat the balance or value of the contingent liability or assets as an interest-free provision of funds and will calculate the benefit using, where appropriate, either a short-term or long-term commercial interest rate.

* * * * *

■ 22. In § 351.505, add paragraph (a)(6)(iii) and revise paragraphs (b), (c), and (e) to read as follows:

§ 351.505 Loans.

(a) * * *

(6) * * *

(iii) *Initiation standard for government-owned policy banks.* An interested party will normally meet the initiation threshold for specificity under paragraph (a)(6)(ii)(A) of this section with respect to section 771(5A)(D) of the Act if the party can sufficiently allege that the government-owned policy bank provides loans pursuant to government policies or directives and loan distribution information for the bank is not reasonably available. A policy bank is a government-owned special purpose bank.

(b) *Time of receipt of benefit.* The Secretary normally will consider a benefit as having been received in the year in which the firm otherwise would have had to make a payment on the comparable commercial loan.

(c) *Allocation of benefit to a particular time period*—(1) *Short-term loans.* The Secretary will allocate (expense) the benefit from a short-term loan to the year(s) in which the firm is due to make interest payments on the loan.

(2) *Long-term loans.* The Secretary normally will calculate the subsidy amount to be assigned to a particular year by calculating the difference in interest payments for that year, *i.e.,* the difference between the interest paid by the firm in that year on the government-provided loan and the interest the firm would have paid on the comparable commercial benchmark loan.

* * * * *

(e) *Contingent liability interest-free loans*—(1) *Treatment as loans.* In the case of an interest-free loan for which the repayment obligation is contingent upon the company taking some future action or achieving some goal in fulfillment of the loan's requirements, the Secretary normally will treat any balance on the loan outstanding during a year as an interest-free, short-term loan in accordance with paragraphs (a), (b), and (c)(1) of this section. However, if the event upon which repayment of the loan depends will occur at a point in time more than one year after the receipt of the contingent liability loan, the Secretary will use a long-term interest rate as the benchmark in accordance with paragraphs (a), (b), and (c)(2) of this section.

(2) *Treatment as grants.* If at any point in time the Secretary determines that the event upon which repayment depends is not a viable contingency or the loan recipient has met the contingent action or goal and the government has not taken meaningful action to collect repayment, the Secretary will treat the outstanding balance of the loan as a grant received in the year in which this condition manifests itself.

■ 23. In § 351.509, revise paragraph (a)(1) and (b)(1) to read as follows:

§ 351.509 Direct taxes.

(a) * * *

(1) *Exemption or remission of taxes.* In the case of a program that provides for a full or partial exemption or remission of a direct tax (for example, an income tax), or a reduction in the base used to calculate a direct tax, a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program, including as a result of being located in an area designated by the government as being outside the customs territory of the country.

(b) * * *

(1) *Exemption or remission of taxes.* In the case of a full or partial exemption or remission of a direct tax, the Secretary normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. For all exemptions or remissions related to income taxes, this date will be the date on which the firm filed its tax return.

* * * * *

■ 24. In § 351.510, revise paragraph (a)(1) to read as follows:

§ 351.510 Indirect taxes and import charges (other than export programs).

(a) * * *

(1) *Exemption or remission of taxes.* In the case of a program other than an export program that provides for the full or partial exemption or remission of an indirect tax or an import charge, a benefit exists to the extent that the taxes or import charges paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program, including as a result of being located in an area designated by the government as being outside the customs territory of the country.

* * * * *

■ 25. In § 351.511, revise paragraphs (a)(2)(i) and (iii) to read as follows:

§ 351.511 Provision of goods or services.

(a) * * *

(2) * * *

(i) *In general.* The Secretary will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question. Such a price could include prices stemming from actual transactions between private parties or actual imports. In choosing such transactions or sales, the Secretary will consider product similarity; quantities sold or imported; and other factors affecting comparability.

* * * * *

(iii) *World market price unavailable.* If there is no world market price available to purchasers in the country in question, the Secretary will normally measure the adequacy of remuneration by assessing whether the government price is consistent with market principles. In making an assessment of whether a government price is consistent with market principles under this provision, the Secretary may assess such factors as costs (including rates of return sufficient to ensure future operations), the government's price setting methodology, possible price discrimination, or a government price derived from actual sales from competitively run government auctions if the government auction:

(A) Uses competitive bid procedures that are open without restriction on the use of the good or service;

(B) Is open without restriction to all bidders, including foreign enterprises, and protects the confidentiality of the bidders;

(C) Accounts for the substantial majority of the actual government provision of the good or service in the jurisdiction in question; and

(D) Determines the winner based solely on price.

* * * * *

■ 26. Revise § 351.512 to read as follows:

§ 351.512 Purchase of goods.

(a) *Benefit*—(1) *In general.* In the case where goods are purchased by the government from a firm, in accordance with section 771(5)(E)(iv) of the Act a benefit exists to the extent that such goods are purchased for more than adequate remuneration.

(2) *Adequate remuneration defined*—(i) *In general.* The Secretary will normally seek to measure the adequacy of remuneration by comparing the price paid to the firm for the good by the government to a market-determined price for the good based on actual transactions, including imports, between private parties in the country in question, but if such prices are not available, then to a world market price or prices for the good.

(ii) *Actual market-determined prices unavailable.* If there are no market-determined domestic or world market prices available, the Secretary may measure the adequacy of remuneration by analyzing any premium in the request for bid or government procurement regulations provided to domestic suppliers of the good or use any other methodology to assess whether the price paid to the firm for the good by the government is consistent with market principles.

(iii) *Exclusion of certain prices.* In measuring the adequacy of remuneration under this section, the Secretary may exclude certain prices from a particular country from its analysis if the Secretary determines that interested parties have demonstrated, with sufficient information, that certain actions, including government laws or policies, such as price or production mandates or controls, likely impact such prices.

(iv) *Use of ex-factory or ex-works price.* In measuring adequate remuneration under paragraph (a)(2)(i) or (ii) of this section, the Secretary will use an ex-factory or ex-works comparison price and price paid to the firm for the good by the government in order to measure the benefit conferred to the recipient within the meaning of section 771(5)(E) of the Act. The Secretary will, if necessary, adjust the comparison price and the price paid to the firm by the government to remove all delivery charges, import duties, and taxes to derive an ex-factory or ex-works price.

(3) *Exception when the government is both a provider and purchaser of the good.* When the government is both a provider and a purchaser of the good, such as electricity, the Secretary will normally measure the benefit to the recipient firm by comparing the price at which the government provided the good to the price at which the government purchased the same good from the firm.

(b) *Time of receipt of benefit.* In the case of the purchase of a good, the Secretary normally will consider a benefit as having been received as of the date on which the firm receives payment for the purchased good.

(c) *Allocation of benefit to a particular time period.* In the case of the purchase of a good, the Secretary will normally allocate (expense) the benefit to the year in which the benefit is considered to have been received under paragraph (b) of this section. However, if the Secretary considers this purchase to be for or tied to capital assets such as land, buildings, or capital equipment, the benefit will normally be allocated over time as defined in § 351.524(d)(2).

■ 27. Revise § 351.521 to read as follows:

§ 351.521 Indirect taxes and import charges on capital goods and equipment (export programs).

(a) *Benefit*—(1) *Exemption or remission of taxes and import charges.* In the case of a program determined to be an export subsidy that provides for the full or partial exemption or remission of an indirect tax or an import charge on the purchase or import of capital goods and equipment, a benefit exists to the extent that the taxes or import charges paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program, including as a result of being located in an area designated by the government as being outside the customs territory of the country.

(2) *Deferral of taxes and import charges.* In the case that the program provides for a deferral of indirect taxes or import charges, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of indirect taxes or import charges will be treated as a government-provided loan in the amount of the taxes deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(b) *Time of receipt of benefit*—(1) *Exemption or remission of taxes and import charges.* In the case of a full or partial exemption or remission of an indirect tax or import charge, the Secretary normally will consider the benefit as having been received at the time the recipient firm otherwise would be required to pay the indirect tax or import charge.

(2) *Deferral of taxes and import charges.* In the case of the deferral of an indirect tax or import charge of one year or less, the Secretary normally will consider the benefit as having been received on the date on which the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission or deferral of taxes or import charges described in paragraph (a) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.522 [Removed and Reserved]

■ 28. Remove and reserve § 351.522.

■ 29. In § 351.525:

■ a. Revise paragraphs (b)(1) and (b)(6)(iii), (iv), (v), and (vi);

■ b. Add paragraphs (b)(6)(vii) and (b)(8) and (9);

■ c. Revise paragraph (c); and

■ d. Add paragraph (d).

The revisions and additions read as follows:

§ 351.525 Calculation of ad valorem subsidy rate and attribution of subsidy to a product.

* * * * *

(b) * * *

(1) *In general.* In attributing a subsidy to one or more products, the Secretary will apply the rules set forth in paragraphs (b)(2) through (9) of this section. The Secretary may determine to limit the number of cross-owned corporations examined under this section based on record information and resource availability.

* * * * *

(6) * * *

(iii) *Holding or parent companies.* If the firm that received a subsidy is a holding company, including a parent company with its own business operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries.

(iv) *Input producer*—(A) *In general.* If there is cross-ownership between an input producer that supplies, either directly or indirectly, a downstream producer and production of the input product is primarily dedicated to production of the downstream products, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

(B) *Primarily dedicated.* In determining whether the input product is primarily dedicated to production of the downstream product, the Secretary will determine, as a threshold matter, whether the input could be used in the production of a downstream product including subject merchandise. The Secretary may also consider the following factors, which are not in hierarchical order: whether the input is a link in the overall production chain; whether the input provider's business activities are focused on providing the input to the downstream producer; whether the input is a common input used in the production of a wide variety of products and industries; whether the downstream producers in the overall production chain are the primary users of the inputs produced by the input producer; whether the inputs produced by the input producer are primarily reserved for use by the downstream producer until the downstream producer's needs are met; whether the input producer is dependent on the downstream producers for the purchases of the input product; whether the downstream producers are dependent on the input producer for their supply of the input; the coordination, nature and extent of business activities between the input producer and the downstream producers whether directly between the input producer and the downstream producers or indirectly through other cross-owned corporations; and any other factor deemed relevant by the Secretary based upon the case-specific facts.

(v) *Providers of utility products.* If there is cross-ownership between a corporation providing electricity, natural gas or other similar utility product and a producer of subject merchandise, the Secretary will attribute subsidies received by that provider to the combined sales of that provider and the sales of products sold by the producer of subject merchandise if at least one of the following two conditions are met:

(A) A substantial percentage, normally defined as 25 percent or more, of the production of the cross-owned utility provider is provided to the producer of subject merchandise, or

(B) The producer of subject merchandise purchases a substantial percentage, normally defined as 25 percent or more, of its electricity, natural gas, or other similar utility product from the cross-owned provider.

(vi) *Transfer of subsidy between corporations with cross-ownership.* If a cross-owned corporation received a subsidy and transferred the subsidy to a producer of subject merchandise, the Secretary will only attribute the subsidy to products produced by the recipient of the transferred subsidy. When the cross-owned corporation that transferred the subsidy could fall under two or more of the paragraphs under paragraph (b)(6) of this section the transferred subsidy will be attributed solely under this paragraph.

(vii) *Cross-ownership defined.* Cross-ownership exists between two or more corporations when one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met when there is a majority voting ownership interest between two corporations or through common

ownership of two (or more) corporations.

* * * * *

(8) *Attribution of subsidies to plants or factories.* The Secretary will not tie or attribute a subsidy on a plant- or factory-specific basis.

(9) *General standard for finding tying.* A subsidy will normally be determined to be tied to a product or market when the authority providing the subsidy was made aware of, or otherwise had knowledge of, the intended use of the subsidy and acknowledged that intended use of the subsidy prior to, or concurrent with, the bestowal of the subsidy.

(c) *Trading companies*—(1) *In general.* Benefits from subsidies provided to a trading company that exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated.

(2) *The individually examined respondent exports through trading company.* To cumulate subsidies when the trading company is not individually examined as a respondent, the Secretary will pro-rate the subsidy rate calculated for the trading company by using the ratio of the producer's total exports of subject merchandise to the United States sold through the trading company divided by producer's total exports of subject merchandise to the United States and add the resultant rate onto the producer's calculated subsidy rate.

(3) *The individually examined respondent is a trading company.* To cumulate subsidies when the trading company is individually examined as a respondent, the Secretary will pro-rate the subsidy rate calculated for the producer(s) by the ratio of the producer's sales of subject merchandise to the United States purchased or sourced by the trading company to total sales to the United States of subject merchandise from all selected producers sourced by the respondent trading company and add the resultant rates to the trading company's calculated subsidy rate.

(d) *Ad valorem subsidy rate in countries with high inflation.* For countries experiencing an inflation rate greater than 25 percent *per annum* during the relevant period, the Secretary will normally adjust the benefit amount (numerator) and the sales data (denominator) to account for the rate of inflation during the relevant period of investigation or review in calculating the *ad valorem* subsidy rate.

■ 30. Revise § 351.526 to read as follows:

§ 351.526 Subsidy extinguishment from changes in ownership.

(a) *In general.* The Secretary will normally presume that non-recurring subsidies continue to benefit a recipient in full over an allocation period determined consistent with §§ 351.507(d), 351.508(c)(1), or 351.524, notwithstanding an intervening change in ownership.

(b) *Rebutting the presumption of subsidy continuation notwithstanding a change in ownership.* (1) An interested party may rebut the presumption in paragraph (a) of this section by demonstrating with sufficient evidence that, during the allocation period, a change in ownership occurred in which the seller sold its ownership of all or substantially all of a company or its assets, retaining no control of the company or its assets, and

(i) In the case of a government-to-private sale, that the sale was an arm's-length transaction for fair market value, or

(ii) In the case of a private-to-private sale, that the sale was an arm's-length transaction, unless a party demonstrates that the sale was not for fair market value.

(2) *Arm's-length.* In determining whether the evidence presented in paragraph (b)(1) of this section demonstrates that the transaction was conducted at arm's length, the Secretary will be guided by the SAA, which defines an arm's-length transaction as a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties.

(3) *Fair Market Value.* (i) In determining whether the evidence presented by parties pursuant to paragraph (b)(1) of this section demonstrates that the transaction was for fair market value, the Secretary will determine whether the seller, including in the case of a privatization through the government in its capacity as seller, acted in a manner consistent with the normal sales practices of private, commercial sellers in that country, taking into account evidence regarding whether the seller failed to maximize its return on what it sold.

(ii) In making the determination under paragraph (b)(3)(i) of this section, the Secretary may consider information regarding comparable benchmark prices as well as information regarding the process through which the sale was made. The following is a non-exhaustive list of specific considerations that the Secretary may find to be relevant in this regard:

(A) *Objective analysis.* Whether the seller performed or obtained an objective analysis in determining the appropriate sales price and, if so, whether it implemented the recommendations of such objective analysis for maximizing its return on the sale, including in regard to the sales price recommended in the analysis;

(B) *Artificial barriers to entry.* Whether the seller-imposed restrictions on foreign purchasers or purchasers from other industries, overly burdensome or unreasonable bidder qualification requirements, or any other restrictions that artificially suppressed the demand for, or the purchase price of, the company;

(C) *Highest bid.* Whether the seller accepted the highest bid, reflecting the full amount that the company or its assets (including the value of any subsidy benefits) were actually worth under the prevailing market conditions and whether the final purchase price was paid through monetary or close equivalent compensation; and

(D) *Committed investment.* Whether there were price discounts or other inducements in exchange for promises of additional future investment that private, commercial sellers would not normally seek (for example, retaining redundant workers or unwanted capacity) and, if so, whether such committed investment requirements were a barrier to entry or in any way distorted the value that bidders were willing to pay for what was being sold.

(4) *Deadline to rebut the presumption under paragraph (b)(1) of this section.* The Secretary will normally not consider information submitted by a respondent or government on the record to be sufficient to rebut the presumption of subsidy continuation under paragraph (b)(1) of this section unless that submitted information is timely filed as part of the respondent's or government's initial questionnaire response.

(5) *Market distortion.* Information presented under paragraphs (b)(2) and (3) of this section notwithstanding, the Secretary will not find the presumption in paragraph (a) of this section to be rebutted if an interested party has demonstrated that, at the time of the change in ownership, the broader market conditions necessary for the transaction price to accurately reflect the subsidy benefit were not present or were severely distorted by government action or inaction such that the transaction price was meaningfully

different from what it would otherwise have been absent the distortive government action or inaction. In assessing such claims, the Secretary may consider, among other things, the following factors:

(i) *Fundamental conditions.* Whether the fundamental requirements for a properly functioning market are sufficiently present in the economy in general as well as in the particular industry or sector, including, for example, free interplay of supply and demand, broad-based and equal access to information, sufficient safeguards against collusive behavior, and effective operation of the rule of law; and

(ii) *Legal and fiscal incentives.* Whether the government has used the prerogatives of government in a special or targeted way that makes possible or otherwise significantly distorts the terms of a change in ownership in a way that a private seller could not. Examples of such incentives include, but are not limited to, the following:

(A) Special tax or duty rates that make the sale more attractive to potential purchasers;

(B) Regulatory exemptions particular to the privatization (or to privatizations generally) affecting worker retention or environmental remediation; or

(C) Subsidization or support of other companies to an extent that severely distorts the normal market signals regarding company and asset values in the industry in question.

(c) *Subsidy benefit extinguishment*—(1) *In general.* If the Secretary determines that any evidence presented by interested parties under paragraph (b) of this section rebuts the presumption under paragraph (a) of this section, the full amount of pre-transaction subsidy benefits, including the benefit of any concurrent subsidy meeting the criteria in paragraph (c)(2) of this section, will be found to be extinguished and therefore not countervailable. Absent such a finding, the Secretary will not find that a change in ownership extinguishes subsidy benefits.

(2) *Concurrent subsidies.* For purposes of paragraph (c)(1) of this section, concurrent subsidies are those subsidies given to facilitate or encourage or that are otherwise bestowed concurrent with a change in ownership. The Secretary will normally consider the value of a concurrent subsidy to be fully reflected in the fair market value price of an arm's-length change in ownership and, therefore, to be fully extinguished in such a transaction under paragraph (c)(1) of this section, if the following criteria are met:

(i) The nature and value of the concurrent subsidies are fully transparent to all potential bidders and, therefore, reflected in the final bid values of the potential bidders,

(ii) The concurrent subsidies are bestowed prior to the sale, and

(iii) There is no evidence otherwise on the record demonstrating that the concurrent subsidies are not fully reflected in the transaction price.

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Part III

Department of Health and Human Services

45 CFR Parts 170, 171, and 172
Health Data, Technology, and Interoperability: Trusted Exchange Framework and Common Agreement (TEFCA); Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 170, 171, and 172

RIN 0955–AA07

Health Data, Technology, and Interoperability: Trusted Exchange Framework and Common Agreement (TEFCA)

AGENCY: Assistant Secretary for Technology Policy/Office of the National Coordinator for Health Information Technology, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule has finalized certain proposals from a proposed rule published in August 2024 and in doing so advances interoperability and supports the access, exchange, and use of electronic health information. Specifically, this final rule amends the information blocking regulations by including definitions related to the Trusted Exchange Framework and Common Agreement (TEFCA) Manner Exception. It also implements provisions related to the TEFCA, which will support the reliability, privacy, security, and trust within TEFCA. Lastly, this final rule includes corrections and updates to current regulatory provisions of the Office of the National Coordinator for Health Information Technology (ONC) Health IT Certification Program.

DATES: This final rule is effective on January 15, 2025.

FOR FURTHER INFORMATION CONTACT: Kate Tipping, Office of Policy, Assistant Secretary for Technology Policy (ASTP)/Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of Regulatory Action

The Secretary of Health and Human Services has delegated responsibilities to the Assistant Secretary for Technology Policy and Office of the National Coordinator for Health Information Technology (hereafter ASTP/ONC) [1] for the implementation of certain provisions in Title IV of the 21st Century Cures Act (Pub. L. 114–255, Dec. 13, 2016) (Cures Act) that are designed to: advance interoperability; support the access, exchange, and use of electronic health information (EHI); and identify reasonable and necessary activities that do not constitute information blocking.[2] ASTP/ONC is responsible for the implementation of certain provisions of the Health Information Technology for Economic and Clinical Health Act (Pub. L. 111–5, Feb. 17, 2009) (HITECH Act) including: requirements that the National Coordinator perform duties consistent with the development of a nationwide health information technology infrastructure that allows for the electronic use and exchange of information and that promotes a more effective marketplace, greater competition, and increased consumer choice, among other goals. This final rule fulfills statutory requirements; advances equity, innovation, and interoperability; and supports the access to, and exchange and use of, EHI.

B. Summary of Major Provisions

General Comments

We received approximately 270 comment submissions on the broad range of proposals included in the ''Health Data, Technology, and Interoperability: Patient Engagement, Information Sharing, and Public Health Interoperability'' proposed rule (HTI–2 Proposed Rule) (89 FR 63498). We thank all commenters for their thoughtful input. For the purposes of this final rule, we have reviewed and responded to comments on a narrowed set of proposals. Specifically, we summarize and respond to comments related to the Trusted Exchange Framework and Common Agreement (TEFCA) information blocking exception and part 172 proposals, and a limited set of the proposed ONC Health IT Certification Program (Program) administrative updates. Comments received in response to other proposals from the HTI–2 Proposed Rule are beyond the scope of this final rule, are still being reviewed and considered, and may be the subject of subsequent final rules related to such proposals in the future.

As discussed above, the name of the office changed from the Office of the National Coordinator for Health Information Technology (ONC) to now be dually titled as the Assistant Secretary for Technology Policy and Office of the National Coordinator for Health Information Technology (ASTP/ONC) per the **Federal Register** notice released on July 29, 2024.[3] When the HTI–2 Proposed Rule appeared in the **Federal Register** on August 5, 2024, it referred to the office as ''ONC.'' It was not until days after the HTI–2 Proposed Rule had been released to the public (on

[1] The Office of the National Coordinator for Health Information Technology (ONC) was the previous name of this office. See **Federal Register**: Statement of Organization, Functions, and Delegations of Authority; Office of The National Coordinator for Health Information Technology (89 FR 60903, July 29, 2024).

[2] Reasonable and necessary activities that do not constitute information blocking, also known as information blocking exceptions, are identified in 45 CFR part 171, subparts B, C and D. ASTP/ONC's official website, *HealthIT.gov*, offers a variety of resources on the topic of Information Blocking, including fact sheets, recorded webinars, and frequently asked questions. To learn more, please visit: *https://www.healthit.gov/topic/information-blocking/*.

[3] **Federal Register**: Statement of Organization, Functions, and Delegations of Authority; Office of The National Coordinator for Health Information Technology (89 FR 60903).

July 10, 2024) [4] that the name officially changed. Accordingly, where we referred to ''ONC'' in the HTI–2 Proposed Rule, we continue to refer to ''ONC'' when referencing the HTI–2 Proposed Rule in this final rule. However, in the comment summaries, responses, and regulatory text of this final rule, we have revised those references to refer to ''ASTP/ONC.'' In this final rule, we acknowledge these changes where we have finalized regulatory text as proposed except for the changed reference to ''ASTP/ONC.'' We note that this change is technical in nature and does not affect any substantive rights or obligations.

1. ONC Health IT Certification Program

a. Administrative Updates

In section III.A.1, we discuss the removal of the ''Complete EHR'' and ''EHR Module'' terms from certain sections within subpart E of 45 CFR part 170.

As discussed in section III.A.2, we have removed from 45 CFR part 170, § 170.550(m), ''Time-limited certification and certification status for certain ONC Certification Criteria for Health IT,'' and removed the certification criteria with time-limited certification and certification status, including § 170.315(a)(10) and (13), (b)(6), (e)(2), and (g)(8). Additionally, as discussed in section III.A.2, we have revised § 170.315(b)(7) and (8) to remove § 170.315(b)(7)(ii) and (b)(8)(i)(B), which were time-limited provisions (now expired) that permitted health IT to demonstrate security tagging of Consolidated–Clinical Document Architecture (C–CDA) documents at the document level. In section III.A.3, we discuss the final revision of § 170.550(h), the Privacy and Security Certification Framework requirements, that adds the certification criterion ''decision support interventions'' (§ 170.315(b)(11)) to the list of certification criteria in § 170.550(h)(3)(ii).

b. Correction—Privacy and Security Certification Framework

We have finalized a correction to the Privacy and Security Certification Framework in § 170.550(h). As discussed in section III.B, we have added § 170.550(h)(4) that existed prior to the ''21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program'' final rule (85 FR 25642, May 1, 2020) (ONC Cures Act Final Rule) being finalized but was erroneously deleted.

2. Information Blocking Enhancements

In this final rule, with consideration of public comments, we have finalized the TEFCA Manner Exception in subpart D of part 171 with no revisions. We have also codified definitions of certain terms relevant to the Trusted Exchange Framework and Common Agreement™ (TEFCA™) in § 171.401.

3. Trusted Exchange Framework and Common Agreement™

As discussed in this final rule, we have codified (in new 45 CFR part 172) provisions related to TEFCA to provide greater process transparency and to further implement section 3001(c)(9) of the PHSA, as added by the Cures Act. The finalized 45 CFR part 172 establishes the processes associated with the qualifications necessary for an entity to receive and maintain Designation (as defined in § 172.102) as a Qualified Health Information Network (QHIN) capable of trusted exchange under the Common Agreement. The final provisions codified in part 172 also establish the procedures governing Onboarding (as defined in § 172.102) of QHINs and Designation of QHINs, suspension, termination, and administrative appeals to ASTP/ONC, as described in § 172.100(c)(1) of this final rule. We believe establishing these provisions in regulation support reliability, privacy, security, and trust within TEFCA, which furthers our obligations to ''support'' TEFCA under sections 3001(c)(9)(A) and (B) of the PHSA and TEFCA's ultimate success. In addition, in subpart G of part 172, we have codified requirements related to QHIN attestation for the adoption of TEFCA. This subpart implements section 3001(c)(9)(D) of the PHSA. Section 3001(c)(9)(D)(i) requires the publication on ASTP/ONC's website of a list of the health information networks (HINs) that have adopted the Common Agreement and are capable of trusted exchange pursuant to the Common Agreement. Section 3001(c)(9)(D)(ii) requires HHS to establish, through notice and comment rulemaking, a process for HINs that voluntarily elect to adopt TEFCA to attest to such adoption.

C. Costs and Benefits

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 14094 (Modernizing Regulatory Review) amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a ''significant regulatory action.'' The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) has determined that this final rule is not a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, we have not prepared a detailed Regulatory Impact Analysis (RIA). We did, however, include some quantitative analysis of the costs and benefits of this final rule.

II. Background

A. Statutory Basis

The Health Information Technology for Economic and Clinical Health Act (HITECH Act), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), was enacted on February 17, 2009. The HITECH Act amended the Public Health Service Act (PHSA) and created ''Title XXX—Health Information Technology and Quality'' (Title XXX) to improve healthcare quality, safety, and efficiency through the promotion of health IT and EHI exchange.

The 21st Century Cures Act (Pub. L. 114–255) (Cures Act) was enacted on December 13, 2016, to accelerate the discovery, development, and delivery of 21st century cures, and for other purposes. The Cures Act, through Title IV—Delivery, amended the HITECH Act by modifying or adding certain provisions to the PHSA relating to health IT.

ONC Health IT Certification Program Rules

Section 3001(c)(5) of the PHSA provides the National Coordinator with the authority to establish a certification program or programs for the voluntary certification of health IT. Section 3001(c)(5)(A) specifies that the National Coordinator, in consultation with the Director of the National Institute of Standards and Technology (NIST), shall keep or recognize a program or programs for the voluntary certification of health IT that is in compliance with applicable certification criteria adopted under section 3004 of the PHSA.

[4] *https://www.hhs.gov/about/news/2024/07/10/hhs-proposes-hti-2-rule-improve-patient-engagement-information-sharing-public-health-interoperability.html.*

Information Blocking Under the 21st Century Cures Act

Section 4004 of the Cures Act added section 3022 of the Public Health Service Act (PHSA) (42 U.S.C. 300jj–52, ''the information blocking provision''). Section 3022(a)(1) of the PHSA defines practices that constitute information blocking when engaged in by a health care provider, or a health information technology developer, exchange, or network. Section 3022(a)(3) authorizes the Secretary to identify, through notice and comment rulemaking, reasonable and necessary activities that do not constitute information blocking for purposes of the definition set forth in section 3022(a)(1).

Trusted Exchange Framework and Common Agreement

Section 4003(b) of the Cures Act added section 3001(c)(9)(B)(i) to the PHSA, which requires the National Coordinator ''to convene appropriate public and private stakeholders'' with the goal of developing or supporting a Trusted Exchange Framework and a Common Agreement (collectively, TEFCA) for the purpose of ensuring full network-to-network exchange of health information. Section 3001(c)(9)(B) outlines provisions related to the establishment of a Trusted Exchange Framework for trust policies and practices and a Common Agreement for exchange between health information networks (HINs)—including provisions for the National Coordinator, in collaboration with the NIST, to provide technical assistance on implementation and pilot testing of TEFCA. Section 3001(c)(9)(C) requires the National Coordinator to publish TEFCA on its website and in the **Federal Register**. Section 3001(c)(9)(D)(i) requires the National Coordinator to publish a list of HINs that have adopted TEFCA. Section 3001(c)(9)(D)(ii) requires the Secretary to establish a process for HINs to attest that they have adopted TEFCA.

B. Regulatory History

The Secretary issued an interim final rule with request for comments on January 13, 2010, ''Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology'' (75 FR 2014), which adopted an initial set of standards, implementation specifications, and certification criteria. On March 10, 2010, the Secretary issued a proposed rule, ''Proposed Establishment of Certification Programs for Health Information Technology'' (75 FR 11328), that proposed both temporary and permanent certification programs for the purposes of testing and certifying health IT. A final rule establishing the temporary certification program was published on June 24, 2010, ''Establishment of the Temporary Certification Program for Health Information Technology'' (75 FR 36158), and a final rule establishing the permanent certification program was published on January 7, 2011, ''Establishment of the Permanent Certification Program for Health Information Technology'' (76 FR 1262).

We have engaged in multiple rulemakings to update standards, implementation specifications, certification criteria, and the Program, a history of which can be found in the October 16, 2015, final rule, ''2015 Edition Health Information (Health IT) Certification Criteria, 2015 Edition Base Electronic Health Record (EHR) Definition, and ONC Health IT Certification Program Modifications'' (80 FR 62602) (2015 Edition Final Rule). The history can be found at 80 FR 62606. A final rule making corrections and clarifications was published for the 2015 Edition Final Rule on December 11, 2015 (80 FR 76868), to correct preamble and regulatory text errors and clarify requirements of the Common Clinical Data Set (CCDS), the 2015 Edition privacy and security certification framework, and the mandatory disclosures for health IT developers.

The 2015 Edition Final Rule established a new edition of certification criteria (''2015 Edition health IT certification criteria'' or ''2015 Edition'') and a new 2015 Edition Base EHR definition. The 2015 Edition established the minimum capabilities and specified the related minimum standards and implementation specifications that Certified EHR Technology (CEHRT) would need to include to support the achievement of ''meaningful use'' by eligible clinicians, eligible hospitals, and critical access hospitals under the Medicare and Medicaid EHR Incentive Programs (EHR Incentive Programs) (now referred to as the Promoting Interoperability Programs and the Promoting Interoperability performance category under MIPS) when the 2015 Edition is required for use under these and other programs referencing the CEHRT definition. The final rule also adopted a proposal to change the Program's name to the ''ONC Health IT Certification Program'' from the ONC HIT Certification Program, modified the Program to make it more accessible to other types of health IT beyond EHR technology and for health IT that supports care and practice settings beyond the ambulatory and inpatient settings, and adopted new and revised Principles of Proper Conduct (PoPC) for ONC–ACBs.

After issuing a proposed rule on March 2, 2016, ''ONC Health IT Certification Program: Enhanced Oversight and Accountability'' (81 FR 11056), we published a final rule by the same title (81 FR 72404) (EOA Final Rule) on October 19, 2016. The EOA Final Rule finalized modifications and new requirements under the Program, including provisions related to our role in the Program. The final rule created a regulatory framework for our direct review of health IT certified under the Program, including, when necessary, requiring the correction of non-conformities found in health IT certified under the Program and suspending and terminating certifications issued to Complete EHRs and Health IT Modules. The final rule also set forth processes for us to authorize and oversee accredited testing laboratories under the Program. In addition, it included provisions for expanded public availability of certified health IT surveillance results.

On March 4, 2019, the Secretary published a proposed rule titled ''21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program'' (84 FR 7424) (ONC Cures Act Proposed Rule). The proposed rule proposed to implement certain provisions of the Cures Act that would advance interoperability and support the access, exchange, and use of electronic health information. We also requested comment in the ONC Cures Act Proposed Rule (84 FR 7467) as to whether certain health IT developers should be required to participate in TEFCA as a means of providing assurances to their customers and ONC that they are not taking actions that constitute information blocking or any other action that may inhibit the appropriate exchange, access, and use of EHI, with the goal of developing or supporting TEFCA for the purpose of ensuring full network-to-network exchange of health information.

On May 1, 2020, the ONC Cures Act Final Rule was published (85 FR 25642). The final rule implemented certain provisions of the Cures Act, including Conditions and Maintenance of Certification requirements for health IT developers, the voluntary certification of health IT for use by pediatric health providers, and reasonable and necessary activities that do not constitute information blocking. The final rule also implemented certain parts of the Cures Act to support patients' access to their EHI, and the implementation of

information blocking policies that support patient electronic access. Additionally, the final rule modified the 2015 Edition health IT certification criteria and Program in other ways to advance interoperability, enhance health IT certification, and reduce burden and costs, as well as improving patient and health care provider access to EHI and promoting competition. On November 4, 2020, the Secretary published an interim final rule with comment period titled ''Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID–19 Public Health Emergency'' (85 FR 70064) (Cures Act Interim Final Rule). The interim final rule extended certain compliance dates and timeframes adopted in the ONC Cures Act Final Rule to offer the healthcare system additional flexibilities in furnishing services to combat the COVID–19 pandemic, including extending the applicability date for information blocking provisions to April 5, 2021.

On April 18, 2023, the Secretary published a proposed rule titled ''Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing'' (88 FR 23746) (HTI–1 Proposed Rule). The HTI–1 Proposed Rule proposed to implement the Electronic Health Record (EHR) Reporting Program provision of the Cures Act by establishing new Conditions and Maintenance of Certification requirements for health IT developers under the Program. The HTI–1 Proposed Rule also proposed to make several updates to certification criteria and implementation specifications recognized by the Program, including revised certification criterion for: ''clinical decision support'' (CDS), ''patient demographics and observations'', and ''electronic case reporting.'' The HTI–1 Proposed Rule also proposed to establish a new baseline version of the United States Core Data for Interoperability (USCDI). Additionally, the HTI–1 Proposed Rule proposed enhancements to support information sharing under the information blocking regulations.

On January 9, 2024, the Secretary issued the ''Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing'' final rule (HTI–1 Final Rule), which implemented the EHR Reporting Program provision of the 21st Century Cures Act and established new Conditions and Maintenance of Certification requirements for health IT developers under the Program (89 FR 1192). The HTI–1 Final Rule also made several updates to certification criteria and standards recognized by the Program. The Program updates included revised certification criteria for ''decision support interventions,'' ''patient demographics and observations,'' and ''electronic case reporting,'' as well as adopted a new baseline version of the USCDI standard, USCDI Version 3. Additionally, the HTI–1 Final Rule provided enhancements to support information sharing under the information blocking regulations. Through these provisions, we sought to advance interoperability, improve algorithm transparency, and support the access, exchange, and use of EHI. The HTI–1 Final Rule also updated numerous technical standards in the Program in additional ways to advance interoperability, enhance health IT certification, and reduce burden and costs for health IT developers and users of health IT.

On August 5, 2024, the Secretary published a proposed rule titled ''Health Data, Technology, and Interoperability: Patient Engagement, Information Sharing, and Public Health Interoperability'' (89 FR 63498) (HTI–2 Proposed Rule). The HTI–2 Proposed Rule sought to advance interoperability, improve transparency, and support the access, exchange, and use of electronic health information through proposals for: standards adoption; adoption of certification criteria to advance public health data exchange; expanded uses of certified application programming interfaces, such as for electronic prior authorization, patient access, care management, and care coordination; and information sharing under the information blocking regulations. Additionally, the HTI–2 Proposed Rule proposed to establish a new baseline version of the USCDI standard and proposed to update the ONC Health IT Certification Program to enhance interoperability and optimize certification processes to reduce burden and costs. The HTI–2 Proposed Rule also proposed to implement certain provisions related to TEFCA, which would support the reliability, privacy, security, and trust within TEFCA. This final rule is the second ''Health Data, Technology, and Interoperability'' final rule that seeks to advance interoperability, improve transparency, and support the access, exchange, and use of electronic health information.

III. ONC Health IT Certification Program

A. Administrative Updates

1. Updates Pursuant to 2014 Edition Removal

We proposed to remove the ''Complete EHR'' and ''EHR Module'' terms from certain sections within subpart E of 45 CFR part 170 because by the time we would finalize any proposal in a final rule, the terms would no longer be relevant (89 FR 63614). As described below, due to the amount of time that has elapsed since the June 30, 2020, effective date of the ONC Cures Act Final Rule's removal of the 2014 Edition from subparts A, B, and C of part 170, we believe removing obsolete terms as the Program evolves over time maintains clarity of the regulatory text and Program provisions, particularly for regulated entities and interested parties.

a. Removal of ''Complete EHR'' References

Because the ability to maintain Complete EHR certification was only permitted with health IT certified to the 2014 Edition certification criteria, the ''Complete EHR'' concept was discontinued for the 2015 Edition (80 FR 62719). In order to finalize removal of the 2014 Edition, the ONC Cures Act Final Rule removed the 2014 Edition certification criteria in § 170.314 from the Program regulations in 45 CFR part 170, § 170.545, and references to ''Complete EHR'' from the regulation text (85 FR 25655 through 25656). In the HTI–1 Final Rule, we removed the ''Complete EHR'' language from all reference points in §§ 170.523 and 170.524 (89 FR 1209 through 1210).

However, as explained in the HTI–2 Proposed Rule (89 FR 63614), until now, we have retained references to ''Complete EHRs'' in certain provisions within subpart E of 45 CFR part 170:

- The definition of ''gap certification'' (§ 170.502).
- Authorization scope for ONC–ATL status (§ 170.511).
- Requirements for ONC–ACBs to refund fees to developers seeking certification under certain circumstances (§ 170.523(j)(3)).
- Applicability of a newer version of a minimum standard (§ 170.555(b)(2)).

The ''Complete EHR'' concept remained relevant for supporting continuity through these provisions at that time because the 2014 Edition was not removed from the CFR until the ONC Cures Act Final Rule (85 FR 25655). As explained in the HTI–2 Proposed Rule, the ONC Cures Act Final Rule became effective on June 30, 2020,

and records for the 2014 Edition were required to be retained (including Complete EHRs) until June 30, 2023, under 45 CFR 170.523(g)(1) (89 FR 63614).

However, beginning with the 2015 Edition, Complete EHR certifications could no longer be issued and December 31, 2023, has passed. Thus, we proposed to remove references to ''Complete EHRs'' from the provisions listed above as of the effective date of this final rule.

b. Removal of ''EHR Modules'' References

As explained in the 2015 Edition Final Rule (80 FR 62604), in order to better reflect the scope of ONC's authority under the PHSA (section 3000(5)) and to make the Program more open and accessible, we replaced the term ''EHR Module'' with ''Health IT Module.''

As noted above, consistent with the three-year records retention requirement for ONC–ACBs (45 CFR 170.523(g)(1)), June 30, 2023, marked the end of a three-year minimum retention period (36 calendar months) since we finalized, in the ONC Cures Act Final Rule, the removal of the 2014 Edition from 45 CFR part 170, subparts A, B, and C (85 FR 25656). Similarly, December 31, 2023, marked the end of the third calendar year following the calendar year in which the ONC Cures Act Final Rule became effective. Because we passed both rules' three-year retention requirements for ONC–ACBs and the term ''EHR Module'' is no longer relevant, we proposed to remove from § 170.523(f) reference to ''EHR Modules.'' In the HTI–2 Proposed Rule (89 FR 63614 through 63615), we included the explanation for removing the term ''EHR Modules'' from § 170.523(f) in the preamble. However, we erroneously neglected to include the removal of ''EHR Modules'' in the regulatory text for § 170.523(f). Because we included our intent to remove all of the references to EHR Modules in the HTI–2 Proposed Rule and there were no comments on the removal of the term generally, we have included the revision to the regulatory text for § 170.523(f) in this final rule.

Comments. We did not receive any comments in response to our proposals to remove the terms ''Complete EHR'' and ''EHR Module.''

Response. Because these terms are no longer relevant and retaining them may cause confusion for the public, we have adopted our proposals without revisions.

2. Removal of Time-Limited Criteria

In the ONC Cures Act Final Rule, we finalized § 170.550(m) ''time-limited certification and certification status for certain 2015 Edition certification criteria,'' which provided that for five specific certification criteria, an ONC–ACB may only issue a certification to a Health IT Module and permit continued certified status for a specified time period (85 FR 25952). The five criteria with time-limited certification and certification status are the ''drug-formulary and preferred drug list checks'' certification criterion (§ 170.315(a)(10)), ''patient-specific education resources'' (§ 170.315(a)(13)), ''data export'' certification criterion (§ 170.315 (b)(6)), ''secure messaging'' certification criterion (§ 170.315(e)(2)), and ''application access—data category request'' (§ 170.315(g)(8)). Because the specified time periods for certification to these criteria have elapsed, we proposed to remove all of the certification criteria referenced in § 170.550(m) in one action by removing and reserving § 170.550(m) in its entirety (89 FR 63615 and 63616). We also proposed to remove and reserve these aforementioned certification criteria from the specific CFR locations in which they are adopted. In the ONC Cures Act Final Rule, we also finalized revisions in § 170.315(b)(7)(ii) and (b)(8)(i)(B) to allow security tagging of Consolidated-Clinical Document Architecture (C–CDA) documents at the document level only for the period until 24 months after publication date of the final rule (85 FR 25667). Because that time period has elapsed, we proposed to revise § 170.315(b)(7) and (8) to remove § 170.315(b)(7)(ii) and (b)(8)(i)(B) (89 FR 63616).

Comments. The majority of comments received on this proposal objected in particular to the removal of the ''patient-specific education resources'' certification criterion in § 170.315(a)(13). They stated that while innovation has progressed, patient-specific educational resources remain essential in supporting clinicians during patient interactions. Another commenter expressed concern over the lack of Fast Healthcare Interoperability Resources (FHIR®)-based standards for patient education resources. The commenter stated that although some patient education resources align with FHIR standards to bolster patient engagement, no specific FHIR standards align with the HL7 Context-Aware Knowledge Retrieval (Infobutton) standard. The same commenter recommended that until clear FHIR standards are established, patient education resources should be codified in regulations and EHR certification criteria. One commenter stated that while automation and algorithms have advanced, this technology is not universally available or fully developed across all health IT systems and removing this criterion could create a gap in systems where this capability is less robust, particularly in underserved communities. One commenter stated that providing patient-specific educational resources contributes to better long-term outcomes, supporting chronic disease management, treatment adherence, and overall public health. Another commenter suggested that instead of eliminating the certification, updating the criterion to reflect advancements in automation and AI-driven patient education would encourage ongoing innovation.

Response. We thank commenters for providing feedback on the removal of ''patient-specific education resources'' certification criterion in § 170.315(a)(13). However, we believe commenters expressing specific concerns about maintaining the criterion may have misunderstood the proposal. The discussion of removing the ''patient-specific education resources'' certification criterion in § 170.315(a)(13) and the decision to end its applicability within the Program as of January 1, 2022, was finalized in the ONC Cures Act Final Rule. In the ONC Cures Act Final Rule, we finalized § 170.550(m), ''Time-limited certification and certification status for certain ONC Certification Criteria for Health IT,'' which provided that for five specific certification criteria, an ONC–ACB may only issue a certification to a Health IT Module and permit continued certified status for a specified time period (85 FR 25952). One of those criteria included the ''patient-specific education resources'' certification criterion in § 170.315(a)(13).

Specifically, in the ONC Cures Act Final Rule, we finalized requirements in § 170.550(m)(1) permitting ONC–ACBs to issue certificates for the ''patient-specific education resources'' certification criterion in § 170.315(a)(13) up until January 1, 2022 (85 FR 25661). We stated that we believed that health IT's capabilities to identify appropriate patient education materials was widespread among health IT developers and their customers, and noted innovation had occurred for these capabilities, including the use of automation and algorithms to provide appropriate education materials to patients in a timely manner (85 FR 25661). In addition, the ''patient-specific education resources''

certification criterion in § 170.315(a)(13) included no means to advance innovations such as FHIR-based educational resources or patient-engagement applications. Therefore, in the ONC Cures Act Final Rule we also stated that we believed this certification criterion was no longer the best way to encourage innovation and advancement in the capabilities of health IT to support clinician-patient interactions and relationships (85 FR 25661).

As the discussion of removing the ''patient-specific education resources'' certification criterion in § 170.315(a)(13) and the decision to end its applicability within the Program as of January 1, 2022, was finalized in the ONC Cures Act Final Rule seems to have been misunderstood by those commenters, we believe those comments are not applicable to our proposal and out of scope for this rulemaking. We have finalized the proposal to remove and reserve § 170.315(a)(13).

We did not receive comments on the other proposals to remove time-limited certification criteria. Therefore, except as to the modified reference or references to 'ASTP/ONC,' we have finalized as proposed and remove and reserve those criteria. We have also finalized the proposal to revise § 170.315(b)(7) and (8) to remove § 170.315(b)(7)(ii) and (b)(8)(i)(B), which were time-limited provisions (now expired) that permitted health IT to demonstrate security tagging of C–CDA documents at the document level.

3. Privacy and Security Framework Incorporation of DSI Criterion

In the ONC HTI–1 Final Rule, we established a revised certification criterion (''decision support interventions'' (§ 170.315(b)(11))) to replace the ''clinical decision support'' certification criterion (§ 170.315(a)(9)) effective January 1, 2025 (89 FR 1196 through 1197). However, we neither proposed nor finalized corresponding privacy and security certification requirements for Health IT Modules certifying to the ''decision support interventions'' certification criterion. This omission was an oversight. In the HTI–2 Proposed Rule, we proposed to add the ''decision support interventions'' certification criterion (§ 170.315(b)(11)) to the list of certification criteria in § 170.550(h)(3)(ii) (89 FR 63616).

To provide developers of certified health IT time to comply with these proposed requirements, we specifically proposed to require, in § 170.550(h)(3)(ii), that Health IT Modules certified to the ''decision support interventions'' (§ 170.315(b)(11)) must also be certified to the specific privacy and security certification criteria on and after January 1, 2028. We stated that these specific privacy and security certification criteria are: ''authentication, access control, and authorization'' in § 170.315(d)(1); ''auditable events and tamper-resistance'' in § 170.315(d)(2); ''audit report(s)'' in § 170.315(d)(3); ''automatic access time-out'' in § 170.315(d)(5); ''emergency access'' in § 170.315(d)(6); ''end-user device encryption'' in § 170.315(d)(7); ''encrypt authentication credentials'' in § 170.315(d)(12); and ''multi-factor authentication'' in § 170.315(d)(13). In the HTI–2 Proposed Rule preamble (89 FR 63616), when listing the specific privacy and security certification criteria that a Health IT Module certified to the ''decision support interventions'' (§ 170.315(b)(11)) certification criterion must also be certified to, we neglected to include ''emergency access'' in § 170.315(d)(6). However, because we stated, in the HTI–2 Proposed Rule, that we were proposing to require in § 170.550(h)(3)(ii) that Health IT Modules certified to the ''decision support interventions'' (§ 170.315(b)(11)) must also be certified to the specific privacy and security certification criteria on and after January 1, 2028, and because § 170.315(d)(6) is one of the specific privacy and security certification criteria referenced in § 170.550(h)(3)(ii), we believe that the public was informed of the requirement to certify to § 170.315(d)(6) as well despite our erroneous omission in the preamble.

Comments. We did not receive any comments specific to this proposal to add the ''decision support interventions'' certification criterion (§ 170.315(b)(11)) to the list of certification criteria in § 170.550(h)(3)(ii). We did, however, receive comments addressing other provisions related to decision support interventions and timelines that are beyond the scope of this final rule and are still being reviewed and considered for purposes of issuing subsequent final rules for such proposals in the future.

Response. Except as to the modified reference or references to 'ASTP/ONC,' we have finalized this provision as proposed.

B. Correction—Privacy and Security Certification Framework

We proposed to make a correction to the Privacy and Security Certification Framework in § 170.550(h) (89 FR 63508). We revised § 170.550(h) in the ONC Cures Act Final Rule but intended for § 170.550(h)(4) to remain unchanged. However, when we drafted the amendatory instructions, we erroneously included the instruction to revise all of paragraph (h) (85 FR 25952). Due to this error, when the CFR was updated, § 170.550(h)(4) was removed. Therefore, we proposed to add § 170.550(h)(4) back to the CFR [45 CFR 170.550(h)(4) (Jan. 1, 2020)] as it existed prior to the ONC Cures Act Final Rule (89 FR 63508). We included the complete language to be added to § 170.550(h) in the proposed and in the regulatory text of this final rule so that there is sufficient notice of the language that was previously omitted.

Comments. We did not receive any comments on this proposal.

Response. We have corrected this provision in this final rule to add § 170.550(h)(4) back in the CFR.

IV. Information Blocking Enhancements—Part 171, Subpart D (TEFCA™)

In the HTI–2 Proposed Rule, we proposed revisions to defined terms for purposes of the information blocking regulations, which appear in 45 CFR 171.102. Specifically, we proposed to clarify the definition of ''health care provider'' (89 FR 63616, 63617, and 63802) and adopt definitions for three terms not previously included in § 171.102: ''business day'' (89 FR 63601, 63602, 63626, and 63802), ''health information technology or health IT'' (89 FR 63617 and 63802), and ''reproductive health care'' (89 FR 63633 and 63802). We proposed to revise two existing exceptions in subpart B of 45 CFR part 171 (§§ 171.202 and 171.204). We proposed revisions to paragraphs (a), (d), and (e) of § 171.202 (89 FR 63620 through 63622 and 63803) and to paragraphs (a)(2) and (3) and (b) of § 171.204 (89 FR 63622 through 63628 and 63803). We proposed two new exceptions, one in each in subparts B and C of part 171. The Protecting Care Access Exception was proposed as new § 171.206 (89 FR 63627 through 63639 and 63804) and the Requestor Preferences Exception as new § 171.304 (89 FR 63639 through 63642, 63804 and 63805). We proposed to codify in § 171.401 definitions of certain terms relevant to the Trusted Exchange Framework and Common Agreement™ (TEFCA™) (89 FR 63642, 63804, and 63805) and in § 171.104 descriptions of certain practices that constitute interference with the access, exchange, and use of electronic health information (EHI) (89 FR 63617 through 63620, 63802, and 63803). Lastly, we solicited comment on potential revisions to the TEFCA Manner Exception in subpart D (§ 171.403).

In this final rule, we only address comments on the proposal to codify definitions of certain TEFCA terms in § 171.401 and comments received in response to our potential revisions to the TEFCA Manner Exception. All other information blocking (part 171) proposals from the HTI–2 Proposed Rule and comments received on those proposals are beyond the scope of this final rule but may be a subject of another final rule.

In the HTI–2 Proposed Rule (89 FR 63642 and 63643), we discussed that in the HTI–1 Proposed Rule (88 FR 23872), we proposed to add a *TEFCA manner* condition to the proposed revised and renamed Manner Exception. In the HTI–2 Proposed Rule, we re-stated that this approach ''aligns with the Cures Act's goals for interoperability and the establishment of TEFCA by acknowledging the value of TEFCA in promoting access, exchange, and use of EHI in a secure and interoperable way'' (88 FR 23872). In the HTI–1 Final Rule (89 FR 1437), in part 171, we finalized a new subpart D, ''Exceptions That Involve Practices Related to Actors' Participation in The Trusted Exchange Framework and Common Agreement (TEFCA).'' We noted that the new subpart consists of three sections, § 171.400, ''Availability and effect of exceptions,'' which mirrors §§ 171.200 and 171.300, stating that a practice shall not be treated as information blocking if the actor satisfies an exception to the information blocking provision as set forth in subpart D by meeting all applicable requirements and conditions of the exception at all relevant times (89 FR 1388). We reserved § 171.401 for definitions in a future rulemaking, and also reserved § 171.402 for future use. In § 171.403 we finalized a new TEFCA Manner Exception based on the *TEFCA manner* condition we proposed in HTI–1 Proposed Rule.

A. Definitions

While we reserved § 171.401 for possible future use as a ''definitions'' section in the HTI–1 Final Rule, we declined to finalize any definitions in the HTI–1 Final Rule. Instead, we referred readers to the definitions in the most recent version of the Common Agreement (88 FR 76773) for the terms relevant to the new exception (89 FR 1388). For example, we noted that when we referred to Framework Agreement(s), we meant any one or combination of the Common Agreement, a Participant-QHIN Agreement, a Participant-Subparticipant Agreement, or a Downstream Subparticipant Agreement, as applicable (86 FR 76778). We noted that this approach would allow us to maintain consistency and harmony between the Common Agreement and the new subpart D regulatory text.

In the HTI–2 Proposed Rule, we proposed to include definitions in § 171.401 by cross-referencing the TEFCA definitions included in the proposed new 45 CFR part 172, ''Trusted Exchange Framework and Common Agreement.'' We specifically proposed to adopt in § 171.401 the definitions from § 172.102 for the following terms: Common Agreement, Framework Agreement, Participant, Qualified Health Information Network or QHIN™, and Subparticipant. The definitions would apply to all of subpart D.

Comments. We did not receive any comments regarding our proposal to adopt in § 171.401 the definitions from 45 CFR part 172, ''Trusted Exchange Framework and Common Agreement,'' for the terms: Common Agreement, Framework Agreement, Participant, Qualified Health Information Network or QHIN, and Subparticipant. Comments regarding the substance of those definitions are addressed in section V. of this final rule.

Response. We have finalized the definitions as proposed. The above terms will have the meaning given to them in § 172.102.

B. TEFCA™ Manner Exception

As briefly discussed above, we finalized a new TEFCA Manner Exception in the HTI–1 Final Rule. In the HTI–1 Final Rule, we stated that the TEFCA Manner Exception (§ 171.403) provides that an actor's practice of limiting the manner in which it fulfills a request to access, exchange, or use EHI to be providing such access, exchange, or use to only via TEFCA will not be considered information blocking when it follows certain conditions (89 FR 1388). Those conditions require that (1) the actor and requestor both be part of TEFCA; (2) that the requestor is capable of such access, exchange, or use of the requested EHI from the actor via TEFCA; and (3) any fees charged by the actor and the terms for any license of interoperability elements granted by the actor in relation to fulfilling the request are required to satisfy, respectively, the Fees Exception (§ 171.302) and the Licensing Exception (§ 171.303). In addition to these three requirements, we noted (89 FR 63643) that we also included a limitation in § 171.403(c), stating that the exception is available only if the request is *not* made via the standards adopted in 45 CFR 170.215, which include the FHIR Application Programming Interface (API) standards.

We noted (89 FR 63643) that our finalized TEFCA Manner Exception differed from the proposed *TEFCA manner* condition in two ways. First, when we proposed the *TEFCA manner* condition, we stated that the Fees Exception and the Licensing Exception would not apply, because ''we mistakenly assumed that all actors participating in TEFCA would have *already* reached overarching agreements on fees and licensing such that there would be no need for application of the Fees and Licensing Exceptions'' (89 FR 1389). We stated that we believe that by soliciting comments specifically on this point, we provided notice to parties that we either would or would not apply the Fees and Licensing Exceptions. In response to our proposal in the HTI–1 Proposed Rule, some commenters expressed concern that because the Common Agreement prohibits fees between QHINs™ but is otherwise silent on fees between Participants and Subparticipants, the proposal could allow actors to charge fees to access, exchange, or use EHI that did not comply with the Fees or Licensing Exceptions. Some commenters also expressed that this could have the effect of disincentivizing participation in TEFCA and could cause actors to use other options of electronic exchange outside of TEFCA, where the actors believed the Fees and Licensing Exceptions would apply. As such, in the HTI–1 Final Rule, we finalized the TEFCA Manner Exception to include that any fees charged by the actor, and any licensing of interoperability elements, must satisfy the Fees Exception (§ 171.302) and the Licensing Exception (§ 171.303) (89 FR 1389). In the HTI–2 Proposed Rule, we stated that while we continue to believe that it was clear that the alternative would be *to* apply the exceptions, we requested comment on whether there are drawbacks to applying the Fees and Licensing Exceptions, and if we should continue to apply them to the TEFCA Manner Exception as currently required in § 171.403(d).

We noted (89 FR 63643) that the other change made to the proposed *TEFCA manner* condition was the limitation that carves out requests made for access, exchange, or use of EHI via FHIR API standards (89 FR 1389). We finalized this limitation in response to comments noting that a request could be made for access, exchange, or use via FHIR-based API and an actor could respond in a different manner and satisfy the exception (89 FR 1390 and 1391). Commenters on the HTI–1 Proposed Rule further noted that this potential

outcome could undermine our stated purpose in incentivizing TEFCA participation with the new exception (See 89 FR 1390). In the HTI–2 Proposed Rule (89 FR 63643), we solicited comment on this limitation within the TEFCA Manner Exception for requests via FHIR API standards. For example, we solicited comment on whether the limitation should be expanded to include exchange based on versions of the FHIR standards that are more advanced than those adopted in 45 CFR 170.215 or approved through the 45 CFR 170.405(b)(8), ''Standards Version Advancement Process—voluntary updates of certified health IT to newer versions of standards and implementation specifications.'' We noted that as of the time we issued the HTI–2 Proposed Rule, the limitation would only cover requests made via FHIR API standards codified in § 170.215, including standards that may be updated from time to time through § 170.405(b)(8), which may involve a delay before the version is formally approved under Standards Version Advancement Process (SVAP).

We also sought comment on a different approach (89 FR 63643). We noted that eventually all TEFCA QHINs will be required to support exchange via FHIR API standards. A Participant or Subparticipant who makes a request for access, exchange, or use of EHI via FHIR API will at first make such a request through a QHIN, but in time, a Participant or Subparticipant could directly request access, exchange, or use of EHI via FHIR API standards from another Participant or Subparticipant in a different QHIN. We stated that one option would be to sunset the limitation in § 171.403(c) once all QHINs can support brokered FHIR. Another option would be to sunset the limitation in § 171.403(c) if all QHINs, Participants and Subparticipants support facilitated FHIR exchange. We also stated that as an alternative to these options, we could maintain the exception as is, regardless of FHIR API adoption among TEFCA entities. We requested comment on all of the options, including whether or not the limitation should remain as it is currently.

Comments. The majority of comments we received on whether there are drawbacks to applying the Fees and Licensing Exceptions, and if we should continue to apply them to the TEFCA Manner Exception as currently required in § 171.403(d), were in support of the exception as finalized in the HTI–1 Final Rule. Commenters expressed appreciation that ASTP/ONC listened to their feedback in response to the HTI–1 Proposed Rule and added the Fees and Licensing Exceptions applicability to the TEFCA Manner Exception. Commenters noted that including the applicability of the Fees and Licensing Exceptions would mitigate risks that some organizations could exploit their TEFCA participation to consolidate market power and stifle competition.

Response. We appreciate the commenters' support. We are retaining the exception as finalized in HTI–1 Final Rule, such that there will be no changes finalized in this final rule and the Fees and Licensing Exceptions will apply to an actor seeking to use the TEFCA Manner Exception.

Comments. One commenter recommended modifying the TEFCA Manner Exception so that both the requestor and responder must agree on the mechanism (FHIR or other transmission protocol) within TEFCA used to exchange EHI, in order to accommodate TEFCA participants who may not yet have enabled FHIR transactions for TEFCA.

Response. We appreciate the comment and the opportunity to clarify that the exception does not apply to requests made via the standards adopted in 45 CFR 170.215, including version(s) of those standards approved pursuant to 45 CFR 170.405(b)(8) (the Standards Version Advancement Process, or SVAP). The standards adopted in § 170.215 include the FHIR standards the commenter describes. When actors seek to use the TEFCA Manner Exception, as finalized in 45 CFR 171.403, the exception includes a ''requestor capability'' condition (§ 171.403(b)) that limits the exception to only be available when the requestor is capable of such access, exchange, or use of the requested EHI from the actor via TEFCA. Therefore, if the requestor is unable to receive the EHI from the actor using a FHIR transaction via TEFCA, this exception would not be available to the actor. We believe this provides enough flexibility for actors to use this exception when the requestors are able to access the requested EHI, while ensuring that actors who do not yet have FHIR-based exchange capabilities will not be expected to share via FHIR.

Comments. A few commenters suggested that ASTP/ONC revise the TEFCA Manner exception to state that if an actor charges fees to access data through TEFCA, the TEFCA Manner Exception will not apply, and the requestor would be entitled to EHI through a different manner. One commenter stated that ASTP/ONC should state that charging fees to access data through TEFCA negates the TEFCA Manner Exception and actors that do not provide a secondary method of exchange would be considered information blockers.

Response. We decline to adopt these suggestions. We have retained the finalized exception from the HTI–1 Final Rule. We reiterate that certain fees are permitted under the Fees Exception, and that an actor participating in TEFCA would still be subject to the restrictions of the Fees Exception if the actor is seeking to make use of the TEFCA Manner Exception (for example, by responding via TEFCA even if the request was not received via TEFCA). We note that, per § 171.403(c), the TEFCA Manner Exception is not available if a requestor requests EHI via the standards adopted in 45 CFR 170.215, including version(s) of those standards approved pursuant to 45 CFR 170.405(b)(8). Under those conditions described in § 171.403(c), a fee could still be considered an interference if it does not meet the requirements of the Fees Exception (or the practice is not covered by another exception).

Comments. Many commenters supported retaining the limitation in the TEFCA Manner Exception to exclude requests made via the standards adopted in § 170.215. Commenters stated that removing the condition in § 171.403(c) could disincentivize joining TEFCA for entities seeking to leverage FHIR-based exchange. Some of those commenters also suggested that the condition should be removed once everyone exchanging data on TEFCA is required to support the more advanced FHIR standard. One commenter recommended removing the condition now, and others recommending ASTP/ONC consider sunsetting the condition in the future but stated that it was premature to do so now. Most commenters supported maintaining the condition for now, and recommended ASTP/ONC revisit the exception in the future.

Response. We appreciate the comments and agree that the condition remains useful for advancing interoperability as discussed in the HTI–2 Proposed Rule. We also agree that it is premature to remove the condition at this time. As noted above, we are maintaining the TEFCA Manner Exception as finalized in the HTI–1 Final Rule.

Comments. A few commenters expressed concerns that actors who participate in TEFCA may seek to use this exception to cover practices involving the access, exchange, or use of EHI with entities or requestors who do not participate in TEFCA. The commenters asked for clarification on this point.

Response. We appreciate the opportunity to clarify that this

exception is only available when both the actor and the requestor participate in TEFCA as QHINs, Participants, or Subparticipants (§ 171.403(a)). An actor who participates in TEFCA may not use this exception to cover any practice related to the access, exchange, or use of EHI with an entity who is not a TEFCA QHIN, Participant, or Subparticipant.

Comments. Some commenters expressed concerns related to the ''TEFCA SOP XP Implementation: Health Care Operations'' because the standard operating procedure (SOP) would allow providers and developers to charge health plans to access data under the health care operations exchange purpose.

Response. Commenters correctly point out that health care providers and developers of certified health IT (''actors'' for purposes of the information blocking regulations) are permitted to charge fees under TEFCA for the health care operations exchange purpose as well as other exchange purposes.[5] However, these fees would need to meet the Fees Exception (§ 171.302) under the information blocking regulations and if charged in conjunction with an actor choosing to voluntarily use and meet the conditions of the TEFCA Manner Exception. We decline, however, to state in this final rule whether any specific fee amount that may be charged as a permitted fee under TEFCA meets the conditions of the Fees Exception.

Comments. We received many comments in response to our question regarding whether the limitation should be expanded to include exchange based on versions of the FHIR standards that are more advanced than those adopted in 45 CFR 170.215 or approved through the 45 CFR 170.405(b)(8), ''Standards Version Advancement Process—voluntary updates of certified health IT to newer versions of standards and implementation specifications.'' Some commenters suggested that the limitation should only apply to requests made via standards adopted in § 170.215 or through the Standards Version Advancement Process (SVAP). Some suggested that if the actor supports the more advanced FHIR standard that has not yet been adopted, then the actor must respond to a request via that standard. The commenters stated that if the actor does not support the more advanced FHIR standard at the time of the request, then the TEFCA Manner Exception should still be available.

Response. We appreciate the comments. Until adoption of the FHIR standard is widespread, we think it is sufficient to reserve the carve-out only for versions of the FHIR standard adopted under § 170.215 or approved through the SVAP process. We believe including standards approved through the SVAP process, as well as those adopted under § 170.215, provides the right balance of ensuring newer versions of the FHIR standard can be used without expanding the carve-out to the point that it subsumes the exception itself.

Comments. One commenter encouraged us to clarify that the exception does not mean an organization participating in TEFCA can or will only share data with other organizations participating in TEFCA. Another commenter recommended that the mutuality requirement be phased out so that an actor's participation in TEFCA allows them to claim the TEFCA Manner Exception regardless of the requestor's participation.

Response. We appreciate the opportunity to draw attention to § 171.403(a), as finalized in the HTI–1 Final Rule, which states that the actor and requestor *must both be part of TEFCA* for the exception to be available. A request to access, exchange, or use EHI that an actor receives from a requestor who does not participate in TEFCA as a QHIN, Participant, or Subparticipant does not qualify for the TEFCA Manner Exception (89 FR 1388). Nor does anything in this exception, or anything else in the information blocking regulations, permit a TEFCA entity actor to interfere with a non-TEFCA entity's request to access, exchange, or use EHI, unless required by law or covered by an exception. We decline to adopt the suggestion to remove the mutuality requirement because it would be detrimental to exchange and could force participation in a voluntary exchange framework. We remind all interested parties that participation in TEFCA is voluntary, and no actor is required to join TEFCA.

Comments. Some commenters expressed concerns that the TEFCA Manner Exception could have unintended consequences. For example, one commenter expressed concern that the TEFCA Manner Exception could tip the scales to prioritize TEFCA exchange over all other interoperability pathways and noted that TEFCA does not offer solutions to all needs, including, for example, write-back capabilities and non-EHI data. A few commenters encouraged ASTP/ONC to regularly review the need for the TEFCA Manner Exception, and to update or sunset the exception in the future.

Response. We appreciate the comments. We agree that retaining multiple pathways to interoperability is important. We will continue to monitor the interaction between TEFCA and the TEFCA Manner Exception.

Comment. One commenter suggested encouraging TEFCA participation by expanding the TEFCA Manner Exception. The commenter noted that the exception states that if both parties (requestor and responder) participate in TEFCA, it is not information blocking to only fulfill requests for EHI via TEFCA. The commenter asserted that this incentivizes a requestor not to become a TEFCA participant, since the exception does not apply against a requestor as long as it is not a TEFCA participant. Instead, the commenter suggested that we incentivize entities to join TEFCA by adjusting the exception to place a burden on any requester who is not currently a TEFCA QHIN, participant, or sub-participant to explain why joining TEFCA is infeasible or poses an undue burden for their request. The commenter stated this would satisfy the stated goals of the exception and drive adoption within the industry.

Response. We thank the commenter for their suggestions. These suggestions are outside the scope of our solicitation of comments on the TEFCA Manner Exception.

V. Trusted Exchange Framework and Common Agreement™

Section 3001(c)(9)(B)(i) of the PHSA provides the National Coordinator with the authority to ''develop or support a trusted exchange framework for trust policies and practices and for a common agreement for exchange between health information networks.'' The components of this Trusted Exchange Framework and Common Agreement™ (TEFCA™) include the Trusted Exchange Framework (a common set of principles designed to facilitate trust between health information networks (HINs)) and the Common Agreement (the agreement Qualified Health Information Networks® (QHINs™) sign), which includes, among other provisions, privacy, compliance, and security requirements). The Common Agreement also references the QHIN Technical Framework (QTF) (which describes technical requirements for exchange among QHINs) as well as, where necessary, SOPs. These documents further the statute's overall goal of ensuring full network-to-network exchange of health information by

[5] 4.2 Required Information and Permitted Fees and Table 2 at *https://rce.sequoiaproject.org/wp-content/uploads/2024/08/SOP-Exchange-Purposes_CA-v3_508.pdf.*

establishing an organizational, operational, and technical floor for nationwide interoperability and securely facilitating the exchange of information across different networks nationwide.

By providing a common and consistent approach for the exchange of health information across many different networks, TEFCA simplifies and significantly reduces the number of separate networks that individuals, health care providers, and other interested parties need to be a part of in order to access the health information they seek. HINs that voluntarily join TEFCA will facilitate exchange in a secure and interoperable manner. TEFCA establishes a method for authenticating trusted HIN participants, potentially lowering the cost and expanding the nationwide availability of secure health information exchange capabilities. The establishment of technical services for HINs that voluntarily join TEFCA, such as an electronic address directory and security services, will help to scale network exchange nationwide. In addition, the organizational and operational policies established through TEFCA enable the exchange of health information among HINs and include minimum conditions required for such exchange to occur.

Updates in Common Agreement Version 2.1 reflect the latest technical specifications, among other changes, including updates to network-based exchange using FHIR APIs, which are a cornerstone of the interoperability initiatives of not only ASTP/ONC but also of other Federal agencies such as the Centers for Medicare & Medicaid Services (CMS), Centers for Disease Control and Prevention (CDC), Health Resources & Services Administration (HRSA), and U.S. Department of Veterans Affairs (VA).

Under TEFCA, QHINs play an important role in advancing secure, standardized health information exchange. QHINs have significant organizational and technical capabilities, facilitate exchange at the highest level of the TEFCA infrastructure, and are the entities with which Participants (and their Subparticipants) connect to engage in TEFCA Exchange. ''TEFCA Exchange,'' which we proposed to define in § 172.102, means the transaction of electronic protected health information (ePHI) between Nodes [6] using a TEFCA-specific purpose of use code, meaning a code that identifies the Exchange Purpose for which exchange is occurring. QHINs voluntarily agree to follow certain organizational and operational policies that allow Participants (entities who have entered into an agreement with the QHIN that includes the Participant/Subparticipant Terms of Participation) and Subparticipants (entities that have entered into an agreement with a Participant or other Subparticipant that includes the Participant/Subparticipant Terms of Participation) to simplify their operations and promote efficiency of scale.

QHINs must meet policy and technical requirements under the Common Agreement. The QTF and SOPs provide additional information on how QHINs meet those requirements. As finalized, QHINs must comply with the provisions in this final rule. QHINs also perform an important role by ensuring that Participants and Subparticipants meet the requirements of TEFCA.

As we discussed in the HTI–2 Proposed Rule (89 FR 63644), we proposed to establish rules in 45 CFR part 172 to implement our obligations under section 3001(c)(9)(D) of the PHSA to publish a directory of HINs that ''have adopted the common agreement and are capable of trusted exchange pursuant to the common agreement'' and to establish a process through notice-and-comment rulemaking for HINs to attest to adopting TEFCA.

The provisions also establish the qualifications for HINs to receive and maintain Designation as a QHIN capable of trusted exchange pursuant to TEFCA, as well as establish procedures governing QHIN Onboarding and Designation, suspension, termination, and administrative appeals to ONC as described in the sections below. In the HTI–2 Proposed Rule, we stated that we believe establishing these provisions in regulation would strengthen the trust of interested parties in TEFCA and support its success at scale.

Comments. A majority of commenters supported ONC's proposal to adopt rules in 45 CFR part 172 regarding TEFCA. A number of commenters encouraged ASTP/ONC to prioritize focusing on high-quality data within data sharing and creating more equal information exchange to advance interoperability.

Many commenters highlighted that strong TEFCA requirements allow organizations who exchange information to avoid national security and fraud risk and have protection against outside bad actors. Several commenters also expressed support for the implementation of the QTF to support data exchange and noted the importance of TEFCA ensuring the exchange of reliable and high-quality data.

Response. We thank commenters for their support of our proposal to adopt rules in 45 CFR part 172 regarding TEFCA and their support for our implementation of TEFCA. We agree with commenters about the importance of TEFCA in advancing interoperability and high-quality data exchange. We appreciate commenters' concerns about potential risks of data exchange without TEFCA infrastructure. We are working to fulfill TEFCA's statutory purpose of ensuring full network-to-network exchange of health information, while also recognizing that appropriate guardrails and protections for information exchange are needed. We agree with commenters who encouraged us to prioritize high-quality data and we are also exploring how TEFCA can help improve data quality for TEFCA Exchange.

Comments. Some commenters recommended that ASTP/ONC should codify all TEFCA requirements so that TEFCA requirements and applicable SOPs not included in the HTI–2 Proposed Rule may be subject to notice and comment rulemaking. These commenters also suggested that ASTP/ONC should become more involved in enforcing TEFCA requirements and providing incentives and removing disincentives for entities to participate in TEFCA. Some of these commenters also expressed that TEFCA should remain in alignment with Health Insurance Portability and Accountability Act of 1996 (HIPAA) [7] unless there are strong policy reasons for TEFCA to diverge from HIPAA. One commenter requested that ASTP/ONC clarify within TEFCA any HIPAA interactions and protections related to disclosures.

Response. We appreciate the comments. In the Cures Act, Congress directed ONC to convene public-private and public-public partnerships to build consensus and develop or support a trusted exchange framework, including the Common Agreement (42 U.S.C. 300jj–11(c)(9)(A)). The statute provides that the Common Agreement—which must be published in the **Federal Register**, but which is not subject to notice and comment (42 U.S.C. 300jj–11(c)(9)(C))—may include a common method for authenticating trusted health information network participants, a common set of rules for trusted

[6] Node means a technical system that is controlled directly or indirectly by a QHIN, Participant, or Subparticipant and that is listed in the RCE Directory Service.

[7] Public Law 104–191, 110 Stat. 1936.

exchange, organizational and operational policies to enable the exchange of health information among networks, including minimum conditions for such exchange to occur, and a process for filing and adjudicating noncompliance with the terms of the common agreement (42 U.S.C. 300jj–11(c)(9)(B)). ASTP/ONC has convened such partnerships, and we believe the Common Agreement is generally best developed through those channels, as provided for in the Common Agreement to which QHINs agree. We believe the current process strikes the right balance between ASTP/ONC oversight, public engagement, and the use of a public-private partnership to both ensure important input from interested parties and maintain flexibility to adapt to the ever-evolving interoperability landscape. Finally, TEFCA is aligned with the HIPAA Privacy, Security, and Breach Notification Rules in the sense that an entity is able to comply with the HIPAA Rules and TEFCA at the same time. But we do not agree with commenters who suggest that TEFCA should presumptively copy-and-paste definitions or requirements from the HIPAA Rules into TEFCA. The HIPAA Rules and TEFCA are authorized by different statutes that pursue different goals, and while those goals might sometimes overlap, other times they might not. In order to recognize overlap between the two legal frameworks and reduce regulatory burden while balancing other policy interests, including trusted exchange, ASTP/ONC has sometimes aligned TEFCA requirements. However, ASTP/ONC may develop definitions and requirements within TEFCA that are narrower or broader than corresponding definitions and requirements within the HIPAA Rules to satisfy competing policy interests and achieve TEFCA's statutory goal of ensuring full network-to-network exchange of health information.

Comments. One commenter recommended that ASTP/ONC require QHINs to have a privacy official and a chief information security to monitor data privacy. Another commenter specifically expressed support for the requirement that any organization aspiring to become a QHIN must adhere to specific privacy and security guidelines, with additional stipulations for those providing Individual Access Services.

Response. We appreciate the commenter's support for TEFCA's existing privacy and security requirements, as well as the additional requirements for QHINs that provide Individual Access Services. Regarding the comment recommending that each QHIN be required to have a privacy official and a chief information security to monitor data privacy, we note that we proposed and have finalized § 172.201(c)(8), which requires QHINs to maintain privacy and security policies that permit the entity to support TEFCA Exchange. The *QHIN Security Requirements for the Protection of TEFCA Information SOP*[8] provides additional information on how that requirement can be met, including by QHINs having a chief information security officer (CISO). CISOs are responsible for the overall security posture of a QHIN with respect to their participation in TEFCA. This includes technical, administrative, and physical security safeguards and documentation thereof for a QHIN.

Comments. A number of commenters supported ASTP/ONC's approach of proposing to codify TEFCA requirements but expressed concern that it could be adopting TEFCA requirements into a regulatory framework too quickly and requested that ASTP/ONC provide information regarding our intentions to adopt other TEFCA requirements in the future. These commenters recommended that ASTP/ONC take a cautionary approach and potentially delay the adoption of further TEFCA requirements, citing that TEFCA is intended to be fluid and evolve more quickly than regulations. One commenter also urged ASTP/ONC take care with future adoptions of TEFCA requirements that we do not undermine the independence of the Recognized Coordinating Entity® (RCE®).

Several commenters were concerned that codifying TEFCA hampers the ability of TEFCA to change and adapt as needed, and a few of these commenters suggested that the codification of TEFCA requirements is unnecessary because TEFCA infrastructure is supported by its contractional nature. One commenter specifically recommended that ASTP/ONC incorporate TEFCA and relevant SOPs by reference rather than adopt sections of TEFCA as regulations out of concern that adopting sections of TEFCA as regulations would undermine the sections of TEFCA that are not adopted as a whole and would require future rulemaking actions to modify the sections of TEFCA that have been codified as regulations.

Response. We appreciate commenters' support of our proposals and also understand the concerns about the adoption of TEFCA requirements in regulation and the need for TEFCA to evolve as the interoperability landscape changes. The provisions we have finalized in 45 CFR part 172 mainly address QHIN appeals (subpart F) and the underlying requirements regarding which decisions may ultimately be appealed (subparts B through E). We believe establishing QHIN appeal rights in regulation will enhance trust in the TEFCA framework, as QHINs—that have invested significant time and resources into becoming a QHIN—will know that processes exist to appeal decisions that could have a significant impact of their businesses and the exchange of information for their Participants and Subparticipants. That said, we do not believe it would benefit TEFCA to codify all TEFCA requirements in regulation due to the need, as commenters noted, for TEFCA to move quickly and evolve with the ever-changing interoperability landscape. We appreciate commenters' suggestions regarding the future adoption of other TEFCA requirements in regulation and will consider them in the future.

Subpart G in 45 CFR part 172, which addresses QHIN attestation for the adoption of the Trusted Exchange Framework and the Common Agreement, has been adopted in accordance with statutory requirements. Specifically, section 4003(b) of the Cures Act added section 3001(c)(9), ''Support for Interoperable Networks Exchange,'' to the PHSA. Section 3001(c)(9)(D)(ii) requires HHS to establish, through notice and comment rulemaking, a process for HINs that voluntarily elect to adopt TEFCA to attest to such adoption of the trusted exchange framework and common agreement. Section 3001(c)(9)(D)(i) requires the National Coordinator to publish on ONC's website a list of the HINs that have adopted the Common Agreement and are capable of trusted exchange pursuant to the Common Agreement.

For these reasons, we decline to adopt TEFCA solely through incorporation by reference instead of through a regulatory framework.

We also received numerous comments that were out of scope or that recommended that ASTP/ONC adopt new requirements that we did not propose and are not addressed in this rulemaking.

Comments. A number of comments addressed concerns about the role and authority of QHINs in relation to TEFCA Participants. Some commenters urged

[8] *QHIN Security Requirements for the Protection of TEFCA Information SOP, https://rce.sequoiaproject.org/wp-content/uploads/2024/08/QHIN-Security-for-the-Protection-of-TI-21.pdf.*

ASTP/ONC to take a more direct role in monitoring and enforcing compliance and bolstering Participant confidence as TEFCA participation expands and monitoring by QHINs potentially becomes more difficult. Several commenters were concerned that there was no investigative body for independent oversight within TEFCA and suggested ASTP/ONC should monitor for the possibility of QHINs exercising outsized influence. A few commenters recommended that ASTP/ONC create an oversight board, or a body associated with the Office of the Inspector General (OIG), to provide independent review within TEFCA. These commenters also suggested that ASTP/ONC should include a mechanism for patient-identified issues.

Some commenters suggested that ASTP/ONC require that a QHIN create a continuity plan that includes support for the migration of Participants and Subparticipants if a QHIN is terminated or sanctioned. Additionally, one commenter requested information on how the TEFCA requirements will impact existing SOPs and whether the RCE will continue to have the authority to modify requirements for QHINs through the SOPs.

Response. We thank commenters for their feedback. We appreciate commenters' concerns regarding the role of QHINs in TEFCA governance but have decided not to make any related changes in this final rule. We believe QHINs are best positioned to have primary oversight responsibility over their customers (*i.e.,* Participants) and should have autonomy to make decisions about their networks so long as such decisions do not conflict with the requirements for TEFCA Exchange. We note that there is strong representative and participatory network governance built into the TEFCA infrastructure, including the requirement that QHINs must maintain a representative and participatory group or groups with the authority to approve processes for governing the Designated Network (§ 172.201(c)(7)). Regarding the comments related to including additional oversight within the TEFCA framework, including the suggestion of including HHS OIG in TEFCA governance and oversight, we believe that doing so is not necessary and could limit the flexibility of TEFCA's public-private model of exchange and governance. We believe the oversight provided by ASTP/ONC, including as established in provisions we are finalizing in 45 CFR part 172, meets the needs of the TEFCA community and provides strong support for TEFCA. ASTP/ONC will continue to monitor TEFCA, and we will consider additional measures should circumstances arise that show that QHINs require additional oversight.

We appreciate the suggestion regarding creation of a mechanism for patient-identified issues and note that there are already mechanisms in place for reporting of patient-identified issues. Patients can report issues to ASTP/ONC through the TEFCA tab in the Health IT Feedback and Inquiry Portal available at *https://inquiry.healthit.gov/support/plugins/servlet/desk/portal/2.* Patients may also report issues to the RCE at *https://rce.sequoiaproject.org/contact/.* We encourage patients to report any issues they are experiencing to ASTP/ONC, the RCE, or both so that we can continue to improve TEFCA Exchange.

We also appreciate the suggestion that we require QHINs to create a continuity plan that includes support for the migration of Participants and Subparticipants if a QHIN is terminated or sanctioned. We did not propose to require a continuity plan in the HTI–2 Proposed Rule and believe it would be appropriate for the public to have an opportunity to submit comments before we could adopt this type of requirement. Therefore, we have decided not to finalize a requirement regarding creation of a continuity plan in this final rule. We may consider including such a requirement in a future rulemaking. In the meantime, we encourage QHINs and their Participants to discuss the details regarding continuity of service and consider addressing such details in the respective Framework Agreement between the two parties.

Regarding the comment concerning how the TEFCA requirements will impact existing SOPs, we note that the SOPs can be updated to align with updated requirements. We expect that the RCE will continue to support the development of SOPs, as they have to this point.

Comments. Multiple commenters raised concerns about the adoption of the Exchange Purposes (XPs) SOP version 3.0 without a public comment period. These commenters highlighted in particular that the recent XPs SOP version 3.0 allows health care providers to charge for data exchanges and requested that ASTP/ONC not allow entities to charge fees for TEFCA-based data exchanges.

Response. We thank commenters for raising this concern to our attention. While we understand the importance of this issue, it falls outside the scope of this final rule. The provisions regarding fees and the XP SOP version 3.0 are not addressed within this final rule. We encourage further engagement on the topic of fees through public TEFCA meetings, webinars, and other feedback opportunities.

Comments. Several commenters advocated for the inclusion of State, Tribal, Local, and Territorial (STLT) public health agencies in the governance of TEFCA and QHINs to identify priority use cases. A few of these commenters also noted that the exchange of Prescription Drug Monitoring Program (PDMP) information through TEFCA is incompatible with PDMPs' data confidentiality and privacy requirements and suggested that PDMPs be excluded from TEFCA requirements.

A few commenters additionally noted that there is no Common Agreement for advisory boards and suggested that ASTP/ONC recognize advisory boards, including or referencing groups such as patients, providers, payors, and public health. One commenter recommended that TEFCA advisory groups include expanded roles for health plan representatives.

Response. We thank commenters for their input. The involvement of state and local public health agencies, as well as advisory boards, in TEFCA is an important consideration, and we will consider the related suggestions as we implement and refine the TEFCA governance process. We encourage interested communities to continue engaging with us as these aspects of the TEFCA framework are refined. We welcome all feedback from interested parties, which can be submitted via the ASTP/ONC website at *https://inquiry.healthit.gov/support/plugins/servlet/desk/portal/2/create/61,* for consideration and potential inclusion within the TEFCA framework.

We do not understand the comment that there is no Common Agreement for advisory boards. We appreciate the suggestion for enhancing TEFCA's governance. We are currently considering ways to ensure that different groups, such as patients, providers, payors, and public health, are represented within TEFCA's governance, which could include the development of advisory boards or councils. However, we did not make a proposal in this rulemaking regarding advisory boards, and it would be appropriate for the public to have an opportunity to submit comments before we could adopt these types of changes. We may consider addressing this issue in a future rulemaking.

We appreciate the comment that the exchange of PDMP information through TEFCA is incompatible with PDMPs' data confidentiality and privacy

requirements and the suggestion that PDMPs be excluded from TEFCA requirements. We have decided not to make any related changes in this final rule because we did not make any proposals about PDMPs, and it would be appropriate for the public to have an opportunity to submit comments before we could adopt these types of changes. We may consider addressing this issue in a future rulemaking.

Comments. Several commenters were concerned that the TEFCA requirements prioritize TEFCA participation over other mechanisms of interoperability. A few commenters were concerned that the TEFCA requirements allow participants to not respond to queries from entities that are not TEFCA participants when the data exchange is lawful thereby allowing data from certain providers to be siloed. These commenters suggested that ASTP/ONC clarify that the refusal by entities connected to TEFCA to lawfully exchange data with entities that are not licensed health care professionals is information blocking. Commenters also requested that ASTP/ONC publish a request for information (RFI) on the treatment of all federally defined health care providers under TEFCA. One commenter also advocated that TEFCA requirements should focus on treatment and individual access exchange.

Response. We thank commenters for their feedback. The concerns raised regarding TEFCA requirements and their interaction with other interoperability mechanisms are out of scope for this final rule, since the TEFCA requirements do not apply to other mechanisms of interoperability. However, we would like to direct commenters to the TEFCA Manner Exception in 45 CFR 171.403, finalized in the HTI–1 Final Rule (89 FR 1387 through 1388). This exception applies when, among other necessary conditions, both the actor and requestor participate in TEFCA as QHINs, Participants, or Subparticipants (§ 171.403(a); 89 FR 1388). When the necessary conditions under § 171.403 are met, the actor's practice of fulfilling requests for access, exchange, or use of EHI exclusively via TEFCA will not be considered information blocking. We recommend reviewing this exception for further clarity on TEFCA participation and its interplay with information blocking.

Comments. One commenter expressed concern about the perceived lack of intellectual property protections in TEFCA and recommended that ASTP/ONC increase intellectual property protections within TEFCA.

Response. We thank the commenter their feedback. The issue of intellectual property protections within TEFCA is outside the scope of this final rule, as we did not propose, and this final rule does not address, such provisions. We welcome all feedback from interested parties, which can be submitted via the ASTP/ONC website at *https://inquiry.healthit.gov/support/plugins/servlet/desk/portal/2/create/61,* for consideration and potential inclusion within the TEFCA framework.

Comments. A number of commenters who expressed support for TEFCA were concerned that compliance with TEFCA requirements could be difficult for non-medical specialist entities and entities with limited financial or infrastructure resources. Some of these commenters recommended that ASTP/ONC and the RCE consider providing educational initiatives, incentives, and technical and financial support to providers with limited resources that transition to joining TEFCA. These commenters also expressed concern that participation fees for TEFCA participants should be fair and scaled to the size of and potential use by participants and non-duplicative.

Some commenters requested that ASTP/ONC provide TEFCA Participants more time to prepare when new requirements are adopted as part of updates to the Common Agreement or when SOPs are updated. One commenter also recommended that ASTP/ONC and the RCE establish steps and goals to guide how entities will transition to TEFCA participation. One commenter recommended that ASTP/ONC adopt more specific definitions of Participants and Subparticipants for TEFCA to reduce ambiguity. One commenter particularly requested that ASTP/ONC delay requiring emergency medical services agencies to comply with TEFCA requirements that involve significant technological hurdles or require significant financial and infrastructure resources, and that ASTP/ONC convene a working group to determine how emergency medical services agencies can comply with TEFCA requirements in the future.

Response. We thank commenters for their feedback. We appreciate commenters' concerns about potential financial and technological limitations for some entities regarding TEFCA. We are exploring ways to assist such entities and ensure that the benefits of TEFCA are not disproportionately allocated to larger, for-profit entities. In order to inform such efforts, we are focused on collecting and analyzing exchange metrics as TEFCA matures to better understand where exchange gaps persist.

We understand that cost is a concern for many organizations, particularly small and rural providers. We continue to engage with providers to understand these concerns and providers' needs better and to develop strategies to assist small and rural providers with TEFCA implementation. We are also developing, along with the RCE, various resources to clarify various questions about TEFCA participation and implementation. We appreciate the request that ASTP/ONC provide TEFCA Participants more time to prepare when new requirements are adopted as part of updates to the Common Agreement or when SOPs are updated and will consider the request as we work to expand TEFCA Exchange and update TEFCA requirements over time.

We also appreciate the recommendation that ASTP/ONC and the RCE establish steps and goals to guide how entities will transition to TEFCA participation and agree that ASTP/ONC and the RCE should provide resources and information to support the transition to TEFCA Exchange. As such, ASTP/ONC and the RCE have recently released a plethora of resources to assist entities considering transitioning to TEFCA Exchange, which are available on the ASTP/ONC [9] and RCE [10] websites. In addition, we continue to support the transition to TEFCA Exchange through regular webinars and information sessions for the public.

We appreciate the recommendation that ASTP/ONC adopt more specific definitions of Participants and Subparticipants for TEFCA to reduce ambiguity; however, we have not changed the definitions in this final rule because we do not believe the definitions are ambiguous.

Last, we are aware that emergency medical service providers and agencies may face obstacles in joining TEFCA, and we are considering options for addressing such potential obstacles. We plan to conduct additional outreach to the emergency medical service community to better understand their concerns and the issues this community faces and will consider other ways to assess the issue(s) moving forward.

Comments. One commenter suggested that ASTP/ONC should mandate that health information exchanges respond to every QHIN request with sharing data

[9] *https://www.healthit.gov/topic/interoperability/policy/trusted-exchange-framework-and-common-agreement-tefca.*

[10] *https://rce.sequoiaproject.org/tefca/.*

and participate in TEFCA with at least one QHIN.

Response. We thank the commenter for their feedback. This comment is out of scope for this rulemaking, and therefore, we decline to adopt this suggested change. We also note that we generally believe that participation in TEFCA should remain voluntary and decline to mandate TEFCA participation.

Comments. A number of commenters expressed concern about the interactions of TEFCA requirements with HIPAA requirements, and with other ASTP/ONC and CMS regulations creating an overly complex regulatory framework for interoperability. Commenters urged ASTP/ONC to ensure that TEFCA requirements are compatible with other interoperability and information blocking rulemaking. Another commenter also urged ASTP/ONC to collaborate with CMS to provide endpoint directories and use RESTful FHIR interoperability protocols.

These commenters noted the importance of keeping TEFCA participation voluntary. A few commenters expressed concern that the TEFCA requirements proposed together with other ASTP/ONC and CMS regulations will pressure entities to solely engage with entities connected to TEFCA.

Response. We thank commenters for their feedback and appreciate commenters' concerns about how TEFCA requirements will interact with other regulatory requirements. ASTP/ONC has worked, and will continue to work, with our Federal partners, including CMS, in developing and implementing TEFCA. We are working to align TEFCA requirements with other ASTP/ONC, CMS, and OCR [11] requirements when possible, and while we have not required any entity to participate in TEFCA, we are trying to ensure that TEFCA complements other Federal requirements to reduce complexity and encourage more seamless nationwide exchange. For example, as explained in more detail above, entities are able to comply with both HIPAA (HIPAA Privacy, Security, and Breach Notification Rules) and TEFCA. While ASTP/ONC may develop definitions and requirements within TEFCA that are narrower or broader than corresponding definitions and requirements within the HIPAA Rules, ASTP/ONC does try to align TEFCA requirements with the requirements in the HIPAA Rules when possible.

[11] The HHS Office for Civil Rights has authority for implementing and enforcing HIPAA.

Comment. One commenter recommended that we refer to, prioritize as a goal, recognize, or focus on high-quality data within data sharing, since one of TEFCA's goals is to create an atmosphere of trust.

Response. We thank the commenter for their feedback. We agree with the importance of data quality within health information exchange. We believe our proposals support data quality by advancing the standardization of health information exchange and helping to improve the completeness and comprehensiveness of data being exchanged. However, additional operational aspects and practical implementations of data quality measures are beyond the scope of this final rule.

Comment. Multiple commenters sought clarification on laboratory involvement with respect to TEFCA proposals. One commenter requested clarification about the participation of laboratories in QHINs and the use of TEFCA as a means for health information exchange in the current environment, where FHIR functionality is not available. Another commenter sought clarification on the value proposition for rerouting laboratory results through TEFCA, given that the existing HL7 v2 messaging framework effectively supports public health reporting. If there is value in rerouting, they questioned what requirements must QHINs meet to facilitate HL7 v2 messaging. The commenter expressed concerns about how the process would introduce additional complexity by requiring QHINs to convert HL7 v2 messages into XCDR, which the receiving QHIN would then need to extract and forward to the connected public health agency. Given these concerns, the commenter suggested that ASTP/ONC and the RCE consider selectively endorsing existing technologies, such as HL7 v2, to operate under the Common Agreement, akin to how eCR reporting is implemented under Carequality.

Response. We appreciate this feedback, but these comments are out of scope for this rule. We did not propose and are not finalizing requirements for laboratories to participate in TEFCA or technical requirements to facilitate HL7 v2 messaging within TEFCA.

Comment. One commenter recommended that TEFCA governance documents be updated to define responsibilities for Participants and QHINS related to disclosures and third-party vetting, as well as how requests are intended to operate within the HIPAA framework and who would monitor/enforce such requirements.

Response. We thank the commenter for the feedback. The HTI–2 Proposed Rule outlines the approach among ONC, the RCE, and QHINs to monitor and enforce proposed requirements under TEFCA.

Comment. One commenter noted that requiring EHRs to demonstrate a connection with an established QHIN or with health information exchanges for health IT to achieve certification will help ensure efficient data sharing and support interoperability goals.

Response. We appreciate the feedback on our proposals. However, this comment is out of scope for this final rule, as we have neither proposed nor are we finalizing a requirement for Health IT Modules to demonstrate a connection with an established QHIN or with a health information exchange for the Health IT Module to obtain certification to any criterion or criteria under the ONC Health IT Certification Program (Program). Nonetheless, we highlight that, as noted in the HTI–2 Proposed Rule (89 FR 63510 and 63511), we intend to accomplish the overall goal of full network-to-network exchange of health information by establishing a floor for interoperability under TEFCA across the country. We believe the suggested EHR requirement might conflict with our intent to encourage innovation, facilitate incremental progress, and promote flexibility.

Comment. One commenter shared multiple suggestions for encouraging TEFCA participation. The commenter noted that TEFCA participation may be encouraged by increasing the utility of TEFCA participation to an entity's patients. They noted that incorporating a mechanism for patients to correct or add to their interoperable records would be beneficial. Rather than limiting TEFCA Individual Access Services (IAS) requests to access and deletion options, they also suggested providing an option for patients to amend or augment their records through a patient portal so that these changes could be automatically incorporated into their records exchanged through TEFCA.

Response. We thank the commenter for their suggestions. We agree with the value of patient engagement. However, the suggestions are beyond the scope of this final rule, as we did not propose and are not finalizing related policies specifically designed encourage TEFCA participation.

A. Subpart A—General Provisions

For the purposes of subpart A, we proposed (89 FR 63644) in § 172.100 of the HTI–2 Proposed Rule the basis, purpose, and scope for the proposed TEFCA provisions in 45 CFR part 172.

We proposed in § 172.100(a) that the basis for these provisions would be to implement section 3001(c)(9) of the PHSA (42 U.S.C. 300jj–11(c)(9)). We proposed in § 172.100(b) the dual purposes of proposed part 172: (1) to ensure full network-to-network exchange of health information; and (2) to establish a voluntary process for QHINs to attest to adoption of the Trusted Exchange Framework and Common Agreement. We explained that § 172.100(b)(1) supports the statutory basis because the organizational and operational policies covered by part 172 would enable the exchange of health information among health information networks using the common set of rules found in these regulations. We also noted that § 172.100(b)(2) supports the statutory basis because it implements section 3001(c)(9)(D) of the PHSA. We proposed in § 172.100(c) the scope for part 172, which would include: (1) minimum qualifications needed to be Designated as a QHIN capable of trusted exchange under TEFCA; (2) procedures governing QHIN Onboarding and Designation, suspension, termination, and further administrative review; (3) attestation submission requirements for a QHIN to attest to its adoption of TEFCA; and (4) ONC attestation acceptance and removal processes for publication of the list of attesting QHINs in the QHIN Directory.

In proposed § 172.101, we specified the applicability of part 172 by proposing that part 172 would apply only to Applicant QHINs, QHINs, and terminated QHINs. In the HTI–2 Proposed Rule, we noted that our proposed QHIN definition in § 172.102 captures suspended QHINs (since a suspended QHIN is still a QHIN) and so we did not address them separately in proposed § 172.101. In § 172.102, we proposed definitions for certain terms in part 172. In the HTI–2 Proposed Rule, we stated that we intended the definitions provided in the Common Agreement to be consistent with these proposed definitions. We also stated that differences in phrasing would generally be attributable to differences in context, though in the case of any true conflict, we stated that we intend the regulatory definitions to control.

Additionally, ASTP/ONC has hired a contractor to help administer and implement TEFCA Exchange. This contractor, chosen through a competitive solicitation, is known as the RCE. While the RCE is currently one entity, in the future, we noted in the HTI–2 Proposed Rule, ONC may choose to assign some or all of its responsibilities to a different entity or multiple entities. We noted that assigning responsibilities to a different or multiple entities in the future could, for example, allow for more efficient use of resources or best leverage expertise. In § 172.103, ''Responsibilities ONC may delegate to the RCE,'' we proposed that ONC may assign certain responsibilities to such an entity or entities for these purposes. We note that we changed the title of this section from the proposed title—''Responsibilities ONC may delegate to the RCE''—to ''Responsibilities ASTP/ONC may delegate to the RCE'' because of the recent change to the name of our office and to conform with similar changes made throughout this final rule. In addition to changes to the proposed text described below, we have also finalized references to ''ONC'' in subpart A of the proposed rule to instead refer to ''ASTP/ONC.'' For further discussion of the use of ''ASTP/ONC,'' please see the Executive Summary of this final rule.

We proposed in § 172.103(a)(1) through (4) that ONC may assign any of its responsibilities in subparts C (''QHIN Onboarding and Designation Process'') and D (''Suspension'') and §§ 172.501 (''QHIN self-termination'') and 172.503 (''Termination by mutual agreement''). In § 172.103(b), we proposed that any authority exercised by the RCE under this section is subject to review by ONC under subpart F (''Review of RCE Decisions'').

Comments. One commenter argued that any TEFCA expansion to new purposes should be driven by Congressional mandate and conducted transparently with opportunities for public input. The commenter emphasized that an open process ensures that stakeholders' diverse perspectives are considered fully and that the TEFCA framework evolves to serve all stakeholders' collective interests. The commenter cautioned against mission creep and recommended establishing clear guardrails for any future expansion of TEFCA's use cases, including rigorous evaluation, comprehensive needs assessments and industry engagement. Other commenters advised ASTP/ONC to avoid sub-regulatory guidance and instead follow standard rulemaking procedures, including 60-day public comment periods for proposed changes or additions to TEFCA SOPs. One commenter expressed that all substantive issues and core concepts, such as, but not limited to, foundational definitions of the different exchange purposes, should be codified in regulation following the notice and comment rulemaking process, rather than being addressed in TEFCA documents such as SOPs, which do not undergo the same rigorous review process as do regulations. Another commenter further argued that any future regulatory changes should relate back to the text of the Cures Act.

Response. We thank the commenter for the feedback. We have developed and implemented TEFCA consistent with the 21st Century Cures Act (section 3001(c)(9) of the PHSA, as added by the 21st Century Cures Act (Pub. L. 114–255, Dec. 13, 2016)). That statute sets out at least one broad statutory purpose: ensuring full network-to-network exchange of health information. TEFCA as currently designed furthers that purpose. We do agree that TEFCA should generally be related to that goal or other ones suggested in the statute—for instance, that the exchange should be ''trusted''—but we believe that statute envisions that TEFCA will be flexible within that broad goal, consistent with the need for flexibility in rapidly developing spaces like health information technology and health information exchange. For example, section 3001(c)(9)(B) identifies a list of potential topics the Common Agreement ''may include,'' but does not require the Common Agreement to address those topics or suggest that those topics are the only ones the Common Agreement can address.

We appreciate the commenters' suggestion to follow standard rulemaking procedures. As noted previously in this rulemaking, we believe the inclusion of TEFCA provisions in this rulemaking will strengthen the trust of interested parties in TEFCA and support its success at scale. We likewise believe that TEFCA must remain flexible and agile, in order to enable nationwide exchange at scale.

Comments. Commenters supported the general definitions related to TEFCA proposed in regulatory text, suggesting that those terms may arise in other regulatory programs and can be later cross-referenced.

Response. We thank commenters for their support and have finalized the definitions related to TEFCA we proposed in § 172.102 with some modifications based on comments we received and as explained hereafter.

Comments. One commenter expressed concern about codifying definitions from the Common Agreement in regulation and specifically identified inconsistencies between the Common Agreement and the proposed regulatory definitions. The commenter noted that some definitions in the HTI–2 Proposed Rule do not fully align with the Common Agreement (*e.g.,* Threat Condition and Recognized Coordinating Entity) and some of the definitions (*e.g.,*

XP Code) are included in the regulation but not used in the proposed regulatory text. The commenter also noted that certain definitions in the HTI–2 Proposed Rule refer to applicable SOPs (*e.g.,* the definition for Participant/Subparticipant Terms of Participation), while others do not—including when the Common Agreement does refer to the SOP. For example, Exchange Purposes in the proposed regulatory text omits reference to SOPs, though the Common Agreement includes such reference. The commenter states that leaving out references to SOPs could change the meaning of the Common Agreement and render the SOPs inapplicable. The commenter also stated that the term ''Responding Node'' is used in the definition of Required Information but not defined in the regulation. Further the commenter noted that some definitions refer to ''ONC (or an RCE)'' (*e.g.,* threat condition), other times there is no mention of an RCE, even though the Common Agreement includes such a reference (*e.g.,* Qualified Health Information). The commenter suggested that differing definitions between the Common Agreement and the regulatory text will lead to confusion and misinterpretation. The commenter also expressed concern that, if such inconsistencies are finalized in the regulatory text, they could necessitate subsequent amendments to the Common Agreement that are inconsistent with the public input used to establish the definitions in the Common Agreement.

Response. We appreciate the comments that opined on the potential for confusion and misinterpretation related to certain proposed definitions. We also appreciate the input related to clear and consistent alignment between the regulatory definitions and the Common Agreement. As noted in the proposed rule, we intend for the definitions in this final rule to be consistent with the definitions in the Common Agreement and the SOPs. We have adopted this approach to maintain consistency between the Common Agreement and the regulatory text (89 FR 63642). However, in some cases we used different verbiage in the HTI–2 Proposed Rule to accommodate discussion of different contexts such as future or past circumstances. In other cases, differences between definitions in the regulation text and the Common Agreement may be the result of inconsistencies in the level of specification between the Common Agreement and definitions in the HTI–2 Proposed Rule. However, we agree with the commenter that these differences in the definitions between the Common Agreement or SOPs and this rulemaking may lead to confusion and misinterpretation or the need for amendments to the Common Agreement. Therefore, in this final rule we have addressed inconsistencies by revising the final regulatory text wherever feasible to directly align with definitions in the Common Agreement and SOPs. Below we explain how, in response to public comment, we have further aligned definitions in this final rule to the definitions in the Common Agreement and SOPs.

Regarding the comment that leaving out references to SOPs could change the meaning of the Common Agreement and render the SOPs inapplicable, we reiterate our statement in the HTI–2 Proposed Rule that in the case of any true conflict, we intend for the regulatory definitions to control (89 FR 63644). We also note that, as stated, our definitions in the HTI–2 Proposed Rule included references to SOPs (see for example, § 172.102, definitions of ''Governance Services'' and ''Participant/Subparticipant Terms of Participation''). We have further updated definitions in this final rule to incorporate reference to SOPs where necessary to align with the Common Agreement as described below.

Regarding the definition of ''Threat Condition,'' we agree with the comment that the definition in this final rule should be identical to the definition in the Common Agreement. Given our stated intent for the TEFCA-specific definitions in these regulations to align with the definitions in the Common Agreement and SOPs (89 FR 63642), and public comments that clearly stated a preference for aligning the definitions in this final rule to the definitions in the Common Agreement and SOPs, we have finalized this definition to align with the definition in the Common Agreement. As such, we have modified the proposed definition and finalized the definition of ''Threat Condition'' as set out in the regulatory text at the end of this document.

Regarding the definition of ''Recognized Coordinating Entity,'' we agree with the commenter that the definition in this final rule should be identical to the definition in the Common Agreement. Given our intent for the TEFCA-specific definitions in these regulations to align with the definitions in the Common Agreement and SOPs (89 FR 63642), and public comments that clearly stated a preference for aligning the definitions in this final rule to the definitions in the Common Agreement and SOPs, we have finalized this definition to align with the definition in the Common Agreement. As such, we have modified the proposed definition and finalized the definition of ''Recognized Coordinating Entity® (RCE®)'' as set out in the regulatory text at the end of this document.

Regarding the comment that ''XP Code'' is included in the regulation, but not used in the regulatory text, we are not clear on the specific issue the commenter is raising. We note that ''Exchange Purpose Code or XP Code'' was defined in the regulatory text for the Proposed Rule (89 FR 63806) as a code that identifies the Exchange Purpose being used for TEFCA Exchange. We use only ''Exchange Purpose Code'' in the discussion in this final rule, but we recognize interested parties may commonly use ''XP Code''. Therefore, as noted in the HTI–2 Proposed Rule, we interpret the ''or'' between ''Exchange Purpose Code'' and ''XP Code'' in the definition to indicate that the two terms are interchangeable. Accordingly, we have decided that use of either term is appropriate throughout the regulation (89 FR 63806) and have finalized the definition of ''Exchange Purpose Code or XP Code'' as proposed.

Regarding the comment that certain definitions refer to applicable SOPs (*e.g.,* the definition for Participant/Subparticipant Terms of Participation) while others do not, we note that this inconsistency was not intentional. Given our intent for the TEFCA-specific definitions in these regulations to align with the definitions in the Common Agreement and SOPs (89 FR 63642), and the public comments that clearly stated a preference for aligning the definitions in this final rule to the definitions in the Common Agreement and SOPs, we have finalized the definition of ''Exchange Purpose(s) or XP(s)'' to align with the definition in the Common Agreement. As such, we have modified the definition of ''Exchange Purpose(s) or XP(s)'' to align with the Common Agreement definition, which includes mention of SOP(s).

Regarding the comment that the term ''Responding Node'' was included in the proposed definition of ''Required Information'' but not proposed to be defined in § 172.102, we note that this inconsistency was not intentional. In order to address commenters' reasonable expectation that we would define terms necessary to understand other terms we proposed to define where such definitions are consistent with those in the Common Agreement per our stated intent of alignment (89 FR 63642), we have finalized the definition of ''Responding Node'' in § 172.102.

Regarding the comment that some definitions refer to ''ONC (or an RCE)'' (*e.g.,* Threat Condition), and other times there is no mention of an RCE even though the Common Agreement includes such a reference (*e.g.,* Qualified Health Information Network), we intentionally referenced the RCE in certain circumstances and not others in the definitions we proposed in § 172.102. Our goal with the proposed definitions was to afford ourselves flexibility in the event that one day there is no longer an RCE. We emphasize, however, that the current RCE, the Sequoia Project, is now in the second year of a five-year contract with ASTP/ONC.

Comments. One commenter identified what they believed to be two typos in proposed 45 CFR 172.102. The commenter noted that a few definitions, notably the proposed definitions for the HIPAA Privacy Rule and the HIPAA Security Rule, reference the regulations at 45 CFR part 160 and subparts A and E of 45 CFR part 164, as well as to 45 CFR part 160 and subparts A and C of 45 CFR part 164. The commenter asked for clarification on what subparts were meant to be referenced.

Response. The terms HIPAA Privacy Rule and the HIPAA Security Rule are both defined in § 172.102 by referencing their codifications in the CFR. Both rules have slightly different citations. The citation for the HIPAA Privacy Rule is 45 CFR part 160 and subparts A and E of 45 CFR part 164. The HIPAA Security Rule is located at 45 CFR part 160 and subparts A and C of 45 CFR part 164. Because those are the correct citations for the HIPAA Privacy and Security Rules, we have finalized the HIPAA Privacy Rule and the HIPAA Security Rule definitions in § 172.102 as proposed.

Comments. One commenter recommended a revision to the definition of ''Framework Agreements'' to include only those documents for which a draft was made available to the public and the public has some opportunity to provide input on the draft before a final version is effective. The commenter requested that we require such a process for all Framework Agreements. The commenter noted that the RCE should make SOP drafts available for public feedback or any other transparent process around their establishment and review. The commenter noted further that under the proposed rule, ASTP/ONC can review an RCE decision, but that there is no process for a QHIN or a participant to appeal or require formal review of an SOP. The commenter cited an SOP issued last summer that the commenter believed significantly narrowed the scope of required response for treatment purposes, which it said cut off access to the networks for hundreds of thousands of patients. The commenter believed that the proposed rule would allow this result to happen again.

Response. We appreciate the comments. However, the definition of ''Framework Agreement(s)'' we proposed tracks the definition in the Common Agreement, and we believe that deviating from the definition in the Common Agreement for such a foundational concept might be confusing or suggest differences between the meaning of Framework Agreements in the Common Agreement and the regulation that we do not intend. Nor do we agree with the commenters who suggest that we should require more process for SOPs than is laid out in the Common Agreement (at section 5.3 of version 2.0). That process—to which QHINs, Participants, and Subparticipants agree by signing the Framework Agreements—balances the need for input by the public with the need to respond quickly in a fast-developing space. We understand that, as the commenter points out, sometimes individual entities will disagree with particular SOPs, but that is part of the balance struck in the Common Agreement's procedures, and we decline the invitation to impose a higher regulatory standard on SOPs than set forth in the Common Agreement. We believe that transparency is essential to TEFCA's success because it is in the best interest of individuals whose health information is exchanged via TEFCA and is central to the efforts of HHS to enhance and protect the health and well-being of all Americans. Since we began developing TEFCA following the passage of the Cures Act in 2016, ASTP/ONC and the RCE have held dozens of webinars, listening sessions, and other feedback opportunities with the public and interested communities to promote transparency and provide the opportunity for public comment. We will continue to offer robust feedback opportunities related to TEFCA in the future. In addition, ASTP/ONC's processes for gathering feedback on TEFCA documents, processes, and procedures have been transparent and consistent—and the feedback we have received has informed the development of and changes to the Common Agreement and Terms of Participation, both of which are included in the finalized definition of ''Framework Agreement(s),'' as well as SOPs, which are not.

We do not believe that the appeals process we have finalized in 45 CFR part 172 should be expanded to include appeals of SOPs. Section 5 of the Common Agreement [12] discusses TEFCA's change management process for updating the Common Agreement and SOPs. This process was developed with significant input from prospective QHINs, interested communities, Federal partners, and the public. It provides opportunities for input from multiple different kinds of entities that participate in TEFCA. ASTP/ONC must approve all changes, additions, or deletions. In addition, section 15 of the Common Agreement [13] addresses dispute resolution, and section 15.6 addresses the escalation of certain disputes to ASTP/ONC.[14] We note these sections to highlight that the governance in place for TEFCA ensures that changes to TEFCA's policies and procedures are informed by feedback and driven by a strong, consistent process with ASTP/ONC oversight embedded throughout the processes.

Besides the revisions to the Definitions section discussed above, subpart A was finalized as proposed with a few modifications. Specifically, the name ''ONC'' used in the title of proposed § 171.103, as well as the proposed text of § 171.103(a), has been finalized as ''ASTP/ONC'' to reflect the recent change to our office's name and ensure consistency in the use of ASTP/ONC throughout this final rule. In addition, we have added language requiring an RCE to seek and receive ASTP/ONC's prior authorization before making certain decisions (*e.g.,* interim or final designation decisions (§ 172.303(b)), setting onboarding requirements and determining a QHIN has complied with those requirements (§ 172.304(b) and (c)), and deeming a QHIN application withdrawn for failure to respond to information requests during the designation process (§ 172.305(c)). We have added language to § 172.103(b) to clarify that ASTP/ONC cannot subdelegate the authority to grant prior authorization to an RCE. These revisions, taken together, help to ensure that an RCE remains subordinate to ASTP/ONC and provides only fact-gathering, ministerial, and administrative support to ASTP/ONC.

B. Subpart B—Qualifications for Designation

In the HTI–2 Proposed Rule (89 FR 63644), we discussed that in subpart B,

[12] Common Agreement for Nationwide Health Information Interoperability (*healthit.gov*).

[13] *Id.*

[14] *Id.*

we proposed qualifications for Designation. In § 172.200, we proposed to tie QHIN status to meeting the requirements specified in § 172.201. We proposed that an Applicant QHIN (as we proposed to define it in § 172.102) would need to meet all requirements in § 172.201 to be *Designated,* and a QHIN would need to continue to meet all requirements in § 172.201 to *maintain its Designation.* We noted that the requirements we proposed in § 172.201 would be ongoing; a QHIN that does not meet those requirements at all times would be subject to suspension or termination, consistent with the regulations we proposed in subparts D and E of part 172. In the HTI–2 Proposed Rule, we stated that the continuing obligation to meet the requirements in § 172.201 would help to ensure the reliability of TEFCA Exchange and that QHINs could not maintain their status based on technology and standards that have become obsolete. Because the obligations would be ongoing, throughout this section we referred to Applicant QHINs as well as Designated QHINs as ''QHINs'' unless there was a need to differentiate.

As we explained in the HTI–2 Proposed Rule (89 FR 63645), the Designation qualifications proposed in § 172.201 described certain requirements for Designation. For an entity to become a QHIN, that entity must sign the Common Agreement, thus memorializing its agreement to the comprehensive Designation requirements—as well as other requirements—for trusted exchange under TEFCA. The comprehensive Designation requirements in the Common Agreement correspond to the proposed requirements included in this subpart.

In § 172.201, we proposed Designation requirements in three categories: (a) ownership; (b) exchange requirements; and (c) Designated Network Services.

In § 172.201(a), we proposed the ownership requirements. In § 172.201(a)(1), we proposed that a QHIN must be a U.S. Entity, as we proposed to define ''U.S. Entity/ Entities'' in § 172.102. Under that proposed definition, a U.S. Entity must be a corporation, limited liability company, partnership, or other legal entity organized under the laws of a state or commonwealth of the United States or the Federal law of the United States, be subject to the jurisdiction of the United States and the state or commonwealth under which it was formed, and have its principal place of business be in the United States under Federal law. Additionally, we proposed that none of the entity's directors, officers, or executives, and none of the owners with a five percent (5%) or greater interest in the entity, may be listed on the *Specially Designated Nationals and Blocked Persons List* published by the United States Department of the Treasury's Office of Foreign Asset Control or on the Department of Health and Human Services, Office of Inspector General's List of Excluded Individuals/Entities. We explained that this requirement would help to promote organizational and operational policies that enable the exchange of health information among networks by ensuring that those who actually control the health information exchanged under these provisions are subject to U.S. laws, and it would help to avoid giving access to that information to actors whom the government has previously identified as national security or fraud risks.

We requested comment on whether the above approach, including the specific five percent (5%) threshold, will effectively limit access of bad actors trying to join TEFCA as a QHIN, or whether commenters believe the threshold should be a different percentage.

In § 172.201(a)(2), we proposed that an Applicant QHIN must not be under Foreign Control, which is a term we proposed to define in § 172.102. If, in the course of reviewing a QHIN application, ONC believes or has reason to believe the Applicant QHIN may be under Foreign Control, ONC would refer the case to the HHS Office of National Security (ONS) for review. If information available to ONS supports a determination of Foreign Control, ONS will notify ONC. An application will be denied if ONS notifies ONC that the Applicant is under Foreign Control.

Given the scale of the responsibilities that a Designated QHIN would have with respect to supporting health information exchange and the importance that healthcare data has to the critical infrastructure of our nation's health care system, we noted in the HTI–2 Proposed Rule that we believe that a QHIN should not be under Foreign Control. We stated we believe the requirements proposed in § 172.201(a)(1) and (2), in conjunction with the proposed definitions that those provisions reference, are necessary to ensure that all QHINs are subject to United States law and that compliance by QHINs is enforceable under United States law. Further, we stated these proposals are designed to strengthen the security of the network. We added in the HTI–2 Proposed Rule that we believe that the above proposals would promote organizational and operational policies that enable the exchange of health information among networks by minimizing the risk to TEFCA that may be posed by foreign state actors who wish to harm the United States, lessening the risks of subjecting QHINs to potentially conflicting foreign laws, and encouraging trust in the security of exchange under the system.

In the HTI–2 Proposed Rule (89 FR 63645), we noted that within the proposed definition of ''U.S. Entity/ Entities'' in § 172.102, we proposed that for an entity seeking to become a QHIN to meet the definition, none of the entity's directors, officers, or executives, and none of the owners with a five percent (5%) or greater interest in the entity, can be listed on the *Specially Designated Nationals and Blocked Persons List* published by the United States Department of the Treasury's Office of Foreign Asset Control or on the Department of Health and Human Services, Office of Inspector General's List of Excluded Individuals/Entities. We also noted that we believe the five percent (5%) threshold strikes the right balance between protecting the security of the network from high-risk or known bad actors and achieving practical administrability of TEFCA. We noted individuals with less than five percent (5%) ownership in an entity would likely have limited means of influencing the actions of an entity connected to TEFCA. In the HTI–2 Proposed Rule, we stated we believe that entities—particularly those with a large number of shareholders—would face undue hardship without this sort of exception for small shareholders. In the HTI–2 Proposed Rule, we noted this regulation only would provide the standard that ONC would apply when evaluating QHINs; it would not supersede any stricter requirements imposed by other applicable laws, including, for example national security laws. It remains the responsibility of QHINs (and any other entity) to comply with all applicable laws.

In § 172.201(b), we proposed exchange requirements for QHINs. In the HTI–2 Proposed Rule, we stated we believe these exchange requirements are necessary to build a data sharing infrastructure that is private and secure and that meets all the requirements of PHSA section 3001(c)(9). We believe each of the exchange requirements below is important to the implementation and operationalization of TEFCA Exchange, as described in § 172.201, at scale. We proposed that an entity seeking to become a QHIN must, beginning at the time of application,

either directly or through the experience of its parent entity, meet certain exchange requirements, including: (1) be capable of exchanging information among more than two unaffiliated organizations; (2) be capable of exchanging all Required Information (as that term is defined in § 172.102); (3) be exchanging information for at least one of the Exchange Purposes (as that term is defined in § 172.102) authorized in the Common Agreement or an SOP(s); (4) be capable of receiving and responding to transactions from other QHINs for all Exchange Purposes; and (5) be capable of initiating transactions for the Exchange Purposes that such entity will permit its Participants and Subparticipants to use through TEFCA Exchange.

In the HTI–2 Proposed Rule we stated that, collectively, we believe these requirements are tailored to help ensure that a QHIN is capable of TEFCA Exchange, supports a trusted exchange framework, and maintains consistent practices of exchanging information at scale to support nationwide interoperability. The first requirement, proposed in § 172.201(b)(1), that the entity seeking to become a QHIN be capable of exchanging information among more than two unaffiliated organizations, is a requirement that would ensure a minimum technical ability exists and that exchange would be enabled beyond just the QHIN itself.

We discussed (89 FR 63646) that the second requirement, proposed in § 172.201(b)(2), is also a minimum condition, except it is directed at the minimum quantity of *data* a QHIN must be capable of exchanging. This proposed requirement would ensure that every QHIN can exchange Required Information (as that term is defined in proposed § 171.102) and provides certainty to Participants and Subparticipants who seek to join a QHIN that there is a minimum scope of data that they can reliably expect to be able to exchange via TEFCA Exchange Purposes.

The proposed requirements in § 172.201(b)(3) through (5) are intended to establish basic parameters and expectations for QHINs in order to qualify for Designation. We proposed, in § 172.201(b)(3), that a QHIN or Applicant QHIN must be exchanging information for at least one Exchange Purpose. If a QHIN is not exchanging information for at least one of the Exchange Purposes authorized under TEFCA (for examples, see the ''Exchange Purpose'' definition proposed in § 172.102) at the time of application, we noted in the HTI–2 Proposed Rule that it is not meeting a minimum condition necessary for such exchange to occur and cannot be Designated. While exchange for an Exchange Purpose under TEFCA requires an Exchange Purpose Code, Applicant QHINs can demonstrate that they are meeting the requirement to exchange information for at least one of the Exchange Purposes by conducting exchange for an Exchange Purpose without use of an Exchange Purpose Code.

We proposed in § 172.201(b)(4) to require a QHIN to be capable of receiving and responding to transactions from other QHINs for all Exchange Purposes, to ensure that health information can be exchanged among health information networks under TEFCA. For this same reason, we proposed in § 172.201(b)(5) to require a QHIN to be capable of initiating transactions for the Exchange Purposes that such entity will permit its Participants and Subparticipants to use through TEFCA Exchange. We noted that ensuring that QHINs will respond to Participant or Subparticipant requests for information, and that the Participants or Subparticipants are able to receive the information from QHINs, enables health information exchange among the QHINs, Participants and Subparticipants.

We noted in the HTI–2 Proposed Rule that a QHIN's ability to transact for all Exchange Purposes is a threshold requirement for an entity that seeks Designation and is essential for ensuring that the TEFCA framework facilitates exchange for each Exchange Purpose authorized in the Common Agreement or an SOP(s) for implementation. We also noted that, without this requirement, there would be no certainty that the TEFCA framework would advance exchange beyond the Treatment Exchange Purpose, which is the most prevalent purpose for health information exchange today and the purpose of use that most health care entities seeking Designation would be most familiar with. TEFCA's network connectivity—including this requirement that QHINs have the ability to exchange for all Exchange Purposes—and scale would help, for example, health care providers gain access to more comprehensive and complete information about their patients, which can support improved care, better outcomes, decreased provider burden, and reduced costs.

Entities performing TEFCA Exchange as described in § 172.201 would have the option to request information for all Exchange Purposes. At the time of publication of this final rule, TEFCA supports exchange for the following Exchange Purposes: treatment; payment; health care operations; public health; Individual Access Services (IAS), and government benefits determination. Over time, additional Exchange Purposes may be added. Information regarding whether responses are required for a given Exchange Purpose would be included in an SOP.

In § 172.201(c), we proposed that an Applicant QHIN must meet certain Designated Network Services requirements. Based on our experience in the health IT ecosystem, we noted that we believe adequate network performance is important for the success of TEFCA, as those participating in TEFCA Exchange would be most likely to trust the TEFCA infrastructure if it is performing at a high level. We also expressed that unreliable network performance would dilute confidence in the network and discourage participation.

In § 172.201(c)(1), we proposed that a QHIN must maintain the organizational infrastructure and legal authority to operate and govern its Designated Network. For instance, under this proposal, QHINs would be required to have a representative and participatory group or groups that approve the processes for fulfilling the TEFCA governance functions and that participate in governance for the Designated Network. In § 172.201(c)(2), we proposed that a QHIN must maintain adequate written policies and procedures to support meaningful TEFCA Exchange as described in § 172.201 and fulfill all responsibilities of a QHIN in the part (which an entity agrees to by signing the Common Agreement). For instance, under this proposal, QHINs would be required to have a detailed written policy that describes the oversight and control of the technical framework that enable TEFCA Exchange.

In § 172.201(c)(3), we proposed that a QHIN must maintain a Designated Network (as proposed to be defined in § 172.102) that can support a transaction volume that keeps pace with the demands of network users. We noted in the HTI–2 Proposed Rule that since TEFCA is a nationwide network and will be used daily to support various health data needs to inform care delivery, quality assessments, public health, and health care operations, QHINs must be capable of transacting high volumes of data reliably and at scale. In § 172.201(c)(4), we proposed that a QHIN must maintain the capacity to support secure technical connectivity and data exchange with other QHINs. One of the most fundamental aspects of interoperable network exchange is

technical connectivity, which makes network-to-network exchange possible and, therefore, was important to include in this regulation.

In § 172.201(c)(5) through (7), we proposed certain requirements related to governance for TEFCA to ensure all QHINs are aligned and able to manage risk effectively. In § 172.201(c)(5), we proposed that a QHIN must maintain an enforceable dispute resolution policy governing Participants in the Designated Network that permits Participants to reasonably, timely, and fairly adjudicate disputes that arise between each other, the QHIN, or other QHINs. This proposed requirement would afford flexibility to QHINs to establish their own dispute resolution process while ensuring the process is timely and fair. We expressed that disputes may arise for a variety of reasons, so the QHIN, as the entity overseeing its Participants, is best placed to handle such disputes in a way that minimizes disruptions for the rest of the network. Ensuring that a QHIN has such a dispute resolution policy would, therefore, likely minimize such disruptions.

Similarly, in § 172.201(c)(6), we proposed that a QHIN maintain an enforceable change management policy consistent with its responsibilities as a QHIN. A change management policy establishes the standard procedures to approve different types of changes to TEFCA documents (*e.g.,* standard operating procedures) and policies and will help to avoid changes that are disruptive or in conflict across entities.

In § 172.201(c)(7), we proposed that a QHIN must maintain a representative and participatory group or groups with the authority to approve processes for governing the Designated Network. We explained (89 FR 63647) that the participatory network governance built into the TEFCA infrastructure is important to ensure that the requisite engagement exists between QHINs, Participants, and Subparticipants engaged in TEFCA Exchange. In the HTI–2 Proposed Rule, we stated that we believe the above requirements are fundamental aspects of a network-of-networks focused on participatory governance and the ability to adapt to an ever-changing health information exchange landscape.

In the HTI–2 Proposed Rule, regarding the proposed requirement in § 172.201(c)(7) specifically, we emphasized that TEFCA uses a representative and participatory governance structure. Representative and participatory governance gives those participating in the network a role in informing the policies and decisions that ultimately would affect them. We explained that such a governance structure helps to motivate health care entities and their networks to voluntarily join TEFCA. We also noted that we believe that requiring a QHIN to have a representative and participatory group or groups that has the ability to review and provide input on the governance requirements of the QHIN's Designated Network is an optimal approach for this requirement.

In § 172.201(c)(8), we proposed that an entity seeking to become a QHIN must maintain privacy and security policies that permit the QHIN to support TEFCA Exchange. We identified certain policies that fell within this requirement (89 FR 63647), which we have slightly modified here for clarity and technical accuracy, and which included the following:

- Maintaining certification under a nationally recognized security framework by a qualified, independent third party that ensures its assessments are consistent with the NIST Cybersecurity Framework (CSF) (using both NIST 800–171 (Rev. 2) and NIST 800–53 (Rev. 5) as a reference), ensuring the QHIN performs HIPAA Security Rule risk analyses (as required by § 164.308(a)(1)(ii)(A)) and verifies all requirements for technical audits and assessments are met.
- Having a qualified, independent third party complete an annual security assessment consistent with the NIST Cybersecurity Framework (CSF) (using both NIST 800–171 (Rev. 2) and NIST 800–53 (Rev. 5) as a reference). The third party would review the QHIN for consistency with HIPAA Security Rule risk analysis requirements at § 164.308(a)(1)(ii)(A). Additionally, the annual security assessment must include comprehensive internet-facing penetration testing, must include an internal network vulnerability assessment, and must use methodologies and security controls consistent with Recognized Security Practices, as defined by Public Law 116–321 (42 U.S.C. 17931 and 300jj–52).
- Employing a Chief Information Security Officer with executive-level responsibility.
- Disclosing any breaches of electronic protected health information (including disclosure of any such breaches within the three (3) years preceding applying to become a QHIN) to the RCE and to all QHINs that are likely impacted.
- Complying with 45 CFR part 164, subparts A, C, and E, as applicable, as if the QHIN were a covered entity as described in that regulation.
- Maintaining and complying with a written privacy policy.

We noted in the HTI–2 Proposed Rule that these policies and requirements would provide privacy and security protections for the health information that will be exchanged through TEFCA. All entities that elect to participate in TEFCA, including entities that are not regulated under HIPAA, would be expected to meet a high bar for privacy and security given the nature of the data being exchanged. We stated that it is unlikely that an entity would wish to participate in a network without privacy and security standards, thereby inhibiting TEFCA exchange.

To further support the security of TEFCA, we proposed in § 172.201(c)(9) that a QHIN must maintain data breach response and management policies that support secure TEFCA Exchange. For instance, given the number of electronic connections TEFCA will support, a data breach response and management policy would support a transparent process and timely awareness of a data breach or other security events (*e.g.,* ransomware attacks) which could enable the QHIN to manage secure connectivity services without disrupting patient care.

In § 172.201(c)(10), we proposed that a QHIN must maintain adequate financial and personnel resources to support all its responsibilities as a QHIN, including, at a minimum, sufficient financial reserves or insurance-based cybersecurity coverage, or a combination of both. We noted in the HTI–2 Proposed Rule that this requirement would help to provide stability to TEFCA in the event of unexpected financial or economic occurrences—whether system-wide or specific to individual QHINs. For instance, we stated that this requirement could be met if the QHIN has available a minimum amount of cash, cash equivalents, borrowing arrangements (*e.g.,* a line of credit), or a mix of the three that is equal to six (6) calendar months of operating reserves. Regarding insurance requirements, a QHIN's general liability coverage and the cyber risk/technology coverage should each have limits of at least $2,000,000 per incident and $5,000,000 in the aggregate, which limits can be met through primary coverage, excess coverage, available internal funds, or a combination thereof. We noted that the requirements proposed herein may be insufficient for larger QHINs and recognized that certain QHINs will meet and exceed these minimums.

QHINs will be the central connection points for TEFCA Exchange, responsible for routing queries, responses, and messages among many participating entities and individuals. We proposed,

in § 172.201(c)(10), that QHINs must have sufficient financial resources and personnel capacity to perform such functions successfully. We also noted we believe that QHINs must be prepared to address incidents should they arise and must have the ability to fulfill potential liability obligations, either through insurance, sufficient financial reserves, or some combination of the two.

We stated that one goal of TEFCA is to support patients gathering their healthcare information. In § 172.202, ''QHINS that offer individual access services,'' we proposed IAS requirements for a QHIN to obtain and maintain Designation under TEFCA if that QHIN voluntarily offers IAS. In § 172.202(a), we proposed that a QHIN would be required to obtain express consent from any individual before providing IAS, as defined in § 172.102. We noted that we believe this is an important requirement so that individuals who use IAS that a QHIN offers are informed of the privacy and security practices that are being employed to protect their data. In § 172.202(b), we proposed that a QHIN would be required to make publicly available a privacy and security notice that meets minimum TEFCA privacy and security standards to support transparent exchange practices. We stated that we believe this requirement would provide transparency to all individuals who are considering using IAS regarding how their data is protected and secured by a QHIN providing IAS.

In § 172.202(c), we proposed a QHIN that is the IAS provider for an individual would be required to delete the individual's Individually Identifiable Information (as defined in § 172.102) maintained by the QHIN upon request by the individual except as prohibited by Applicable Law or where such information is contained in audit logs. We noted (89 FR 63648) that we believe this requirement would provide individuals with reassurance that they control access to their data. We also expressed that we believe the carve out for audit logs is appropriate because audit logs are generally used to provide chronological records of system activities and should not be deleted. In § 172.202(d), we proposed that a QHIN would be required to permit any individual to export in a computable format all of the individual's Individually Identifiable Information maintained by the QHIN as an IAS provider. We stated that we believe this requirement would ensure that individuals may access, control, and use their own data held by an IAS provider.

In § 172.202(e), we proposed that all Individually Identifiable Information the QHIN maintains must satisfy certain criteria, including: (1) all Individually Identifiable Information must be encrypted; (2) without unreasonable delay and in no case later than sixty (60) calendar days following discovery of the unauthorized acquisition, access, Disclosure, or Use of Individually Identifiable Information, the QHIN must notify, in plain language, each individual whose Individually Identifiable Information has been or is reasonably believed to have been affected by unauthorized acquisition, access, Disclosure, or Use involving the QHIN; and (3) a QHIN must have an agreement with a qualified, independent third-party credential service provider and must verify, through the credential service provider, the identities of individuals seeking IAS prior to the individuals' first use of such services and upon expiration of their credentials. We noted that to the extent the QHIN is already required by Applicable Law to notify an individual as described in proposed § 172.202(e)(2), we did not propose that it be required to duplicate such a notification. Lastly, the proposed requirement in § 172.202(e)(3) would set a baseline for proving the identity of IAS users that are requesting data via TEFCA Exchange.

Comments. Multiple commenters expressed support for the provisions of this subpart that will establish the qualifications for HINs to receive and maintain Designation as a QHIN, including as an IAS provider. Multiple commenters also expressed support for the proposed qualification requirements. Other commenters cautioned that additional requirements of QHINs could limit entities from participating in TEFCA or deter them from considering becoming a QHIN.

Response. We appreciate commenters' support for the proposed qualifications for QHIN Designation. We also understand commenters' caution to ASTP/ONC regarding additional requirements and appreciate the need within TEFCA to establish strong guardrails for QHIN participation while not unduly burdening Applicant QHINs and QHINs. We agree with commenters that additional requirements for QHINs are not, at this time, appropriate as we work to balance flexibility, participation, and our commitment to strong guardrails for QHIN participation. The current requirements were developed based on ASTP/ONC's and the RCE's collective experience with health information exchange and were informed by a wide range of interested communities and the public. As TEFCA evolves, we will continue to consider ways to strengthen it and ensure that QHINs are held to a high but reasonable standard. In this final rule, we have finalized all subpart B proposals without revision.

Comments. One commenter asked whether any changes to the proposed QHIN designation process would be retroactively applicable to entities currently undergoing that process. Another commenter expressed support for the previous ''sub-regulatory'' approach for establishing criteria and requirements for QHIN Designation that allowed for flexibility. Some commenters also recommended new requirements. Commenters recommended aligning qualifications with existing Department of Homeland Security standards and/or FedRAMP certification standards for cybersecurity. Another commenter recommended background checks, validation of National Provider Identifiers (NPIs), and a rigorous review of organizational credentials. A separate commenter encouraged ASTP/ONC's continued emphasis on and improvement of security and privacy requirements. Another commenter recommended that we leverage QHIN qualification criteria to require that pharmacists, with an established treatment relationship with patients, have access to clinical data.

Response. Regarding the question whether any changes to the proposed QHIN Designation process would be retroactively applicable to entities currently undergoing that process, we note that we are finalizing the QHIN Designation requirements and process within the HTI–2 Proposed Rule, and as discussed above, without revision in this final rule. The provisions will be effective upon the effective date specified for this final rule in the ''effective date'' section. The qualification requirements we have finalized in 45 CFR part 172, subpart B, align with and have no substantive differences from the requirements for and process followed by all Designated QHINs and Applicant QHINs.

We appreciate the comment in support of the previous sub-regulatory approach that we have utilized in TEFCA to this point to establish the processes within the TEFCA framework.

We appreciate the suggestions for updating the existing QHIN Designation requirements within the TEFCA framework (*e.g.,* aligning qualifications with existing Department of Homeland Security standards and/or FedRAMP certification standards for cybersecurity, improving privacy and security requirements, emphasis on background checks, validation of NPIs, and a

rigorous review of organizational credentials). We emphasize our confidence in the strength of the existing requirements. We may consider some of these suggested changes for future rulemaking. While we cannot adopt the various new QHIN Designation requirements recommended by commenters because we did not propose them, we do note that we consulted with various Federal agencies and industry partners in developing the QHIN Designation requirements around privacy and security that align with Federal agency participation requirements.

We appreciate the recommendation that we leverage QHIN qualification criteria to require that pharmacists, with an established treatment relationship with patients, have access to clinical data; however, we do not understand how the QHIN qualification criteria directly relate to the suggested requirement. We encourage the commenter to review the *Exchange Purpose Vetting Process SOP,* which provides helpful information for entities that seek to exchange information for treatment via TEFCA.

As noted in our response to comments above, we proposed to adopt in regulation certain provisions related to TEFCA in order to provide greater process transparency and further implement section 3001(c)(9) of the PHSA, as added by the Cures Act. We believe codifying TEFCA through regulation facilitates alignment with the broader legislative goals around nationwide health information exchange, interoperability, privacy, and security.

Comments. One commenter suggested that the qualification related to transaction volume establish specific performance metrics for the speed of data transfer. In particular, the commenter argued that 48-hour turnarounds for use cases such as prior authorization would be untenable.

Response. We appreciate commenter's suggestion related to transaction volume. The RCE and ASTP/ONC plan to develop performance metrics and service level agreements for TEFCA as we develop more experience and a better understanding about the needs of the TEFCA community. We will consider this comment as we develop the performance metrics and service level agreements for TEFCA.

Comments. One commenter suggested that the 5% ownership requirement for ''bad'' actors should not be increased and that lowering the threshold could be appropriate for good cause. Another commenter suggested that ASTP/ONC clarify that the 5% threshold is for an individual and that collusion between multiple individuals would have a threshold of over 25%. The commenter was supportive of the proposal that QHINs would be ineligible if they are found to be under Foreign Control.

Response. We thank the commenters for the suggestion and the support of our proposal regarding Foreign Control. We continue to believe, based on significant feedback from interested communities, cybersecurity and security experts, and the public, that the five percent (5%) threshold is appropriate and strikes the right balance between protecting the security of the network from high-risk and known bad actors and achieving practical administrability of TEFCA. Individuals with less than 5% ownership in an entity would likely have limited means of influencing the actions of an entity connected to TEFCA. We appreciate the reasoning for the proposal of an aggregate threshold but have decided not to implement that suggested change because it would be extremely difficult and burdensome to determine whether a group of actors is ''colluding'' as suggested by commenter, as determining whether ''collusion'' is present could require information that may not be readily available.

Comments. One commenter suggested that we publish all ''Designation'' documentation on our website for public review.

Response. While ASTP/ONC supports and promotes transparency where possible and appropriate, we decline to adopt the commenter's recommendation in this instance. Foremost, we did not propose such an approach and thus all potentially affected entities have not had an opportunity to comment on the matter. In addition, some of the information received from Applicant QHINs may include confidential information.

C. Subpart C—QHIN™ Onboarding and Designation Processes

In the HTI–2 Proposed Rule, we stated that (89 FR 63648) TEFCA establishes a universal floor for interoperability across the country through a network of networks. In 2019, ONC issued a Notice of Funding Opportunity and subsequently awarded a cooperative agreement to The Sequoia Project to serve as the RCE to support the implementation of TEFCA. In August 2023, ONC awarded The Sequoia Project a five-year contract to continue serving as the RCE.

To establish nationwide health information exchange, TEFCA calls for the Designation of QHINs—HINs that agree to the common policy, functional, and technical requirements for TEFCA Exchange. The QHIN Designation Requirements as described in § 172.201 define the baseline legal and technical requirements for secure information sharing on a nationwide scale—all under commonly agreed-to rules. Exchange through TEFCA simplifies connectivity and creates efficiency by establishing a standardized approach to exchange policies and technical frameworks.

Under the 2019 to 2023 cooperative agreement [15] and the current RCE contract,[16] the RCE's role has been to support the implementation of TEFCA, including the solicitation and review of applications from HINs seeking QHIN status and administration of the Designation and monitoring processes. For entities seeking Designation, the application provides the RCE with the information needed to determine a prospective QHIN's ability to meet its obligations and responsibilities for TEFCA Exchange. All work or activities conducted by the Sequoia Project in their capacity as the RCE under the RCE contract, including work or activities related to Designation, is conducted on behalf of ONC.

In subpart C of part 172, we described the proposed QHIN Onboarding and Designation processes. *Onboarding,* as we proposed to define it in § 172.102, is the process a prospective QHIN must undergo to become a QHIN and become operational in the production environment.[17] *Designation,* as we proposed to define it in § 172.102, is the written determination that an Applicant QHIN has satisfied all regulatory requirements and is now a QHIN.[18]

In § 172.300, we explained that subpart C of part 172 would establish for QHINs the application, review, Onboarding, withdrawal, and redetermination processes that ONC will follow for Designation. We noted that establishing these processes will ensure that ONC (or an RCE) takes a consistent approach to QHIN Onboarding and Designation.

We stated that the first step in becoming a QHIN under TEFCA is submission of an application. In § 172.301, we proposed to establish the information Applicant QHINs must submit in order to be Designated as a

[15] Notice of Funding Opportunity (NOFO)—Trusted Exchange Framework and Common Agreement—Recognized Coordination Entity (RCE) Cooperative Agreement, *https://www.healthit.gov/sites/default/files/facas/TEFCA%20NOFO_FINAL_508.pdf.*

[16] *See USASPENDING.gov, https://www.usaspending.gov/award/CONT_AWD_75P00123C00019_7570_-NONE-_-NONE-.*

[17] 87 FR 2822.

[18] 87 FR 2818.

QHIN. We proposed that an Applicant QHIN must submit: (1) a completed QHIN application; and (2) a signed copy of the Common Agreement. Regarding the first proposed requirement, in § 172.301(a), we noted that we may update the application over time and the most recent version will be available on ONC's and the RCE's website. The application will specify what supporting documentation an Applicant QHIN must submit. We proposed the second requirement in § 172.301(b) because the Applicant QHIN would sign the Common Agreement upon application, but the RCE would only countersign and create a binding agreement with the Applicant QHIN once the Applicant QHIN completes Onboarding and is Designated.

We stated that the next step to becoming a QHIN is application review. In § 172.302, we proposed a process, with required timelines and allowable extensions, for ONC (or an RCE) to review applications. We proposed in § 172.302(a) that, on receipt of an application, ONC (or an RCE) will review the application to determine if the Applicant QHIN has completed all parts of the application and provided the necessary supporting documentation. Further, we proposed that, if the QHIN Application is not complete, ONC (or an RCE) will notify the applicant in writing of the missing information within thirty (30) calendar days of receipt of the application. Last, we proposed (89 FR 63649) that ONC (or an RCE) may extend this period by providing written notice to the Applicant QHIN. We noted that ''written notice'' throughout part 172 would include notice provided by email to the points of contact the Applicant QHIN listed in their application.

In the HTI–2 Proposed Rule we stated that we believe the above timeframe and allowable extensions would allow ONC (or an RCE) enough time to perform a thorough review of each application and ensure that ONC (or an RCE) is provided with the responses and supporting documentation needed to assess the merits of an application. We also noted that we believe the 30-day review timeframe—along with the ability of ONC (or an RCE) to extend this period by providing written notice to the Applicant QHIN—strikes the right balance between moving an application forward as quickly as possible while still providing ONC (or an RCE) with enough time to conduct a review of the application to ensure it is complete and contains all the required material.

We proposed in § 172.302(b) that once the QHIN application is complete, ONC (or an RCE) will review the application to determine whether the Applicant QHIN satisfies the requirements for Designation set forth in § 172.201, and, if the Applicant QHIN proposes to provide IAS, the requirements set forth in § 172.202. We proposed this step to make clear that ONC (or an RCE) will review an application not only for completeness but also to determine if the qualifications are met. We also proposed ONC (or an RCE) would complete its review within sixty (60) calendar days of providing the Applicant QHIN with written notice that its application is complete. We further proposed that ONC (or an RCE) may extend this period by providing written notice to the Applicant QHIN. We noted in the HTI–2 Proposed Rule that we believe that sixty (60) calendar days will *generally* be an adequate amount of time to conduct a thorough, comprehensive review of the substance of the application. However, we also noted that we are cognizant that there may be complex applications that require additional time for review and, therefore, proposed that ONC (or an RCE) may extend this period by providing written notice to the Applicant QHIN.

We proposed in § 172.302(c) that ONC (or an RCE) may contact the Applicant while the application is being reviewed to request additional information. ONC (or an RCE) will provide the timeframe for responding to its request and the manner to submit additional information, which may be extended on written notice to the Applicant QHIN. We noted we believe this provision would be beneficial because the Applicant QHIN will need to provide detailed responses that may be complex and will vary among Applicant QHINs. We also stated we anticipate there will often need to be a discussion between ONC (or an RCE) and the Applicant QHIN to reach a resolution and shared understanding. This provision would provide for this vital communication between ONC (or an RCE) and the Applicant QHINs. We proposed that an Applicant QHIN must respond to ONC (or an RCE) within the timeframe ONC (or an RCE) identifies because ONC (or an RCE) will be in the best position to understand the complexity of the question and estimate a reasonable amount of time for the Applicant QHIN to respond. That said, we noted that we understand that each application, as well as the questions associated with each application, will vary significantly on a case-by-case basis and, therefore, proposed that ONC (or an RCE) may extend the timeframe by providing written notice to the Applicant QHIN. We stated that we believe this approach creates appropriate flexibility regarding timing of Applicant QHIN responses, while still leaving the discretion to decide the need for and length of such extensions.

We proposed in § 172.302(d) that failure to respond to a request within the proposed timeframe, or in the manner specified, is a basis for a QHIN Application to be deemed withdrawn, as set forth in § 172.305(c). In such situations, we proposed that ONC (or an RCE) would provide the Applicant QHIN with written notice that the application has been deemed withdrawn. We stated that we believe this requirement is important to support an efficient application process and to ensure that Applicant QHINs respond to requests in a timely manner. We reiterated that under proposed § 172.302(c), as discussed above, ONC (or an RCE) can extend the timeframe for responding to a request for information. We noted that an Applicant QHIN should request an extension if it does not believe it can meet the proposed response timeframe.

We proposed in § 172.302(e) that if, following submission of the application, any information submitted by the Applicant QHIN becomes untrue or materially changes, the Applicant QHIN must notify ONC (or an RCE), in the manner specified by ONC (or an RCE), of such changes in writing within five (5) business days of the submitted material becoming untrue or materially changing. This proposed requirement takes into consideration the possibility that, over the course of ONC's (or an RCE's) review of an application, an Applicant QHIN's circumstances or information provided with the Applicant QHIN's application may change. This provision would ensure that if such changes occur, the Applicant QHIN would promptly notify ONC (or an RCE) of such changes. We stated that we believe, based on ONC's experience with health IT implementation and coordination efforts, that five (5) business days is enough time for the Applicant QHIN to notify ONC (or an RCE) of the change(s).

In § 172.303, we proposed requirements related to QHIN approval and Onboarding. We proposed in § 172.303(a) that an Applicant QHIN would have the burden of demonstrating its compliance with all qualifications for Designation in § 172.201, and, if the Applicant QHIN proposes to provide IAS, the qualifications in § 172.202. We proposed in § 172.303(b) that if ONC (or an RCE) determines an Applicant QHIN meets the requirements for Designation

set forth in § 172.201, and, if the Applicant QHIN proposes to provide IAS, the qualifications set forth in § 172.202, then ONC (or an RCE) will notify the Applicant QHIN in writing that it has approved its application, and the Applicant QHIN can proceed with Onboarding. These proposed requirements are important for ensuring that the Applicant QHIN is notified of its status and support the transparency and efficiency of the Onboarding process.

We proposed in § 172.303(c) that an approved Applicant QHIN would be required to submit a signed version of the Common Agreement within a timeframe set by ONC (or an RCE). This proposed provision is important in addition to § 172.301(b) (which would require an Applicant QHIN to submit a signed version of the Common Agreement when applying) to ensure that, if the Common Agreement changes between the time the QHIN applies and when it is approved, the QHIN will have signed the most recent version. We did not propose a specific timeframe for submission, and instead proposed to allow ONC (or an RCE) to set the timeframe for each Applicant QHIN, since we believe each timeframe should be tailored to the needs of the Applicant QHIN and the complexity of each application.

We proposed in § 172.303(d) that an approved Applicant QHIN must complete the Onboarding process set forth by ONC (or an RCE), including any tests required by ONC (or an RCE) to ensure the Applicant QHIN's network can connect to those of other QHINs, within twelve (12) months of approval of the QHIN application, unless that time is extended in ONC's (or an RCE's) sole discretion by up to twelve (12) months. Based on our experience with health IT implementation and discussions with the current RCE, we stated that we believe the proposed twelve (12) month timeframe is sufficient time for approved Applicant QHINs to complete the Onboarding process including any tests with QHINs and other Applicant QHINs. We expressed that we believe this timeframe strikes an appropriate balance between the need to onboard QHINs promptly and the need to ensure that all QHINs can connect immediately and seamlessly once Designated. We noted that during the Onboarding process, the Applicant QHIN would have regular check-ins with ONC (or an RCE) to monitor the progress on any outstanding requirements, to coordinate technical testing, and to address any issues that could put the Applicant QHIN in jeopardy of failing to meet the proposed Onboarding timeframe detailed above.

In § 172.304, we proposed the specific procedural requirements for the Designation of QHINs. In § 172.304(a), we proposed the process that would follow an Applicant QHIN's satisfaction of the Onboarding process requirements. We proposed that once the Onboarding process requirements are satisfied, the Common Agreement would be countersigned and the Applicant QHIN would receive a written determination indicating that it had been Designated as a QHIN, along with a copy of the countersigned Common Agreement.

In § 172.304(b), we proposed that within thirty (30) calendar days of receiving its written determination of Designation, each QHIN would be required to demonstrate in a manner specified by ONC (or an RCE) that it has completed a successful transaction with all other in-production QHINs according to standards and procedures for TEFCA Exchange. This proposed provision is important because it would ensure that a Designated QHIN is able to exchange information with other QHINs, which is a core function of QHINs. We stated we believe that the thirty (30)-day timeframe will afford a Designated QHIN ample time to move from testing to production. We also stated we believe that the standards and procedures for such exchanges should remain flexible such that ONC (or an RCE) may update the requirements from time to time as appropriate. QHINs which are unable to complete a successful transaction within the finalized time period would have their Designation revoked.

We proposed in § 172.304(c) that if a QHIN is unable to complete the requirement in § 172.304(b), described above, within the thirty (30)-day period provided, the QHIN would be required to provide to ONC (or an RCE) a written explanation as to why the QHIN is unable to complete the requirement within the allotted time and include a detailed plan and timeline for completion of the requirement. We proposed that ONC (or an RCE) will then review and approve or reject the QHIN's plan, basing its decision on the reasonableness of the explanation based on the specific facts and circumstances, within five (5) business days of receipt. We proposed that if the QHIN fails to provide ONC (or an RCE) its plan or ONC (or an RCE) rejects the QHIN's plan, ONC (or an RCE) will rescind its approval of the application, rescind the QHIN Designation, and deny the application. We stated that we believe these proposals would provide QHINs with the appropriate flexibility to request an extension if the circumstances do not allow the QHIN to meet the timeline. We also expressed that we believe the proposed five (5)-business day timeframe would provide ONC (or an RCE) with enough time to review the request and reach a decision regarding the request based on the information provided. We proposed that within thirty (30) calendar days of the end of the term of the plan, each QHIN must demonstrate in a manner specified by ONC (or an RCE) that it has completed a successful transaction with all other in-production QHINs according to standards and procedures for TEFCA Exchange. We noted that we believe that the thirty (30)-day timeframe will afford a Designated QHIN ample time to move from testing to production.

In § 172.304(d), we proposed that a QHIN Designation will become final sixty (60) days after a Designated QHIN has submitted its documentation, in a manner specified by ONC (or an RCE), that it has completed a successful transaction with all other in-production QHINs. This proposal will allow ONC (or an RCE) to exercise its ability to review a Designation.

In § 172.305, we proposed requirements related to withdrawal of an application. In § 172.305(a), we proposed that an Applicant QHIN may withdraw its application by providing ONC (or an RCE) with written notice in a manner specified by ONC (or an RCE). In § 172.305(b), we proposed that an Applicant QHIN may withdraw its application at any point prior to Designation. In § 172.305(c), we proposed that on written notice to the Applicant QHIN, an application may be deemed as withdrawn as a result of the Applicant QHIN's failure to respond to requests for information from ONC (or an RCE). We stated that we believe the approach in proposed § 172.305 would create an efficient process for ONC (or an RCE) to deem applications withdrawn if an Applicant QHIN fails to respond to requests for information, and also supports a flexible process by allowing an Applicant QHIN, for whatever reason, to decide to withdraw its application without penalty. Given the requirements placed on Applicant QHINs seeking to be Designated, we stated we think it is reasonable to believe that some Applicant QHINs will need to withdraw their applications to address any number of issues that could arise during the application process.

In § 172.306, we proposed that if an Applicant QHIN's application is denied, the Applicant QHIN will be provided with written notice that includes the basis for the denial. We did not propose a specific template that would be used to explain the basis of a denial, as such

explanation would likely vary based on the specific facts and circumstances.

In § 172.307, we proposed requirements for re-application. In § 172.307(a), we proposed that Applicant QHINs may resubmit their applications by complying with the provisions of § 172.301 in the event that an application was denied or withdrawn. We noted that re-application pursuant to § 172.307(a) would also be conditioned on meeting the requirements of proposed paragraphs (b) through (d) of § 172.307, as applicable. We proposed in § 172.307(b) that an Applicant QHIN may reapply at any time after it has voluntarily withdrawn its application as specified in § 172.305(a). We wanted to create flexibility for Applicant QHINs to reassess their applications and, if desired, resubmit the application. We also stated we believe that providing an Applicant QHIN that withdraws its application with discretion to choose when to re-apply would result in better applications and create administrative efficiency. This is because Applicant QHINs would be motivated to self-identify issues and correct them in a subsequent application. Also, Applicant QHINs that withdraw applications early would allow ONC (or an RCE) to avoid expending resources to review and identify such issues.

In § 172.307(c), we proposed that if ONC (or an RCE) deems an application to be withdrawn as a result of the Applicant QHIN's failure to respond to requests for information from ONC (or an RCE), then the Applicant QHIN may reapply by submitting a new application no sooner than six (6) months after the date on which its previous application was submitted. We proposed that the Applicant QHIN must respond to the prior request for information and must include an explanation as to why no response was previously provided within the required timeframe. We proposed in § 172.307(d) that if ONC (or an RCE) denies an application, the Applicant QHIN may reapply by submitting a new application consistent with the requirements in § 172.301, no sooner than six (6) months after the date shown on the written notice of denial. The application must specifically address the deficiencies that constituted the basis for denying the Applicant QHIN's previous application.

We noted in the HTI–2 Proposed Rule that we believe the proposed six (6)-month minimum time period before re-application, in § 172.307(c) and (d), would support efficiency in the review process, as ONC (or an RCE) could shift its attention to other Applicant QHINs or issues while the Applicant QHIN whose application was withdrawn as a result of the Applicant QHIN's failure to respond to requests for information or was denied reconsiders its application and addresses the previously identified deficiency or deficiencies. Because the Applicant QHIN that withdraws its application has not had its application denied or deemed withdrawn for failure to respond to ONC (or an RCE) requests for information, the Applicant QHIN may be prepared to reapply much sooner than is the case for Applicant QHINs that have had their application denied or deemed withdrawn. We welcomed comments on the proposed processes and requirements in this subpart. Specifically, we requested comment on whether the six-month timeframe for re-application after an application has been deemed to be withdrawn as a result of the Applicant QHIN's failure to respond to requests for information or has been denied is appropriate, as well as other timeframes we proposed.

In addition to changes to the proposed regulatory text explained below, and as explained elsewhere in this final rule, we have finalized references to ''ONC'' in subpart B of the proposed rule as ''ASTP/ONC.'' In some instances (for example, in § 172.303(d)), we also modified proposed regulatory text to ensure that the proper possessive is used and finalized text reading ''ASTP/ONC's'' instead of ''ONC's.'' For further discussion of the use of ''ASTP/ONC,'' please see the Executive Summary of this final rule.

Comments. One commenter stated that it was a seamless process to connect to the TEFCA network through the QHIN, but recommended there not be a means where users are opted into exchange via a QHIN by default.

Response. While we appreciate the feedback, this comment is beyond the scope of the proposed regulations because we did not make any proposals related to a QHIN's policies and procedures related to opting-in (or not opting-in). Since the comment is out of scope it would not be appropriate to respond to such policy concerns here. However, we welcome all feedback from interested parties, which can be submitted via the ASTP/ONC website at *https://inquiry.healthit.gov/support/plugins/servlet/desk/portal/2/create/61,* for consideration and potential inclusion within the TEFCA framework.

Comments. Overall, commenters were supportive of our proposal to codify requirements related to QHIN Designation, Onboarding and dispute resolution at this time. However, a couple of commenters expressed concern that the codification could slow down the onboarding process and eliminate the adaptability for future QHINs. One commenter stated that the proposed regulation could hinder the RCE's and ASTP/ONC's ability to make quick, necessary adjustments based on real-world implementation feedback from future QHIN applicants. This commenter said that codifying the requirements could limit the number of QHINs in the network by potentially discouraging or disqualifying future QHINs due to a less forgiving application process. The commenter opined that this might hinder the emergence of innovative solutions and potentially lead to less favorable terms for Participants and Subparticipants.

Response. We appreciate the feedback and the commenters' concerns. By codifying the QHIN Designation, Onboarding, and dispute resolution requirements, we establish a baseline for expectations for QHINs. We believe this is supported by Congress' instruction that the Common Agreement may include ''a common method for authenticating trusted health information network participants'' (42 U.S.C. 300jj–11(c)(9)(B)(i)(I)). For commenters concerned about potential future requirements, while we appreciate the feedback, this comment is beyond the scope of the proposed regulations. However, we welcome all feedback from interested parties, which can be submitted via the ASTP/ONC website at *https://inquiry.healthit.gov/support/plugins/servlet/desk/portal/2/create/61,* for consideration and potential inclusion within the TEFCA framework.

Comments. One commenter requested that the Onboarding process be clarified to give more information regarding the redetermination process for QHIN application.

Response. We appreciate the comment but decline to make any changes to the Onboarding process. We believe the current Onboarding process, as well as the redetermination process, are sufficiently detailed so that QHINs will know what to expect while ensuring flexibility remains in place to allow for reconsideration based on a variety of circumstances.

Comments. Commenters requested that ASTP/ONC make TEFCA's onboarding process become more stringent to keep the system free of bad actors. In addition to a stricter onboarding process, the commenters also recommended active monitoring and swift enforcement, and the creation of a mandatory notification system to alert legitimate practices when their NPIs and credentials are used in data exchanges, ensuring they are aware of

all activities tied to their identities. Another commenter emphasized that this has become a serious issue under TEFCA, particularly as the HITECH Act's requirement to share patient information with a third party at the patient's direction at minimal cost encourages some entities to misrepresent that they are acting on behalf of the patient.

Response. We appreciate the comments and concern. We believe that Onboarding and Designation provisions we are finalizing, including the substantive requirements at §§ 172.201 and 172.202, establish a rigorous testing and onboarding process that will prevent bad actors from misusing the TEFCA framework. Specifically, since we proposed substantive requirements for QHIN approval and Onboarding, and QHIN designation, in §§ 172.303 and 172.304 in the HTI–2 Proposed Rule, we have developed a robust vetting process for ensuring that Participants and Subparticipants that want to query for treatment exchange through TEFCA using the code that requires a response are in fact providers that require the information for treatment of a patient. In addition, the Treatment XP Implementation SOP [19] establishes a definition for TEFCA required treatment that includes the requirement that the TEFCA required treatment XP code can only be asserted by a QHIN, Participant, or Subparticipant if the Query is in connection with or intended to inform health care services that an entity identified in the SOP is providing or intends to provide to a patient through synchronous or asynchronous interaction (either in-person or virtual) with a Licensed Individual Provider. This definition is narrower than the HIPAA Rules' definition of treatment and we believe necessary to build trust within the TEFCA community. We will consider expanding the scope of disclosures that are required under TEFCA's treatment Exchange Purpose over time.

We have decided not to implement a mandatory notification system as suggested because we believe the approach we are taking to address the possibility of misuse of the TEFCA network, as discussed above, is more appropriate, and that a mandatory notification system could be overly burdensome, particularly given the extremely large number of transactions we anticipate occurring through TEFCA once fully implemented.

[19] XP Implementation: Treatment, *https://rce.sequoiaproject.org/wp-content/uploads/2024/07/SOP-Treatment-XP-Implementation_508.pdf.*

Comments. One commenter questioned why § 172.304 references provisional designation when the RCE is currently revising the Onboarding and Designation SOP to remove references to provisional status.

Response. We agree that the references to ''provisional'' designation are confusing and unnecessary. We have revised the regulatory language in § 172.304 to remove reference to provisional Designation and reiterate that a QHIN is Designated when the Common Agreement is countersigned. As we proposed and have finalized, the Designation is rescindable if the requirements for exchange are not met within the 60-day limit described in § 172.304(d), otherwise, the Designation is final.

Comments. One commenter offered support of the six-month timeframe for re-application after an application has been withdrawn or denied. The commenter stated that it is important for ASTP/ONC to take the time it needs and assure security and appropriateness.

Response. We appreciate this comment in support of a six-month timeframe and have finalized the provision in § 172.307(c) as proposed.

Comment. One commenter emphasized the need for strict enforcement of deadlines and application criteria. The commenter also recommended that if the requirements were not met, the application should not only be withdrawn but also prompt an audit of the applicant's activities and a review of any data exchanges that took place during the application process. The commenter also suggested expanding the criteria for withdrawing an application to include not just failures to respond but also the discovery of fraudulent activities or the use of illegitimate credentials at any point during the application process.

Response. We appreciate the feedback. We decline to adopt stricter deadlines and application criteria. We believe the current structure accounts for these concerns, for instance, by requiring a QHIN to specifically address any unresolved issues upon reapplication. Regarding the suggestions to require an audit of the applicant's activities and a review of any data exchange that took place during the application process and expanding the criteria for withdrawing an application, we have decided not to implement the changes in this rulemaking because we believe such potential changes should be reviewed and considered by the public. We may consider the changes in future rulemaking.

We have finalized all of subpart C as proposed, except that we removed language referring to provisional Designation in § 172.304 for the reasons explained above. In addition, we have added language requiring an RCE to seek and receive ASTP/ONC's prior authorization before making interim or final designation decisions (§ 172.303(b)), setting onboarding requirements and determining a QHIN has complied with those requirements (§ 172.304(b) and (c)), and deeming a QHIN application withdrawn for failure to respond to information requests during the Designation process (§ 172.305(c)). Under § 172.103(b), ASTP/ONC cannot subdelegate to the RCE those requirements for prior agency authorization. Combined with the review provisions that apply to all RCE actions in subpart F of part 172, this language helps to ensure that an RCE remains subordinate to ASTP/ONC and provides only fact-gathering, ministerial, and administrative support to ASTP/ONC.

D. Subpart D—Suspension

Within this subpart, in the HTI–2 Proposed Rule, we proposed provisions associated with suspension, notice requirements for suspension, and the effect of suspension. In § 172.401, we proposed provisions related to ONC (or the RCE) suspension of a QHIN or directed suspension of a Participant or Subparticipant. In § 172.401(a), we proposed that ONC (or an RCE) may suspend a QHIN's authority to engage in TEFCA Exchange if the ONC (or an RCE) determines that a QHIN is responsible for a Threat Condition. Within the TEFCA infrastructure, QHINs are expected to meet a high bar for security, including, but not limited to, third-party certification to industry-recognized cybersecurity standards; compliance with the HIPAA Security Rule or the standards required by QHIN participation that mirror the HIPAA Security Rule requirements; annual security assessments; designation of a Chief Information Security Officer; and having cyber risk coverage.

This proposed provision would support the overall security of TEFCA and align with the security requirements for QHINs by enabling ONC (or an RCE) to suspend a QHIN's authority to engage in TEFCA Exchange if the QHIN is responsible for a Threat Condition. According to the definition proposed in § 172.102, a Threat Condition may occur in three circumstances: (i) a breach of a material provision of a Framework Agreement that has not been cured within fifteen (15) calendar days of receiving notice of the material breach (or such other period of time to which contracting parties have agreed), which

notice shall include such specific information about the breach that is available at the time of the notice; or (ii) a TEFCA Security Incident, as that term is defined in § 172.102; or (iii) an event that ONC (or an RCE), a QHIN, its Participant, or their Subparticipant has reason to believe will disrupt normal TEFCA Exchange, either due to actual compromise of, or the need to mitigate demonstrated vulnerabilities in, systems or data of the QHIN, Participant, or Subparticipant, as applicable; or through replication in the systems, networks, applications, or data of another QHIN, Participant, or Subparticipant; or (iv) any event that could pose a risk to the interests of national security as directed by an agency of the United States government. We proposed this policy because we believe that in each of these situations, in order to protect the security of TEFCA Exchange, ONC (or an RCE) must be able to take immediate action to suspend a QHIN's authority to engage in TEFCA exchange and limit the potential effects of the Threat Condition.

In § 172.401(b), we proposed if ONC (or an RCE) determines that one of a QHIN's Participants or Subparticipants has done something or failed to do something that results in a Threat Condition, ONC (or an RCE) may direct the QHIN to suspend that Participant's or Subparticipant's authority to engage in TEFCA Exchange. This provision proposed to extend the ONC (or an RCE's) authority to suspend a QHIN's authority to engage in TEFCA Exchange to also include the authority to order a QHIN to suspend a Participant's or Subparticipant's authority to engage in TEFCA Exchange. We stated that we believe this provision would help protect the security of TEFCA Exchange because any Threat Condition—whether due to the action or inaction by a QHIN, Participant, or Subparticipant—could jeopardize the security of TEFCA and must be addressed once identified. We also noted we believe that in order to protect the security of TEFCA Exchange, ONC (or an RCE) must be able to take immediate action to order a QHIN to suspend a Participant's or Subparticipant's authority to engage in TEFCA Exchange and limit the potential effects of a Threat Condition resulting from something a Participant or Subparticipant has done or failed to do.

In § 172.401(c), we proposed that ONC (or an RCE) will make a reasonable effort to notify a QHIN in writing, in advance, of ONC's (or an RCE's) intent to suspend the QHIN or to direct the QHIN to suspend one of the QHIN's Participants or Subparticipants, and give the QHIN an opportunity to respond. Such notice would identify the Threat Condition giving rise to such suspension. We acknowledged that a suspension would significantly disrupt the activities of a QHIN, Participant, or Subparticipant and therefore § 172.401(c) proposed to require ONC (or an RCE) to make a reasonable effort to notify affected parties in advance of the ONC's (or an RCE's) intent to suspend. We proposed to only require ONC (or an RCE) to make a reasonable effort to notify the entity because the circumstances surrounding a Threat Condition may limit ONC's (or an RCE's) ability to provide advance written notice to the QHIN or the QHIN's Participants or Subparticipants, despite ONC's (or an RCE's) best efforts. In § 172.401(d), we proposed ONC (or an RCE) shall lift a suspension once the Threat Condition is resolved. We stated we believe that it would no longer be necessary to continue a suspension once a Threat Condition is resolved.

We stated in the HTI–2 Proposed Rule that we believe the provisions outlined in § 172.401 would help maintain the integrity of TEFCA and offer a transparent approach to suspension that would communicate the reason for suspension, require timely notification of suspension, and afford QHINs an opportunity to resolve the issue(s)—including in concert with their Participants or Subparticipants—that led to the suspension and to resume TEFCA Exchange.

In § 172.402, we proposed provisions related to selective suspension of TEFCA Exchange between QHINs. In § 172.402(a), we proposed that a QHIN may, in good faith and to the extent permitted by Applicable Law, suspend TEFCA Exchange with another QHIN because of reasonable concerns related to the privacy and security of information that is exchanged. In § 172.402(b), we proposed that if a QHIN decides to suspend TEFCA exchange with another QHIN, it is required to promptly notify, in writing, ONC (or an RCE) and the QHIN with which it is suspending exchange of its determination and the reason(s) for making the decision.

These proposed provisions are intended to further strengthen the privacy and security protections within TEFCA by extending suspension rights to QHINs to suspend exchange with another QHIN due to reasonable concerns related to the privacy and security of information that is exchanged. We emphasize that we proposed the concerns must be ''reasonable'' *and* must be related to the ''privacy and security of information that is exchanged'' in order to ensure that suspension of TEFCA Exchange between QHINs is not based on other factors, such as competitive advantage. We solicited comments on examples of reasonable concerns related to the privacy and security of information that is exchanged. These proposed requirements would support trust between QHINs, which is a foundational element of TEFCA and would help TEFCA establish a universal floor for interoperability across the country. We stated that we believe prompt notification of the selective suspension to ONC (or an RCE) and the suspended QHIN would enable all parties involved to be aware of the situation in a timely fashion and take action to maintain the privacy and security of TEFCA Exchange activities.

In § 172.402(c), we proposed that if a QHIN suspends TEFCA Exchange with another QHIN under § 172.402(a), it must, within thirty (30) calendar days, initiate the TEFCA dispute resolution process in order to resolve the issues that led to the decision to suspend, or the QHIN may end its suspension and resume TEFCA Exchange with the other QHIN within thirty (30) calendar days of suspending TEFCA Exchange with the QHIN. We proposed this provision to provide the parties with an opportunity to resolve concerns related to privacy and security and potentially continue exchange once the issues have been resolved. We stated we believe the thirty (30)-day timeframe would provide sufficient time to resolve issues that led to the suspension, end the suspension, and resume TEFCA Exchange activities in a timely manner. Ultimately, TEFCA will be most impactful and successful if QHINs trust each other and are able to confidently exchange information with each other, so it is in the best interests of the QHINs involved, as well as TEFCA overall, to address and resolve a selective suspension quickly, and by the least disruptive means possible.

In § 172.402(d), we proposed that, provided that a QHIN suspends TEFCA exchange with another QHIN in accordance with other provisions in § 172.402 and in accordance with Applicable Law, such selective suspension would not be deemed a violation of the Common Agreement. This provision would promote the integrity of TEFCA by ensuring that a QHIN with reasonable and legitimate concerns related to the privacy and security of information that is exchanged would not be deterred from suspending exchange activities with another QHIN for fear of being in violation of the Common Agreement.

As described elsewhere in this final rule, we have finalized references to

''ONC'' in subpart D of the proposed rule as ''ASTP/ONC.'' For further discussion of the use of ''ASTP/ONC,'' please see the Executive Summary of this final rule.

Comments. One commenter was supportive of the criteria and process we proposed for the suspension. However, the commenter also highlighted the need to ensure that when a QHIN is suspended, Participants and Subparticipants utilizing that QHIN are protected from actions taken by HHS, ASTP/ONC or the OIG including but not limited to information blocking requirements.

Another commenter was concerned about the lack of clarity regarding the suspension of a QHIN and requested that ASTP/ONC clarify the obligations of hospitals and health systems in such cases to ensure compliance with interoperability rules.

Response. We appreciate the concerns the commenter raised regarding protecting Participants and Subparticipants from actions taken by HHS, ASTP/ONC or the OIG including but not limited to actions related to information blocking requirements. We note that, in the event of suspension of a QHIN's ability to participate in exchange activities under the Common Agreement, the Common Agreement requires the QHIN to communicate with its Participants that all TEFCA Exchange on behalf of the QHIN's Participants will also be suspended during any period of the QHIN's suspension (*see* section 17.4.4 of Common Agreement Version 2.1). The Common Agreement also requires the QHIN to require its Participants to communicate with their Subparticipants that all TEFCA Exchange on behalf of the QHIN's Subparticipants will be suspended during any period of the QHIN's suspension (*see* section 17.4.4 of Common Agreement Version 2.1). We believe these provisions provide appropriate transparency to entities affected by a suspension.

With regard to the comments related to protection from actions taken by HHS, ASTP/ONC or the OIG including but not limited to actions related to information blocking requirements, we note that Participants and Subparticipants remain subject to all applicable laws (*e.g.,* HIPAA Privacy, Security, and Breach Notification Rules, and information blocking regulations). We encourage Participants and Subparticipants to review the information blocking regulations, including the exceptions, to determine their applicability to an actor's facts and circumstances. We also refer readers to section 17.4.4 of the Common Agreement (which discusses the effect of suspension).

We also encourage organizations that connect to a QHIN to discuss transition plans in the event of a suspension with the QHIN and review any appropriate material or requirements.

Comments. One commenter requested additional information from ASTP/ONC on the consequence for repeated Threat Conditions coming from any one QHIN after a Threat Condition has been cured.

Response. We thank the commenter for the suggestion. We did not make any proposals related to consequences for repeated Threat Conditions coming from any one QHIN after a Threat Condition has been cured; nonetheless, we agree with the commenter that we should consider how to address such situations and whether they warrant additional scrutiny. Because we did not make any proposals related to such consequences, we believe it would be appropriate to solicit public comment before adopting consequences of this nature, so we have finalized this rule without addressing that specific issue. We may consider this suggestion in a future rulemaking.

In § 172.401(d), we modified the final regulatory text to better align with § 172.401(b). Specifically, in § 172.401(b), we state that ASTP/ONC would provide direction to the QHIN to suspend one of the QHIN's Participants or Subparticipants. In § 172.401(d), we proposed that ONC (or, with ONC's prior authorization, an RCE) shall lift a suspension of either the QHIN or one of the QHIN's Participants or Subparticipants once the Threat Condition is resolved. We have changed the final regulatory text in § 172.401(d) to state that ASTP/ONC (or, with ASTP/ONC's prior authorization, an RCE) shall provide direction to the QHIN to lift the suspension of one of the QHIN's Participants or Subparticipants once the Threat Condition is resolved. We believe this finalized text better aligns with the text in § 172.401(b), which states that ASTP/ONC (or, with ASTP/ONC's prior authorization, an RCE) will provide direction to the QHIN regarding the suspension of one of its Participants or Subparticipants.

Comments. A few commenters suggested updates to § 172.401 to clarify the requirements for selective suspension. One commenter suggested that a QHIN should be permitted to selectively suspend exchange with another QHIN's Participant(s) or Subparticipant(s). The commenter noted that a more targeted suspension is reasonable and practical to implement while any specific issues are addressed. Another commenter requested that ASTP/ONC specify that a QHIN may implement a selective suspension due to concerns about patient safety and data integrity.

Response. We appreciate the commenters' support for selective suspension for QHINs. Section 172.402(a), which we have finalized as proposed, states that a QHIN may, in good faith and to the extent permitted by Applicable Law, suspend TEFCA Exchange with another QHIN because of reasonable concerns related to the privacy and security of information that is exchanged. We decline to modify § 172.402 to permit a QHIN to selectively suspend exchange with another QHIN's Participant(s) or Subparticipant(s). We appreciate the request for a more targeted selective suspension in certain circumstances, but we believe each QHIN should be responsible for ensuring that its Participants and Subparticipants are meeting applicable requirements. We believe the finalized language in § 172.402(a) that states that a QHIN may suspend exchange between another QHIN if there is reasonable concern about the privacy and security of the data, as well as the finalized language in § 172.402(b) that states that the QHIN must notify the other QHIN of the suspension in writing, creates appropriate guardrails for selective suspension.

We have finalized the provisions in subpart D as proposed, except as follows. We have added to § 172.401(a) language requiring an RCE to seek and receive ASTP/ONC's prior authorization before suspending a QHIN. We have added to § 172.401(b) language requiring an RCE to seek and receive ASTP/ONC's prior authorization before directing the QHIN to suspend a Participant's or Subparticipant's TEFCA Exchange. We have added to § 172.401(d) language requiring an RCE to seek and receive ASTP/ONC's prior authorization before lifting a suspension of either a QHIN or one of a QHIN's Participants or Subparticipants once the Threat Condition is resolved. We have modified § 172.103(b) to clarify that ASTP/ONC cannot subdelegate to the RCE those requirements for prior agency authorization. Combined with the review provisions that apply to all RCE actions in subpart F of part 172, this language helps to ensure that an RCE remains subordinate to ASTP/ONC and provides only fact-gathering, ministerial, and administrative support to ASTP/ONC. We have also revised the text of § 172.401 for added clarity.

We also would like to clarify one point regarding the proposed security requirements for QHINs. Earlier in this section we stated that within the TEFCA

infrastructure, QHINs are expected to meet a high bar for security, including compliance with the HIPAA Security Rule or the standards required by the HIPAA Security Rule. We make the distinction between ''compliance with the HIPAA Security Rule'' and compliance with the standards required by QHIN participation that mirror the HIPAA Security Rule requirements because some entities may not be a covered entity or business associate (*i.e.,* a Non-HIPAA Entity) that are regulated by the HIPAA Security Rule. In order for TEFCA to have consistent security standards, we proposed that even though Non-HIPAA Entities cannot be covered by HIPAA, we can still apply comparable security standards to such entities. To be clear, the HHS Office for Civil Rights (OCR) is the only entity that may determine a HIPAA covered entity's compliance with the HIPAA Security Rule. Any determination by a third party or by the RCE that a QHIN meets the QHIN requirements does not constitute a determination by HHS of the QHIN's compliance with the requirements of the HIPAA Security Rule.

E. Subpart E—Termination

In this subpart, we proposed provisions related to a QHIN's right to terminate its own Designation, ONC's (or an RCE's) obligation to terminate a QHIN's Designation and related notice requirements, and requirements related to the effect of termination. In § 172.501, we proposed that a QHIN may terminate its own QHIN Designation at any time without cause by providing ninety (90) calendar days prior written notice. This provision supports the voluntary nature of TEFCA by allowing a QHIN that, for whatever reason, no longer wants to serve as a QHIN, to terminate its own QHIN Designation with ninety (90) calendar days prior written notice. We stated we believe a QHIN should be able to terminate its Designation, regardless of the circumstances or reason and that ninety (90) calendar days would provide enough time for ONC, the RCE and the departing QHIN to analyze and address the impacts of the QHIN's departure.

In § 172.502, we proposed that a QHIN's Designation will be terminated with immediate effect by ONC (or an RCE) giving written notice of termination to the QHIN if the QHIN: (a) fails to comply with any regulations of the part and fails to remedy such material breach within thirty (30) calendar days after receiving written notice of such failure; provided, however, that if a QHIN is diligently working to remedy its breach at the end of this thirty (30) day period, then ONC (or an RCE) must provide the QHIN with up to another thirty (30) calendar days to remedy its material breach; or (b) a QHIN breaches a material provision of the Common Agreement where such breach is not capable of remedy. We requested comments on examples of material provisions of the Common Agreement where a breach is not capable of remedy.

We stated in the HTI–2 Proposed Rule that we believe these proposals would promote transparency in TEFCA and strengthen the underlying trust among and between entities connected to TEFCA. These termination provisions would enable ONC (or an RCE) to take swift action to remove a non-compliant QHIN and ensure that entities that fail to meet their obligations as QHINs (by failing to comply with the regulations of the part or by breaching a material provision of the Common Agreement) are no longer able to act as QHINs under the TEFCA framework. Without the ability for ONC (or an RCE) to terminate non-compliant QHINs, this trust—which is foundational to TEFCA and necessary for the ultimate success of TEFCA—could quickly erode and undermine TEFCA's progress.

In § 172.503, we proposed that QHINs and ONC (or an RCE) would be able to terminate the QHIN's Designation at any time and for any reason by mutual, written agreement. Allowing two parties to terminate an agreement by mutual, written agreement ensures that two parties are not forced to follow an agreement that neither wants to follow. In the HTI–2 Proposed Rule, ONC stated we believe it is reasonable and efficient to allow termination at any time where both ONC (or an RCE) and the QHIN are satisfied that a QHIN's termination is in the best interest of all.

During the comment period we noticed discrepancies between the use of business days and calendar days when discussing termination in preamble and regulation text. Accordingly, we updated the use of business days (and adopted the full proposed definition of business days in regulation text) and calendar days in the preamble discussion in this subpart to match the use of business days and calendar days in the regulation text we proposed in this subpart.

As described elsewhere in this final rule, we have finalized references to ''ONC'' in subpart E of the proposed rule as ''ASTP/ONC.'' For further discussion of the use of ''ASTP/ONC,'' please see the Executive Summary of this final rule.

Comments. Several commenters noted strong support for the termination process of QHINs when necessary, particularly in cases of financial instability, violations of guidelines, or failure to meet established qualifications and regulations. Commenters emphasized the importance of having the ability to decertify non-compliant QHINs as needed to uphold the integrity of the system.

Some commenters raised concerns regarding the implications of the termination of a QHIN's Designation, particularly for Participants and Subparticipants, as well as hospitals and health systems that rely on these networks. Commenters highlighted the lack of a migration plan and support system for these groups, which raises questions about their options during a transition. Additionally, commenters expressed concerns about compliance reporting and potential information blocking claims affecting Participants and Subparticipants if a QHIN is terminated.

Response. We thank these commenters for these comments. We appreciate commenters' concerns related to termination of QHINs generally, and more specifically related to the effects of a termination on Participants and Subparticipants and the lack of a migration plan, but we believe these comments are out of scope for this final rule because we did not include any proposals in the HTI–2 Proposed Rule to address the effects of a termination.

We also believe the comments related to protection from compliance reporting requirements and the information blocking regulations are out of scope for this final rule because such comments relate to information blocking enforcement. Nonetheless, it is important to emphasize that when a QHIN is terminated, its Participants and Subparticipants will be unable to exchange or respond to queries through that QHIN—meaning TEFCA Exchange would not be possible through that QHIN. We invite Participants and Subparticipants to review the exceptions to the information blocking regulations to determine if the facts of their specific scenarios would fit under an information blocking exception. We also refer readers to section 17.3.5 of the Common Agreement (section 10.3 of the Terms of Participation) which discusses the effect of termination.

We encourage organizations that connect to a QHIN to discuss transition plans with the QHIN as they are discussing connecting to that QHIN and establishing the parameters of their relationship with the QHIN. We also note that, based on the requirements for Designation we have finalized, QHINs should be high-functioning entities that

can support nationwide exchange at scale, and such organizations will have strong incentives to ensure their ongoing participation as QHINs.

Comments. One commenter sought clarification on the rationale behind ASTP/ONC's decision to include all termination provisions of the Common Agreement in the regulation except for section 17.3.5, ''Effect of Termination of the Common Agreement.'' The commenter further stated that its request for clarification underscores the need for transparency and understanding of the regulatory framework affecting QHINs and their stakeholders.

Response. We appreciate this comment. We did not propose to include provisions related to the effect of termination of the Common Agreement because we do not believe that provisions focused on the effect of a termination are necessary in this rulemaking. The termination provisions we included in this rulemaking explain the requirements and processes for termination. If a QHIN is terminated and decides to appeal the decision, the requirements and processes in this rulemaking would be integral in deciding whether the appeal would be successful. On the other hand, provisions related to the effect of termination would have little bearing on the ultimate success of an appeal and thus we do not think it is necessary to include such provisions in this rulemaking. As the commenter noted, there is a provision in the Common Agreement that addresses the effect of termination.

We have finalized all provisions in subpart E as proposed. In addition, we have added to § 172.502 language requiring an RCE to seek and receive ASTP/ONC's prior authorization before terminating a QHIN. Under § 172.103(b), ASTP/ONC cannot subdelegate to the RCE this requirement for prior agency authorization. Combined with the review provisions that apply to all RCE actions in subpart F of part 172, this language helps to ensure that an RCE remains subordinate to ASTP/ONC and provides only fact-gathering, ministerial, and administrative support to ASTP/ONC.

F. Subpart F—Review of RCE® or ASTP/ONC Decisions

ASTP/ONC oversees the RCE's work and has the right to review the RCE's conduct and its execution of nondiscrimination and conflict of interest policies that demonstrate the RCE's commitment to treating QHINs in a transparent, fair, and nondiscriminatory way.[20] In subpart F, we proposed to establish processes for review of RCE or ONC actions, including QHIN appeal rights and the process for filing an appeal. These appeal rights would ensure that a QHIN or Applicant QHIN that disagrees with certain RCE or ONC decisions will have recourse to appeal those decisions. Our proposed § 172.600 reflects this overall scope as an applicability section for this subpart.

In § 172.601, we proposed provisions to establish ONC's authority to review RCE determinations, policies, and actions, as well as procedures for exercising such review. We proposed in § 172.601(a) that ONC may, in its sole discretion, review all or any part of any RCE determination, policy, or action. In § 172.601(b) we proposed ONC may, in its sole discretion and on notice to affected QHINs or Applicant QHINs, stay any RCE determination, policy, or other action. In § 172.601(c), we proposed ONC may, in its sole discretion and on written notice, request that a QHIN, Applicant QHIN, or the RCE provide ONC additional information regarding any RCE determination, policy, or other action. In § 172.601(d), we proposed that on completion of its review, ONC may affirm, modify, or reverse the RCE determination, policy, or other action under review. Additionally, we proposed to provide notice to affected QHINs or Applicant QHINs that includes the basis for ONC's decision. In § 172.601(e), we proposed ONC will provide written notice under this section to affected QHINs or Applicant QHINs in the same manner as the original RCE determination, policy, or other action under review. We stated we believe these proposals provide transparency into the level of oversight ONC has in reviewing RCE determinations, policies, or actions and firmly establish ONC's authority to affirm, modify, or reverse such determinations, policies, and actions. We also noted we believe these provisions are important to assure QHINs and Applicant QHINs that we have the ability to effectively exercise oversight of the RCE, as well as provide all parties with an interest in the administration of TEFCA with confidence that we can and will take necessary action to ensure that QHINs and Applicant QHINs comply with the regulations we proposed in part 172.

In § 172.602, we proposed to establish bases for Applicant QHINs and QHINs to appeal decisions to ONC. We proposed that an Applicant QHIN or QHIN may appeal certain decisions to ONC or a hearing officer, as appropriate. In § 172.602(a)(1), we proposed that an Applicant QHIN would be able to appeal the denial of its application. In § 172.602(a)(2), we proposed that a QHIN would be able to appeal a decision to (1) suspend a QHIN or instruct a QHIN to suspend its Participant or Subparticipant; or (2) terminate a QHIN's Common Agreement. We requested comment on the proposed bases for appeal.

In § 172.603, we proposed the method and timing for filing an appeal. In § 172.603(a), we proposed that to initiate an appeal, an authorized representative of the Applicant QHIN or QHIN must submit electronically, in writing to ONC, a notice of appeal that includes the date of the notice of appeal, the date of the decision being appealed, the Applicant QHIN or QHIN who is appealing, and the decision being appealed within fifteen (15) calendar days of the Applicant QHIN's or QHIN's receipt of the notice of denial of an application, suspension or instruction to suspend its Participant or Subparticipant, or) termination. With regard to an appeal of a termination, the fifteen (15) calendar day timeframe may be extended by ONC up to another fifteen (15) calendar days if the QHIN has been granted an extension for completing its remedy under § 172.502(a). The notice of appeal would serve to notify ONC that the Applicant QHIN or QHIN is planning to file an appeal and would require inclusion of only the minimum amount of information necessary to provide such notice (*i.e.,* the date of the notice of appeal, the date of the decision being appealed, the Applicant QHIN or QHIN who is appealing, and what is being appealed). As such, we stated we believe fifteen (15) business days would be an adequate amount time for deciding whether to initiate an appeal and submitting such information.

In § 172.603(b), we proposed that an authorized representative of an Applicant QHIN or QHIN must submit electronically, to ONC, within thirty (30) calendar days of filing the intent to appeal: (1) A statement of the basis for appeal, including a description of the facts supporting the appeal with citations to documentation submitted by the QHIN or Applicant QHIN; and (2) Any documentation the QHIN would like considered during the appeal.

We stated we expect that it would take an Applicant QHIN or QHIN some

[20] *See* Common Agreement section 3.1, 89 FR 35107 (May 1, 2024), *https://www.federalregister.gov/documents/2024/05/01/2024-09476/notice-of-publication-of-common-agreement-for-nationwide-health-information-interoperability-common.*

time to collect all of the relevant information and documentation to support its appeal, and accordingly proposed a timeframe for requesting an appeal of thirty (30) calendar days from the filing of the intent to appeal with ONC. We welcomed comments on whether this timeframe, as well as the timeframe for submitting an intent to appeal, are adequate and appropriate.

In § 172.603(c), we proposed that an Applicant QHIN or QHIN filing the appeal may not submit on appeal any evidence it did not submit prior to the appeal, except by permission of the hearing officer. We stated we believe this provision balances a QHIN or Applicant QHIN's right to introduce evidence with the need for orderly proceedings. We are aware that under our proposed regulations, QHINs facing suspension or termination do not have an express right to introduce evidence. We solicited comments on whether and when a QHIN facing suspension or termination should have a right to introduce that evidence—for example as part of demonstrating that a material breach has been remedied or is capable of remedy under § 172.502, at the hearing officer stage, or some combination of the two based on circumstances of the suspension or termination.

In § 172.604, we proposed that an appeal would not stay a suspension or termination, unless otherwise ordered by ONC or the hearing officer assigned under § 172.605(b). This means that in the event of an appeal of a suspension or termination, the appeal would not stop the suspension or termination from being effective. We stated we believe this proposed approach is important because a QHIN would only be suspended or terminated for infractions that could, for example, jeopardize the privacy and security of TEFCA Exchange.

Before a QHIN is terminated under § 172.502(a), we noted the QHIN would have already been given an opportunity to remedy the breach unless the breach is not capable of remedy. The move by ONC or an RCE to terminate a QHIN would mean either the QHIN tried and failed to remedy the issue, or a remedy is not possible. In either case, we stated we believe it would be appropriate not to stay the termination. In the case of a suspension, the QHIN would have been found to be responsible for a Threat Condition, and we stated we believe the risk to the privacy and security of the TEFCA ecosystem would far outweigh any perceived benefit of staying the suspension.

In § 172.605, we proposed provisions related to the assignment of a hearing officer. In § 172.605(a), we proposed that, in the event of an appeal, the National Coordinator may exercise authority under § 172.601 to review the RCE determination being appealed. We further proposed an appealing QHIN or Applicant QHIN that is not satisfied with ONC's subsequent determination may appeal that determination to a hearing officer by filing a new notice of appeal and other appeal documents that comply with § 172.603. In § 172.605(b), we proposed if ONC declines review under paragraph (a), or if ONC made the determination under review, ONC would arrange for assignment of the case to a hearing officer to adjudicate the appeal.

We specified in proposed § 172.605(c) that the hearing officer must be an officer appointed by the Secretary of Health and Human Services (for more information about officers and appointments, see section III.D.5.c of the HTI–2 Proposed Rule, 89 FR 63612 through 63615). In § 172.605(d), we proposed, the hearing officer may not be responsible to, or subject to the supervision or direction of, personnel engaged in the performance of investigative or prosecutorial functions for ONC, nor may any officer, employee, or agent of ONC engaged in investigative or prosecutorial functions in connection with any adjudication, in that adjudication or one that is factually related, participate or advise in the decision of the hearing officer, except as a counsel to ONC or as a witness.

In § 172.606, we proposed requirements related to adjudication. In § 172.606(a), we proposed that the hearing officer would decide issues of law and fact *de novo* and would apply a preponderance of the evidence standard when deciding appeals. *De novo* review means that the hearing officer would decide the issue on appeal without deference to a previous decision (*i.e.,* ONC's or the RCE's decision to (1) deny an application, (2) suspend a QHIN or to instruct a QHIN to suspend its Participant or Subparticipant, or (3) terminate a QHIN's Common Agreement). We stated we believe *de novo* review is appropriate for appeals by Applicant QHINs or QHINs because ONC ultimately has responsibility for TEFCA operations and implementation, even though the RCE is a contractor acting on ONC's behalf. Given the gravity and potentially significant implications (financial, effect on existing contracts, etc.) of a denied application, suspension, or termination, we noted we believe the hearing officer the National Coordinator arranges to be assigned should make an independent decision, taking all of the facts and evidence the parties present into consideration.

As described in the HTI–2 Proposed Rule, the ''preponderance of the evidence'' standard means the burden of proof is met when the party with the burden (the appealing Applicant QHIN or QHIN) convinces the fact finder (hearing officer) that there is a greater than 50% chance that the claim is true. This standard is used in most civil cases and would only require the appealing party to show that a particular fact or event was more likely than not to have occurred. We stated we believe this threshold creates the right balance for requiring an appealing Applicant QHIN or QHIN to make a strong case to succeed on appeal, while not imposing a standard that would be extremely difficult for the appeal Applicant QHIN or QHIN to meet. We requested comment on whether the ''preponderance of the evidence'' is the appropriate standard, or if another standard (*e.g.,* clear and convincing evidence, beyond a reasonable doubt, etc.) would be more suitable.

In § 172.606(b), we proposed that a hearing officer would make a determination based on the written record or any information from a hearing conducted in-person, via telephone, or otherwise (for example, via video teleconference). We proposed that the written record would include ONC's or the RCE's determination and supporting information, as well as all appeal materials submitted by the Applicant QHIN or QHIN pursuant to § 172.603. We proposed these requirements for the written record because it is important that the written record reflect both the position of ONC or the RCE and the Applicant QHIN or QHIN. We proposed that the hearing officer would have sole discretion to conduct a hearing in certain situations. We proposed that the hearing officer could conduct a hearing to require either party to clarify the written record under § 172.606(b)(1). Last, we proposed that the hearing officer could conduct a hearing if they otherwise determine a hearing is necessary. We stated we believe the last provision is necessary because it gives the hearing officer discretion to conduct a hearing based on the specific circumstances surrounding the appeal, even if the need for the hearing does not fit under the first or second criteria detailed above.

In § 172.606(c), we proposed that a hearing officer would neither receive witness testimony nor accept any new information beyond what was provided in accordance with paragraph (b) of this section, except for good cause shown by

the party seeking to submit new information. We noted we believe this provision will help ensure that the appeals process is consistent and fair for all involved.

In § 172.607, we proposed requirements related to a decision by the hearing officer. In § 172.607(a), we proposed that the hearing officer would issue a written determination. We requested comment on whether we should include a specific timeframe for issuing the written determination, or whether abstaining from including a specific timeframe is a better approach given the varying complexity and circumstances of each appeal.

To ensure accountability, and to ensure that the hearing officer's decisions would be subject to the discretionary review of a principal officer of the United States, we proposed in § 172.607(b) that a hearing officer's decision on an appeal is the final decision of HHS unless within 10 business days, the Secretary, at the Secretary's sole discretion, chooses to review the determination. We also proposed that ONC would notify the appealing party if the Secretary chooses to review the determination and once the Secretary makes his or her determination. We did not propose a specific timeframe for the Secretary to complete their review (if the Secretary chooses to review) because we believe that if the Secretary makes the decision to review a hearing officer's determination, the Secretary would be informed enough on the issues of the case to determine an appropriate review timeframe.

As described elsewhere in this final rule, we have finalized references to ''ONC'' in subpart F of the proposed rule as ''ASTP/ONC.'' For further discussion of the use of ''ASTP/ONC,'' please see the Executive Summary of this final rule.

Comments. Commenters were generally supportive of ASTP/ONC's proposal for a review process of RCE or ASTP/ONC decisions but expressed concerns regarding the scope and standard of ASTP/ONC's review of RCE and prior ASTP/ONC decisions. In particular, some commenters stated that ASTP/ONC's discretion for review of RCE or prior ASTP/ONC decisions would be too broad and suggested that ASTP/ONC include narrower requirements for when a Hearing Officer can review RCE or prior ASTP/ONC decisions *de novo,* such as limiting use of the *de novo* standard to only when it was a denial of QHIN designation. A few commenters also suggested that ASTP/ONC specify a timeframe for ASTP/ONC review and decision and similarly for review and written decisions by a hearing officer. One commenter recommended that a hearing officer have 30 days to issue a written decision on an appeal.

Response. We appreciate commenters concerns about the scope of ASTP/ONC's ability to review decisions and the timeframe for when a hearing officer must issue a decision. In this final rule, we finalize all subpart F proposals as proposed, except for revisions made in response to comments as discussed here. As TEFCA participation grows, it is important for ASTP/ONC and a hearing officer to be able to review decisions that are impactful to TEFCA participation, and in a manner that gives all TEFCA participants confidence in TEFCA. A *de novo* standard supports such confidence because the hearing officer can exercise independent judgment and review of all relevant facts and law. As for the timeframe for reviews, a 30-day timeframe for issuing a decision by either ASTP/ONC or a hearing officer under subpart F could be too limiting in complex cases. However, we do believe that providing clarity on timeframes for decisions would be helpful to parties subject to ASTP/ONC and/or hearing officer decisions. Accordingly, we have revised subpart F in two ways. We have specified in § 172.601(f) that ASTP/ONC will issue a decision within a timeframe agreed to by the affected Applicant QHIN or QHIN, as applicable, the RCE, and ASTP/ONC. ASTP/ONC may, however, at its sole discretion, extend the timeframe for a decision as circumstances necessitate. This remains consistent with our proposal in that we did not place a time limit on issuing a decision. ASTP/ONC will issue a decision by mailing or sending electronically written notice of such decision as specified in § 172.601(e). Similarly to ASTP/ONC timeframe revision, we have revised § 172.607(a) to specify that the hearing officer will issue a written determination within a timeframe agreed to by the affected Applicant QHIN or QHIN, as applicable, and ASTP/ONC and approved by the hearing officer. The hearing officer may, at their sole discretion, extend the timeframe for a written determination as circumstances necessitate. Again, this is consistent with our proposal in that we did not place a time limit on issuing a decision.

We have also revised the format of § 172.603(a) to provide clarity regarding the method and timing for an applicant QHIN or QHIN to file an appeal. The addition of the numerated list in § 172.603(a) is a formatting change made for clarity.

In addition, we have added to §§ 172.601(a) and (b) and 172.605(a) language that if ASTP/ONC reviews (under § 172.601(a)) or stays (under § 172.601(b)) an RCE determination for which regulations in part 172 required ASTP/ONC's prior authorization, no agent, official, or employee of ASTP/ONC who helped to evaluate or decide the prior authorization, or a prior authorization involving the same party(s) or underlying facts, may participate in deciding or advising ASTP/ONC on its review of (including whether it should stay) that determination. This language will help protect any review by ASTP/ONC of the RCE from influence by someone who previously authorized the RCE action under review, protect the fairness and integrity of ASTP/ONC's review process, and preserve the separation of functions within ONC.

Comments. A commenter raised concerns that the scope of subpart F was too limiting. The commenter recommended that disputes between QHINs, and between a QHIN and a Participant, should be afforded review and appeal under the regulations. The commenter argued that a QHIN's dispute resolution policy, which it is required to maintain per subpart B, would be ineffective in resolving disputes between QHINs or with a Participant of another QHIN. The commenter further asserted that a QHIN's decision to take action against a Participant significantly affects that Participant, their patients, and other Participants (including from other QHINs) that rely on the Participant's data to make care decisions. As such, the commenter specifically recommended that we include a process for appeal and ASTP/ONC review of QHIN decisions to suspend Participants or Subparticipants, including providing a Participant the opportunity to appeal such decisions. The commenter also recommended that a QHIN be afforded the right to appeal an instruction (presumably by the RCE or ASTP/ONC) to suspend a Participant or Subparticipant.

Response. We did not propose the scope of review and appeals that the commenter recommends, and the public was not put on notice that such a policy might be finalized and given an opportunity to comment. Thus, we decline to adopt such an approach in this final rule.

We note that we considered proposing to extend the appeal process to Participants and Subparticipants but decided against proposing that approach for a couple reasons. First, we believe that QHINs should have the autonomy

to make decisions within their respective networks. Second, we note that Participants and Subparticipants are able to join different QHINs if they cannot resolve a dispute with an existing QHIN.

For similar reasons, we believe the Dispute Resolution Process should be limited to disputes filed by the RCE or a QHIN. A QHIN could elevate a dispute on behalf of its Participant or Subparticipant to the Dispute Resolution Process, but we believe that is a decision that should be left to the respective QHIN.

G. Subpart G—QHIN™ Attestation for the Adoption of the Trusted Exchange Framework and Common Agreement™

Section 4003(b) of the Cures Act added section 3001(c)(9), ''Support for Interoperable Networks Exchange,'' to the PHSA. Section 3001(c)(9)(D)(ii) requires HHS to establish, through notice and comment rulemaking, a process for HINs that voluntarily elect to adopt TEFCA to attest to such adoption of the framework and agreement. Section 3001(c)(9)(D)(i) also requires the National Coordinator to publish on ONC's website a list of the HINs that have adopted the Common Agreement and are capable of trusted exchange pursuant to the Common Agreement.

QHINs are the only entities permitted to ''adopt'' the Common Agreement, which is accomplished by becoming a signatory to the Common Agreement. As such, we proposed that only QHINs would be able to attest to the adoption of the Common Agreement and the Trusted Exchange Framework. While the Trusted Exchange Framework was foundational for creating the provisions of the Common Agreement, it is, as noted above, a separate set of principles. Therefore, we proposed that for purposes of attesting to the adoption of the Trusted Exchange Framework, QHINs would be required to expressly attest to their agreement and adherence to the Trusted Exchange Framework.[21]

We described that once attestation is complete and deemed valid, QHINs would be publicly listed on ONC's website. This regulatory provision would implement the HIN attestation provision from the Cures Act and would provide benefits to the public, Federal partners, and interested parties. For example, a Federal website listing of attesting QHINs would make it easy for the public to identify whether an entity is or is not a QHIN and provide a resource for Federal partners to help determine whether participants in some of their programs also belong to a network that is recognized as a QHIN. Section 3001(c)(9)(E) provides the option for Federal agencies to require, under certain circumstances, adoption of TEFCA for health information exchange networks that they contract with or enter into agreements with.

To implement sections 3001(c)(9)(D)(i) and (ii) of the PHSA, we proposed to establish subpart G in part 172, titled ''QHIN Attestation for the Adoption of the Trusted Exchange Framework and Common Agreement.''

We proposed in § 172.700 that subpart G would establish the attestation submission requirements applicable to QHINs. In § 172.701, we proposed attestation submission requirements for QHINs and review and acceptance processes that ONC will follow for TEFCA attestations. In § 172.701(b), we proposed that in order to be listed in the QHIN Directory described in proposed § 172.702, a QHIN would be required to submit to ONC an attestation affirming agreement with and adherence to the Trusted Exchange Framework and its adoption of the Common Agreement. We further proposed in § 172.701(b) that a QHIN would be required to submit to ONC identifying information consisting of its name, address, city, state, zip code, and a hyperlink to its website. We also proposed that the QHIN would be required to submit to ONC identifying information about its authorized representative including the representative's name, title, phone number, and email address. We proposed that a QHIN would also be required to provide documentation confirming its Designation as a QHIN. We also proposed that a QHIN would be required to provide ONC with written notice of any changes to its identifying information provided in accordance with § 172.701 within 30 calendar days of the change(s) to its identifying information. We noted we believe the above provisions provide clear instructions for submitting a QHIN attestation that will support a consistent and transparent QHIN attestation process and provides ONC with the information needed to identify the entity and contact the authorized representative.

We proposed in § 172.701(c) that a QHIN must electronically submit its attestation and documentation specified in § 172.701(b) either via an email address identified by ONC or via a submission on the ONC website, if available. We proposed in § 172.701(d) that once a QHIN has submitted its attestation and documentation, ONC would either accept or reject the submission within 30 calendar days. We proposed that ONC would accept the submission if it determines that the QHIN has satisfied the requirements of § 172.701(b) and (c). In such instances, we proposed that ONC would provide written notice to the applicable QHIN's authorized representative that the submission has been accepted. In § 172.701(d), we also proposed that ONC would reject a submission if it determines that the requirements of § 172.701(b) or (c), or both, have not been satisfied. In such instances, we proposed that ONC would provide written notice to the QHIN's authorized representative of the determination along with the basis for the determination. We proposed that an ONC determination would be a final agency action and not subject to administrative review, except the Secretary may choose to review the determination as provided in § 172.607(b). However, we proposed that a QHIN may, at any time, resubmit an attestation and documentation in accordance with §§ 172.701(b) and (c). We stated we believe these submission procedures will support a consistent and transparent QHIN attestation process. We welcomed comments on these procedures.

In § 172.702, we proposed the requirements for a QHIN directory. We proposed in § 172.702(a) that this subpart would establish processes for publishing a directory of QHINs on the ONC website. We proposed in § 172.702(b)(1) that, within fifteen (15) calendar days of notifying a QHIN that its submission has been accepted, ONC would publish, at a minimum, the QHIN's name in the QHIN directory.

We proposed § 172.702(b)(2) to identify within the QHIN directory those QHINs that have been suspended under the Common Agreement. A QHIN directory that includes QHINs that have adopted the Common Agreement and are capable of TEFCA Exchange and those QHINs suspended under the Common Agreement offers a transparent list of QHINs participating in TEFCA. As noted above, the QHIN directory may serve as a useful tool for the public, Federal partners, and other interested parties seeking information about QHINs. Therefore, we welcomed comments regarding the information we proposed to include in the QHIN directory.

We proposed in § 172.702(c) to establish requirements for removal of a QHIN from the QHIN directory. We proposed in § 172.702(c)(1) that ONC will remove a QHIN that is no longer eligible for QHIN status from the QHIN

[21] The Trusted Exchange Framework (TEF): Principles for Trusted Exchange (January 2022), *https://www.healthit.gov/sites/default/files/page/2022-01/Trusted_Exchange_Framework_0122.pdf.*

directory. We proposed that a QHIN whose Common Agreement has been terminated would no longer be considered a QHIN and so would be removed from the QHIN directory. We noted the removal of a QHIN whose Common Agreement has been terminated from the QHIN Directory would be a ministerial action by ONC.

We proposed in § 172.702(c)(2) that upon termination of a QHIN's Common Agreement, ONC (or an RCE) will send a written statement of intent to remove the QHIN from the QHIN Directory to the authorized representative of the QHIN. Under § 172.702(c)(3), we proposed that the written statement would include, as appropriate, (i) the name of the terminated QHIN and the name and contact information of the authorized representative of the QHIN; (ii) a short statement setting forth findings of fact with respect to any violation of the Common Agreement or other basis for the QHIN's termination; (iii) other materials as the RCE may deem relevant. In § 172.702(d), we proposed that a QHIN that is removed from the QHIN Directory would remain removed until a new attestation is accepted by ONC in accordance with the processes specified in subpart G of the part. In § 172.702(e), we proposed that an ONC determination under § 172.702 is final agency action and not subject to further administrative review, except the Secretary may choose to review the determination as provided in § 172.607(b). We stated we believe this proposal was appropriate because a QHIN would have had ample opportunity to appeal its termination under the provisions in proposed subpart F (89 FR 63654).

We sought comments on alternative ways to structure the requirements to remove a QHIN from the QHIN directory.

Comments. Multiple commenters agreed with our proposal to require QHINs to attest, with one commenter noting the potential burden attestation could cause for all other Participants and Subparticipants. Another commenter, while not suggesting we impose attestation requirements, recommended that we include all TEFCA Participants, Subparticipants and delegates along with their entity type (*e.g.,* health plan, provider, delegate of provider) and relationship(s) in a publicly accessible directory on ASTP/ONC's website. The commenter asserted that this would provide greater transparency and help health care organizations understand the networks that other entities participate in to determine whether a connection already exists or if a new exchange needs to be set-up.

Response. We appreciate commenters' agreement with our proposal and one commenter's suggestions. In this final rule, we have finalized a requirement, in order to be listed in the QHIN Attestation Directory, that applies only to QHINs that attest. We have also finalized all subpart G proposals as proposed, except for revisions made in response to comments discussed here and below. We generally strive to improve transparency where appropriate and permissible. Congress authorized, in PHSA section 3001(c)(9)(D), a directory of health information networks, which is a directory narrower in scope than the commenter suggested and that we proposed. Therefore, we decline to adopt the commenter's suggested changes to the scope of information included in the QHIN Attestation Directory. We will consider ways in which TEFCA can improve such transparency for QHINs, Participants, Subparticipants, and the public at large.

Comments. One commenter did not support the QHIN attestation proposal, arguing that it was unnecessary and duplicative of a QHIN signing the Common Agreement. The commenter further questioned the requirement to ''adhere to'' the Trusted Exchange Framework (TEF), noting that, by its own terms, it is a compilation of non-binding principles. Another commenter similarly argued that the TEF was broad and could not be practically ''adhered to.'' Both of these commenters inquired as to what ''adhere to'' meant in terms of the TEF, with one suggesting that ''adhere to'' be replaced with ''agreement with.'' One commenter suggested that we clarify that any rejection of an attestation by ASTP/ONC will not affect the QHIN's designation status or ability to participate in TEFCA.

Response. Establishing a process for attesting to the adoption of TEFCA by QHINs that voluntarily elect to adopt TEFCA fulfills a statutory obligation by ASTP/ONC. Such a process is paired with the public posting on our website of a directory of these QHINs, which may provide easy recognition and validation for the public of those entities that have been deemed QHINs under TEFCA. We agree with commenters that our proposed wording in § 172.701(b)(1)(i)(A) of ''. . . [a]greement with and adherence to the [TEF] . . . .'' may cause confusion and perceived contradiction with what are characterized as broad, non-binding principles. The statute uses the term ''adoption'' with regard to both the Common Agreement and TEF. As such, we are reverting to use of this term under our regulatory process for attesting to adoption of the Common Agreement *and* the TEF by revising § 172.701(b)(1)(i) to read as follows: ''[a]ttestation affirming its adoption of the Common Agreement and Trusted Exchange Framework.'' For clarity, by attesting to ''adopt'' the TEF, we mean a QHIN would practice and use the TEF principles. We also clarify that the regulatory process for QHIN attestation is separate and distinct from the regulatory criteria we are finalizing for obtaining and maintaining QHIN status, as well as any requirements in the Common Agreement.

Comments. Multiple commenters expressed a need for a definitive attestation schedule for QHINs. One commenter suggested that we incorporate the required attestation into the RCE's onboarding and designation process.

Response. Attestation would be expected each time a QHIN signs the Common Agreement, including new versions, and/or the TEF is updated. To be listed on the ASTP/ONC website, QHINs would need to comply with the attestation submission and acceptance requirements of § 172.701. As proposed and finalized in § 172.701 a QHIN will be able to electronically submit its attestation via email or via the ASTP/ONC website, if available. The exact timing (beyond when signing the Common Agreement and/or when the TEF is updated) and specifics of the submission method, such as by use of a voluntary standard form, will not be codified in regulation through this final rule, but will be determined in a manner that best aligns with statutory obligations and overall efficiencies.

Comments. Multiple commenters expressed concern that use of ''QHIN Directory'' will confuse stakeholders, as the Common Agreement refers to an ''RCE Directory Service'' and the QHIN Technical Framework (QTF) refers to a ''QHIN Directory.'' One commenter suggested that we establish a hyperlink from our website to the RCE website because the RCE maintains a list of QHINs.

Response. Our approach, finalized in this final rule, fulfills a specific statutory requirement to post the names on our website. We agree with the commenters that ''QHIN Directory'' may cause some confusion. Therefore, in alignment with the statutory instruction, we are renaming the directory ''QHIN Attestation Directory'' and have revised references throughout §§ 172.701 and 172.702 accordingly to refer to the ''QHIN Attestation Directory'' rather than the QHIN Directory. We have also

revised § 172.702(a) (''Applicability'') to more clearly align with statutory instruction by stating ''[t]his subpart establishes processes for publishing a directory on the ASTP/ONC website of QHINs that voluntarily elect to adopt TEFCA and attest to such adoption.'' We also note, in response to comment, that we currently provide a hyperlink to the RCE website from our website.

As described elsewhere in this final rule, we have finalized references to ''ONC'' in subpart G of the proposed rule as ''ASTP/ONC.'' For further discussion of the use of ''ASTP/ONC,'' please see the Executive Summary of this final rule. We also made a minor change to § 172.702(c)(3)(iii) by removing the word ''the'' before ASTP/ONC, to align with other references to ASTP/ONC. This change is for clarity and is non-substantive.

VI. Severability

As we explained in the HTI–2 Proposed Rule (89 FR 63511), it was our intent that if any provision of the proposed rule were, if or when finalized, held to be invalid or unenforceable—facially or as applied to any person, plaintiff, or circumstance—or stayed pending further judicial or agency action, such provision shall be severable from other provisions finalized, and from rules and regulations otherwise in effect, and not affect the remainder of provisions finalized. It was and continues to be our intent that, unless such provision shall be held to be utterly invalid or unenforceable, it be construed to give the provision maximum effect permitted by law including in the application of the provision to other persons not similarly situated or to other, dissimilar circumstances from those where the provision may be held to be invalid or unenforceable.

This final rule establishes part 172 and finalizes revisions to certain sections within 45 CFR parts 170 and 171. The provisions finalized in this final rule, whether codified in 45 CFR part 170, 171, or 172, are intended to and will operate independently of each other and of provisions finalized in previous rules, even if multiple of them may serve the same or similar general purpose(s) or policy goal(s). Where any section or paragraph in part 170, 171, or 172 is necessarily dependent on another, the context generally makes that clear (such as by cross-reference to a particular standard, requirement, condition, or pre-requisite, or other regulatory provision). Where any section or paragraph within 45 CFR part 170, 171, or 172 includes a dependency on any provision of any section or paragraph of any part in title 45 of the CFR, or in any other title of the CFR, that is stayed or held invalid or unenforceable (as described in the preceding paragraph), we intend that other provisions of such paragraph(s) or section(s) in 45 CFR part 170, 171, or 172 that operate independently of said provision would remain in effect.

For example, if the regulation at § 171.403 TEFCA Manner Exception were stayed or held facially invalid or unenforceable in whole or in part, we would intend for the other information blocking exceptions in part 171 to remain available to actors, and for all sections and paragraphs within parts 170 and 172 to also continue to be in effect. To provide another example, if any provision of any section or paragraph of part 172 were stayed or held utterly invalid or unenforceable, we would intend for all other sections in part 172 that do not depend upon the stayed or invalidated provisions to remain in full effect. Similarly, if any provision of part 172 were stayed or held to be invalid or unenforceable as applied to any person, plaintiff, or circumstance, it is our intent that such provision—and any section or paragraph of part 172, 171, or 170 that may reference such provision—be construed to give the provision maximum effect permitted by law including in the application of the provision to other persons not similarly situated or to other, dissimilar circumstances from those where the provision may be held to be invalid or unenforceable.

To ensure our intent for severability of provisions is clear in the CFR, we proposed (as explained at 89 FR 63511) the addition to §§ 170.101 (89 FR 63766) and 171.101 (89 FR 63802), and inclusion in the newly codified § 172.101 (89 FR 63805), of a paragraph stating our intent that if any provision is held to be invalid or unenforceable it shall be construed to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which case the provision shall be severable from the part and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

We did not receive any comments specific to our proposal to codify paragraphs stating our intent for severability in part 170, 171, or 172 or regarding our explanation that the provisions finalized in this rule are intended to and will operate independently of each other. We have finalized as proposed, the addition to §§ 170.101 and 171.101, and inclusion in the newly codified § 172.101, a paragraph stating our intent for severability of provisions in each of these parts. We affirm and emphasize our intent that if any provision of this final rule were held to be invalid or unenforceable—facially or as applied to any person, plaintiff, or circumstance—or stayed pending further judicial or agency action, such provision shall be severable from other provisions of this rule, and from rules and regulations currently in effect, and not affect the remainder of this rule. We further affirm and emphasize our intent that if any provision codified in part 170, 171, or 172, whether finalized in this or a prior rule, were to be held to be invalid or unenforceable—facially or as applied to any person, plaintiff, or circumstance—or stayed pending further judicial or agency action, such provision shall be severable from other provisions of this rule, and from rules and regulations currently in effect, and not affect the remainder of this final rule. It is also our intent that, unless such provision shall be held to be utterly invalid or unenforceable, it be construed to give the provision maximum effect permitted by law including in the application of the provision to other persons not similarly situated or to other, dissimilar circumstances from those where the provision may be held to be invalid or unenforceable.

VII. Collection of Information Requirements—Qualified Health Information Networks™

Under the Paperwork Reduction Act of 1995 (PRA), codified as amended at 44 U.S.C. 3501 *et seq.,* agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment on a proposed collection of information before it is submitted to OMB for review and approval. In order to fairly evaluate whether an information collection should be approved by the OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

1. Whether the information collection is necessary and useful to carry out the proper functions of the agency.

2. The accuracy of the agency's estimate of the information collection burden;

3. The quality, utility, and clarity of the information to be collected; and

4. Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Under the PRA, the time, effort, and financial resources necessary to meet

the information collection requirements referenced in this section are to be considered. We solicited comment on our assumptions as they relate to the PRA requirements summarized in this section.

Qualified Health Information Networks™

As stated in the HTI–2 Proposed Rule (89 FR 63661), we proposed in § 172.301 to establish the information Applicant QHINs must submit in order to be Designated as a QHIN. We proposed that an Applicant QHIN must submit: (1) a completed QHIN application; and (2) a signed copy of the Common Agreement. We noted that we may update the application over time and the most recent version will be available on ASTP/ONC's and the RCE's website.

In § 172.701, we proposed attestation submission requirements for QHINs and review and acceptance processes that ONC would follow for TEFCA attestations. In § 172.701(b), we proposed that in order to be listed in the QHIN Directory described in proposed § 172.702, a QHIN would be required to submit to ONC an attestation affirming agreement with and adherence to the Trusted Exchange Framework and its adoption of the Common Agreement. We further proposed in § 172.701(b) that a QHIN would be required to submit to ONC identifying information consisting of its name, address, city, state, zip code, and a hyperlink to its website. We also proposed that the QHIN would be required to submit to ONC identifying information about its authorized representative including the representative's name, title, phone number, and email address.

We proposed that a QHIN would also be required to provide documentation confirming its Designation as a QHIN. We also proposed that a QHIN would be required to provide ONC with written notice of any changes to its identifying information provided in accordance with § 172.701 within 30 calendar days of the change(s) to its identifying information.

We stated our belief that QHINs would face minimal burden in complying with the proposed application, attestation, and supporting documentation requirements. For the purposes of estimating the potential burden, we estimated that 15 Applicant QHINs would apply and subsequently submit an attestation to ONC. We stated that it would take approximately one hour on average for an applicant QHIN to submit a completed QHIN application. We also stated that it would also take approximately one hour on average for a QHIN to complete and submit to ONC their attestation and required documentation. We stated that we expect a general office clerk could complete these required responsibilities.[22] We welcomed comments on whether more or fewer QHINs should be included in our estimate. We also welcomed comments on whether more or less time should be included in our estimate.

TABLE 2—ESTIMATED ANNUALIZED TOTAL BURDEN HOURS FOR QHINS TO COMPLY WITH APPLICATION AND ATTESTATION REQUIREMENTS

Code of Federal Regulations section	Number of applicant QHIN or QHINs	Average burden hours	Total
45 CFR 172.301	15	1	15
45 CFR 172.701	15	1	15
Total Burden Hours			30

Comments. We did not receive any comments related to information collection activities for QHINs.

Response. We have finalized our regulatory collection of information requirements as proposed, but with unrelated revisions to subparts B, C, and G.

VIII. Regulatory Impact Analysis

A. Statement of Need

This final rule is necessary to meet our statutory responsibilities under the Cures Act and to advance HHS policy goals to promote interoperability and information sharing.

B. Alternatives Considered

We have been unable to identify alternatives that would appropriately implement our responsibilities under the Cures Act and support interoperability and information sharing consistent with our policy goals. We believe our policies take the necessary steps to fulfill the mandates specified in the PHSA, as amended by the HITECH Act and the Cures Act, in the least burdensome way. We welcomed comments on our assessment and any alternatives we should have considered.

Comments. We did not receive any comments on alternatives that we should have considered related to the provisions included in this final rule.

Response. We have finalized our assessments on the proposals finalized in this final rule.

C. Overall Impact—Executive Orders 12866 and 13563—Regulatory Planning and Review Analysis

We have examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094, entitled ''Modernizing Regulatory Review'' (April 6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96354), section 202 of the Unfunded Mandates reform Act of 1995 (March 22, 1995; Pub. L. 104–4), the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act, 5 U.S.C. 801 *et seq.*), and the Executive Order 13132 on Federalism (August 4, 1999).

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). The Executive Order 14094 amends section 3(f) of Executive Order 12866. The amended section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an

[22] According to the May 2022 Bureau of Labor Statistics occupational employment statistics, the mean hourly wage for Office Clerks, General (43–9061) is $19.78.

action that is likely to result in a rule: (1) having an annual effect on the economy of $200 million or more in any 1 year (adjusted every 3 years by the Administrator of OMB's OIRA for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

An RIA must be prepared for rules with significant regulatory action(s) and/or with significant effects as per section 3(f)(1) ($200 million or more in any 1 year). OIRA has determined that this final rule is not a significant regulatory action under 3(f) of Executive Order 12866, as amended by E.O. 14094. Accordingly, we have not prepared a detailed RIA. We did, however, include some quantitative analysis of the costs and benefits of this final rule.

Pursuant to 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.*), OIRA has determined that this final rule does not meet the criteria set forth in 5 U.S.C. 804(2).

Trusted Exchange Framework and Common Agreement℠

The regulations in 45 CFR part 172 outline the application requirements an Applicant Qualified Health Information Network® (QHIN™) must submit in order to be Designated as a QHIN, ongoing Designation requirements, and the requirements that an entity would attest to meeting as a QHIN under the TEFCA framework. We estimate that an Applicant QHIN will spend on average an hour to complete the application process. We estimate that an average QHIN will spend at most one hour to complete the attestation process. As we stated in the regulatory impact analysis in the HTI–2 Proposed Rule, we consider these efforts to be de minimis.

We do not assess the burden of a QHIN to appeal a Recognized Coordinating Entity® (RCE™) decision as part of their participation in the TEFCA framework, as this rulemaking creates the appeals process for QHINs but does not require it. Further, we expect that appeals will most often follow RCE decisions related to QHIN participation in the TEFCA framework, rather than ASTP/ONC decisions. We, therefore, do not assess the burden of the appeals process as part of this rulemaking's impact analysis.

Comments. We did not receive any comments on the costs and benefits related to the provisions included in this final rule.

Response. We have finalized our regulatory impact analyses on the matters finalized in this final rule as discussed above and in the HTI–2 Proposed Rule.

D. Regulatory Flexibility Act

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The Small Business Administration (SBA) establishes the size of small businesses for Federal Government programs based on average annual receipts or the average employment of a firm.[23]

Although we did not include an analysis of the proposed TEFCA regulations in the HTI–2 Proposed Rule, we have included an analysis of the finalized TEFCA regulations in this final rule. We estimate that up to 15 Applicant QHINs would apply and subsequently submit an attestation to ASTP/ONC to be listed in the QHIN Attestation Directory. Section 3001(c)(9)(B)(i) of the PHSA provides the National Coordinator with the authority to ''develop or support a trusted exchange framework for trust policies and practices and for a common agreement for exchange between health information networks.'' The components of this Trusted Exchange Framework and Common Agreement™ (TEFCA™) include the Trusted Exchange Framework (a common set of principles designed to facilitate trust between health information networks (HINs)) and the Common Agreement (the agreement Qualified Health Information Networks® (QHINs™) sign), which includes, among other provisions, privacy, compliance, and security requirements). The Common Agreement also references the QHIN Technical Framework (QTF) (which describes technical requirements for exchange among QHINs) as well as, where necessary, SOPs.

By providing a common and consistent approach for the exchange of health information across many different networks, TEFCA simplifies and significantly reduces the number of separate networks that individuals, health care providers, and other interested parties need to be a part of in order to access the health information they seek. Health information networks that voluntarily join TEFCA will facilitate exchange in a secure and interoperable manner. TEFCA establishes a method for authenticating trusted health information network participants, potentially lowering the cost, and expanding the nationwide availability of secure health information exchange capabilities. The establishment of technical services for health information networks that voluntarily join TEFCA, such as an electronic address directory and security services, will be critical to scale network exchange nationwide. In addition, the organizational and operational policies established through TEFCA enable the exchange of health information among health information networks and include minimum conditions required for such exchange to occur. We believe our qualification criteria is structured in a way that it encourages participation from small entities.

We believe that many health information networks impacted by this final rule most likely fall under the North American Industry Classification System (NAICS) code 541511 ''Custom Computer Programming Services.'' [24] OMB advised that the Federal statistical establishment data published for reference years beginning on or after January 1, 2022, should be published using the 2022 NAICS United States codes.[25] The SBA size standard associated with this NAICS code is set at $34 million annual receipts or less. There is enough data generally available to establish that between 75% and 90% of entities that are categorized under the NAICS code 541511 are under the SBA size standard.

We estimate that this final rule would have effects on health information networks, some of which may be small entities. We believe, however, that we have adopted the minimum number of requirements necessary to accomplish our primary policy goal of enhancing

[23] The SBA references that annual receipts mean ''total income'' (or in the case of a sole proprietorship, ''gross income'') plus ''cost of goods sold'' as these terms are defined and reported on Internal Revenue Service tax return forms.

[24] *https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.*

[25] *https://www.sba.gov/article/2022/feb/01/guidance-using-naics-2022-procurement.*

interoperability. Further, as discussed in this RIA above, there are very few appropriate regulatory or non-regulatory alternatives that could be developed to lessen the compliance burden associated with this final rule because the policies are derived directly from legislative mandates in the Cures Act.

Comments. We received no comments on our approach.

Response. We have finalized our approach and analysis as discussed above. We do not believe that this final rule would create a significant impact on a substantial number of small entities, and the Secretary certifies that this final rule would not have a significant impact on a substantial number of small entities.

E. Executive Order 13132—Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications.

Comments We received no comments.

Response. Nothing in this final rule imposes substantial direct compliance costs on state and local governments, preempts state law, or otherwise has federalism implications.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that imposes unfunded mandates on state, local, and tribal governments or the private sector requiring spending in any one year of $100 million in 1995 dollars, updated annually for inflation. The current inflation-adjusted statutory threshold is approximately $183 million in 2024.

Comments. We received no comments on the application of this law to our proposals finalized in this final rule.

Response. The estimated potential cost effects of this final rule do not reach the statutory threshold; therefore, this final rule does not impose unfunded mandates on state, local, and tribal governments, or the private sector.

List of Subjects

45 CFR Part 170

Computer technology, Electronic health record, Electronic information system, Electronic transactions, Health, Healthcare, Health information technology, Health insurance, Health records, Hospitals, Laboratories, Medicaid, Medicare, Privacy, Public health, Reporting and recordkeeping requirements, Security.

45 CFR Part 171

Computer technology, Electronic health record, Electronic information system, Electronic transactions, Health, Healthcare, Health care provider, Health information exchange, Health information technology, Health information network, Health insurance, Health records, Hospitals, Privacy, Public health, Reporting and recordkeeping requirements, Security.

45 CFR Part 172

Computer technology, Electronic health record, Electronic information system, Electronic transactions, Health, Healthcare, Health information technology, Health insurance, Health records, Hospitals, Laboratories, Medicaid, Medicare, Privacy, Public health, Security.

For the reasons set forth in the preamble, 45 CFR subtitle A, subchapter D, is amended as follows:

PART 170—HEALTH INFORMATION TECHNOLOGY STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA AND CERTIFICATION PROGRAMS FOR HEALTH INFORMATION TECHNOLOGY

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 42 U.S.C. 300jj–11; 42 U.S.C 300jj–14; 5 U.S.C. 552.

■ 2. Revise § 170.101 to read as follows:

§ 170.101 Applicability.

(a) The standards, implementation specifications, and certification criteria adopted in this part apply to health information technology and the testing and certification of Health IT Modules.

(b) If any provision of this part is held to be invalid or unenforceable facially, or as applied to any person, plaintiff, or circumstance, it shall be construed to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which case the provision shall be severable from this part and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

■ 3. Amend § 170.315 by:

■ a. Removing and reserving paragraphs (a)(10) and (13) and (b)(6);

■ b. Revising paragraphs (b)(7) and (8); and

■ c. Removing and reserving paragraphs (e)(2) and (g)(2).

The revisions read as follows:

§ 170.315 ONC certification criteria for Health IT.

* * * * *

(b) * * *

(7) *Security tags—summary of care—send.* Enable a user to create a summary record formatted in accordance with the standard adopted in § 170.205(a)(4) that is tagged as restricted and subject to restrictions on re-disclosure according to the standard adopted in § 170.205(o)(1) at the document, section, and entry (data element) level.

(8) *Security tags—summary of care—receive.* (i) Enable a user to receive a summary record that is formatted in accordance with the standard adopted in § 170.205(a)(4) that is tagged as restricted and subject to restrictions on re-disclosure according to the standard adopted in § 170.205(o)(1) at the document, section, and entry (data element) level; and

(ii) Preserve privacy markings to ensure fidelity to the tagging based on consent and with respect to sharing and re-disclosure restrictions.

* * * * *

■ 4. Amend § 170.502 by revising the definition of ''Gap certification'' to read as follows:

§ 170.502 Definitions.

* * * * *

Gap certification means the certification of a previously certified Health IT Module(s) to:

(1) All applicable new and/or revised certification criteria adopted by the Secretary at subpart C of this part based on test results issued by a NVLAP-accredited testing laboratory under the ONC Health IT Certification Program or an ONC–ATL; and

(2) All other applicable certification criteria adopted by the Secretary at subpart C of this part based on the test results used to previously certify the Health IT Module(s) under the ONC Health IT Certification Program.

* * * * *

■ 5. Revise § 170.511 to read as follows:

§ 170.511 Authorization scope for ONC–ATL status.

Applicants may seek authorization from the National Coordinator to perform the testing of Health IT Modules to a portion of a certification criterion, one certification criterion, or many or all certification criteria adopted by the Secretary under subpart C of this part.

■ 6. Amend § 170.523 by revising paragraphs (f) introductory text and (j)(3) to read as follows:

§ 170.523 Principles of proper conduct for ONC–ACBs.

* * * * *

(f) *Certified product listing.* Provide the Assistant Secretary for Technology Policy/Office of the National Coordinator for Health Information Technology (ASTP/ONC), no less frequently than weekly, a current list of Health IT Modules that have been certified that includes, at a minimum:

* * * * *

(j) * * *

(3) Previous certifications that it performed if its conduct necessitates the recertification of Health IT Module(s).

* * * * *

■ 7. Amend § 170.550 by revising paragraph (h)(3)(ii) and adding paragraph (h)(4) to read as follows:

§ 170.550 Health IT Module certification.

* * * * *

(h) * * *

(3) * * *

(ii) Section 170.315(a)(4), (10), and (13) and, on and after January 1, 2028, (b)(11), are also certified to the certification criteria specified in § 170.315(d)(1) through (3), (5) through (7), and (12), and, for the time period up to and including December 31, 2027, (d)(13).

* * * * *

(4) *Methods to demonstrate compliance with each privacy and security criterion.* One of the following methods must be used to meet each applicable privacy and security criterion listed in paragraph (h)(3) of this section:

(i) Directly, by demonstrating a technical capability to satisfy the applicable certification criterion or certification criteria; or

(ii) Demonstrate, through system documentation sufficiently detailed to enable integration, that the Health IT Module has implemented service interfaces for each applicable privacy and security certification criterion that enable the Health IT Module to access external services necessary to meet the privacy and security certification criterion.

* * * * *

PART 171—INFORMATION BLOCKING

■ 8. The authority citation for part 171 continues to read as follows:

Authority: 42 U.S.C. 300jj–52; 5 U.S.C. 552.

■ 9. Amend § 171.101 by adding paragraph (c) to read as follows:

§ 171.101 Applicability.

* * * * *

(c) If any provision of this part is held to be invalid or unenforceable facially, or as applied to any person, plaintiff, or circumstance, it shall be construed to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which case the provision shall be severable from this part and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

■ 10. Add § 171.401 to read as follows:

§ 171.401 Definitions.

Common Agreement has the meaning given to it in 45 CFR 172.102.

Framework Agreement has the meaning given to it in 45 CFR 172.102.

Participant has the meaning given to it in 45 CFR 172.102.

Qualified Health Information Network or *QHIN* has the meaning given to it in 45 CFR 172.102.

Subparticipant has the meaning given to it in 45 CFR 172.102.

■ 11. Add part 172 to read as follows:

PART 172—TRUSTED EXCHANGE FRAMEWORK AND COMMON AGREEMENT

Subpart A—General Provisions

Sec.

Subpart B—Qualifications for Designation

Subpart C—QHIN Onboarding and Designation Processes

Subpart D—Suspension

Subpart E—Termination

Subpart F—Review of RCE or ASTP/ONC Decisions

Subpart G—QHIN Attestation for the Adoption of the Trusted Exchange Framework and Common Agreement

Authority: 42 U.S.C. 300jj–11; 5 U.S.C. 552.

Subpart A—General Provisions

§ 172.100 Basis, purpose, and scope.

(a) *Basis and authority.* The provisions of this part implement section 3001(c)(9) of the Public Health Service Act.

(b) *Purpose.* The purpose of this part is to:

(1) Ensure full network-to-network exchange of health information; and

(2) Establish a voluntary process for a Qualified Health Information Network™ (QHIN™) to attest to adoption of the Trusted Exchange Framework and Common Agreement™ (TEFCA™).

(c) *Scope.* This part addresses:

(1) Minimum qualifications needed for a health information network to be Designated as a QHIN capable of trusted exchange under TEFCA.

(2) Procedures governing QHIN Onboarding and Designation, suspension, termination, and further administrative review.

(3) Attestation submission requirements for a QHIN to attest to its adoption of TEFCA.

(4) ASTP/ONC attestation acceptance and removal processes for publication of attesting QHINs in the QHIN Attestation Directory.

§ 172.101 Applicability.

(a) This part applies to Applicant QHINS, QHINs, terminated QHINs, and the Recognized Coordinating Entity.

(b) If any provision of this part is held to be invalid or unenforceable facially, or as applied to any person, plaintiff, or circumstance, it shall be construed to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which case the provision shall be severable from this part and shall not affect the remainder thereof or the application of the provision to other persons not similarly

situated or to other dissimilar circumstances.

§ 172.102 Definitions.

For purposes of this part, the following definitions apply:

Applicable Law. All Federal, State, local, or Tribal laws and regulations then in effect and applicable to the subject matter in this part. For the avoidance of doubt, Federal agencies are subject only to Federal law.

Applicant QHIN. Any organization with a pending QHIN application before the Assistant Secretary for Technology Policy/Office of the National Coordinator for Health Information Technology (ASTP/ONC).

Business Associate Agreement (BAA). A contract, agreement, or other arrangement that satisfies the implementation specifications described within 45 CFR parts 160 and subparts A, C, and E of 45 CFR part 164, as applicable.

Business day or *business days.* Monday through Friday, except the legal public holidays specified in 5 U.S.C. 6103 and any day declared to be a holiday by Federal statute or Executive order.

Common Agreement. The most recent version of the agreement referenced in section 3001(c)(9) of the Public Service Health Act as published in the **Federal Register**.

Confidential Information. Any information that is designated as Confidential Information by the person or entity that discloses it, or that a reasonable person would understand to be of a confidential nature and is disclosed to another person or entity pursuant to TEFCA Exchange. For the avoidance of doubt, ''Confidential Information'' does not include electronic protected health information (ePHI). Notwithstanding any label to the contrary, ''Confidential Information'' does not include any information that:

(1) Is or becomes known publicly through no fault of the recipient; or

(2) Is learned by the recipient from a third party that the recipient reasonably believes is entitled to disclose it without restriction; or

(3) Is already known to the recipient before receipt from the discloser, as shown by the recipient's written records; or

(4) Is independently developed by recipient without the use of or reference to the discloser's Confidential Information, as shown by the recipient's written records, and was not subject to confidentiality restrictions prior to receipt of such information from the discloser; or

(5) Must be disclosed under operation of law, provided that, to the extent permitted by Applicable Law, the recipient gives the discloser reasonable notice to allow the discloser to object to such redisclosure, and such redisclosure is made to the minimum extent necessary to comply with Applicable Law.

Connectivity Services. The technical services provided by a QHIN, Participant, or Subparticipant to its Participants and Subparticipants that facilitate TEFCA Exchange and are consistent with the technical requirements of the TEFCA framework.

Covered Entity. Has the meaning assigned to such term at 45 CFR 160.103.

Designated Network. The health information network that a QHIN uses to offer and provide Designated Network Services.

Designated Network Services. The Connectivity Services and/or Governance Services.

Designation (including its correlative meanings ''Designate,'' ''Designated,'' and ''Designating''). The written determination that an Applicant QHIN has satisfied all requirements and is now a QHIN.

Disclosure (including its correlative meanings ''Disclose,'' ''Disclosed,'' and ''Disclosing''). The release, transfer, provision of access to, or divulging in any manner of TEFCA Information (TI) outside the entity holding the information.

Electronic Protected Health Information (ePHI). Has the meaning assigned to such term at 45 CFR 160.103.

Exchange Purpose(s) or *XP(s).* The reason, as authorized by a Framework Agreement, including the applicable standard operating procedure(s) (SOP(s)), for a transmission, Query, Use, Disclosure, or Response transacted through TEFCA Exchange.

Exchange Purpose Code or *XP Code.* A code that identifies the Exchange Purpose being used for TEFCA Exchange.

Foreign Control. A non-U.S. Person(s) or non-U.S. Entity(ies) having the direct or indirect power, whether or not exercised, to direct or decide matters materially affecting the Applicant's ability to function as a QHIN in a manner that presents a national security risk.

Framework Agreement(s). With respect to QHINs, the Common Agreement; and with respect to a Participant or Subparticipant, the Participant/Subparticipant Terms of Participation (ToP).

Governance Services. The governance functions described in applicable SOP(s), which are performed by a QHIN's Designated Network Governance Body for its Participants and Subparticipants to facilitate TEFCA Exchange in compliance with the then-applicable requirements of the Framework Agreements.

Health information network or *HIN.* The meaning assigned to it in 45 CFR 171.102.

Individual has the meaning assigned to such term at 45 CFR 171.202(a)(2).

HIPAA. The Health Insurance Portability and Accountability Act of 1996.

HIPAA Privacy Rule. The regulations set forth in 45 CFR part 160 and subparts A and E of 45 CFR part 164.

HIPAA Rules. The regulations set forth at 45 CFR parts 160, 162, and 164.

HIPAA Security Rule. The regulations set forth in 45 CFR part 160 and subparts A and C of 45 CFR part 164.

Individual. Has the meaning assigned to such term at 45 CFR 171.202(a)(2).

Individual Access Services (IAS). The services provided to an Individual by a QHIN, Participant, or Subparticipant that has a direct contractual relationship with such Individual in which the QHIN, Participant or Subparticipant, as applicable, agrees to satisfy that Individual's ability to access, inspect, or obtain a copy of that Individual's Required Information using TEFCA Exchange.

Individually Identifiable Information. Refers to information that identifies an Individual or with respect to which there is a reasonable basis to believe that the information could be used to identify an Individual.

Node. A technical system that is controlled directly or indirectly by a QHIN, Participant, or Subparticipant and that is listed in the RCE Directory Service.

Non-U.S. Entity. Any entity that is not a U.S. Entity.

Non-U.S. Person. Any Individual who is not a U.S. Qualified Person.

Onboarding. The process a prospective QHIN must undergo to become a QHIN and become operational in the production environment.

Organized Health Care Arrangement. Has the meaning assigned to such term at 45 CFR 160.103.

Participant. A U.S. Entity that has entered into the Participant/Subparticipant Terms of Participation in a legally binding contract with a QHIN to use the QHIN's Designated Network Services to participate in TEFCA Exchange in compliance with the Participant/Subparticipant Terms of Participation.

Participant/Subparticipant Terms of Participation (ToP). The requirements to which QHINs must contractually obligate their Participants to agree; to which QHINs must contractually obligate their Participants to contractually obligate their Subparticipants and Subparticipants of the Subparticipants to agree, in order to participate in TEFCA Exchange including the QHIN Technical Framework (QTF), all applicable SOPs, and all other attachments, exhibits, and artifacts incorporated therein by reference.

Qualified Health Information Network® or QHIN™. A Health Information Network that has been so Designated.

Query(s) (including its correlative uses/tenses ''Queried'' and ''Querying''). The act of asking for information through TEFCA Exchange.

Recognized Coordinating Entity® (RCE®). The entity selected by ASTP/ONC that enters into the Common Agreement with QHINs in order to impose, at a minimum, the requirements of the Common Agreement, including the SOPs and the QTF, on the QHINs and administer such requirements on an ongoing basis. The RCE is a Party to the Common Agreement.

Required Information. The Electronic Health Information, as defined in 45 CFR 171.102, that is:

(1) Maintained in a Responding Node by any QHIN, Participant, or Subparticipant prior to or during the term of the applicable Framework Agreement; and

(2) Relevant for a required XP Code.

Responding Node. A Node through which the QHIN, Participant, or Subparticipant Responds to a received transaction for TEFCA Exchange.

Response(s) (including its correlative uses/tenses ''Responds,'' ''Responded'' and ''Responding''). The act of providing the information that is the subject of a Query or otherwise transmitting a message in response to a Query through TEFCA Exchange.

Subparticipant: a U.S. Entity that has entered into the Participant/Subparticipant Terms of Participation in a legally binding contract with a Participant or another Subparticipant to use the Participant's or Subparticipant's Connectivity Services to participate in TEFCA Exchange in compliance with the Participant/Subparticipant Terms of Participation.

TEFCA Dispute Resolution Process. An informal, non-binding process under TEFCA through which QHINs can meet, confer, and seek to amicably resolve disputes.

TEFCA Exchange. The transaction of information between Nodes using an XP Code.

TEFCA Information or *TI.* Any information that is transacted through TEFCA Exchange except to the extent that such information is received by a QHIN, Participant, or Subparticipant that is a Covered Entity, Business Associate, or non-HIPAA entity that is exempt from compliance with the Privacy section of the applicable Framework Agreement and is incorporated into such recipient's system of record, at which point the information is no longer TEFCA Information with respect to such recipient and is governed by the HIPAA Rules and other Applicable Law.

TEFCA Security Incident. (1) An unauthorized acquisition, access, Disclosure, or Use of unencrypted TEFCA Information using TEFCA Exchange, except any of the following:

(i) Any unintentional acquisition, access, Use, or Disclosure of TEFCA Information by a Workforce Member or person acting under the authority of a QHIN, Participant, or Subparticipant, if such acquisition, access, Use, or Disclosure:

(A) Was made in good faith;

(B) Was made by a person acting within their scope of authority;

(C) Was made to another Workforce Member or person acting under the authority of any QHIN, Participant, or Subparticipant; and

(D) Does not result in further acquisition, access, Use, or Disclosure in a manner not permitted under Applicable Law and the Framework Agreements.

(ii) A Disclosure of TI where a QHIN, Participant, or Subparticipant has a good faith belief that an unauthorized person to whom the Disclosure was made would not reasonably have been able to retain such information.

(iii) A Disclosure of TI that has been de-identified in accordance with the standard at 45 CFR 164.514.

(2) Other security events that adversely affect a QHIN's, Participant's, or Subparticipant's participation in TEFCA Exchange.

Threat Condition. (1) A breach of a material provision of a Framework Agreement that has not been cured within fifteen (15) calendar days of receiving notice of the material breach (or such other period of time to which the Parties have agreed), which notice shall include such specific information about the breach that the RCE has available at the time of the notice; or

(2) A TEFCA Security Incident; or

(3) An event that the RCE, a QHIN, its Participant, or their Subparticipant has reason to believe will disrupt normal TEFCA Exchange, either due to actual compromise of, or the need to mitigate demonstrated vulnerabilities in systems or data, of the QHIN, Participant, or Subparticipant, as applicable, or could be replicated in the systems, networks, applications, or data of another QHIN, Participant, or Subparticipant; or

(4) Any event that could pose a risk to the interests of national security as directed by an agency of the United States government.

Trusted Exchange Framework. The most recent version of the framework referenced in section 3001(c)(9) of the Public Service Health Act published in the **Federal Register**.

U.S. Entity/Entities. Any corporation, limited liability company, partnership, or other legal entity that meets all of the following requirements:

(1) The entity is organized under the laws of a state or commonwealth of the United States or the Federal law of the United States and is subject to the jurisdiction of the United States and the state or commonwealth under which it was formed;

(2) The entity's principal place of business, as determined under Federal common law, is in the United States; and

(3) None of the entity's directors, officers, or executives, and none of the owners with a five percent (5%) or greater interest in the entity, are listed on the *Specially Designated Nationals and Blocked Persons List* published by the United States Department of the Treasury's Office of Foreign Asset Control or on the United States Department of Health and Human Services, Office of Inspector General's List of Excluded Individuals/Entities.

U.S. Qualified Person. Those individuals who are U.S. nationals and citizens at birth as defined in 8 U.S.C. 1401, U.S. nationals but not citizens of the United States at birth as defined in 8 U.S.C. 1408, lawful permanent residents of the United States as defined in Immigration and Nationality Act, and non-immigrant aliens who are hired by a U.S. Entity as an employee in a specialty occupation pursuant to an H–1B Visa.

Use(s) (including correlative uses/tenses, such as ''Uses,'' ''Used,'' and ''Using''). With respect to TI, means the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

§ 172.103 Responsibilities ASTP/ONC may delegate to the RCE.

(a) ASTP/ONC may delegate to the RCE the TEFCA implementation

responsibilities specified in the following sections:

(1) Any section(s) of subpart C of this part;

(2) Any section(s) of subpart D of this part;

(3) Section 172.501; and

(4) Section 172.503.

(b) Notwithstanding any delegation, any authority exercised by the RCE under this section is subject to review under subpart F of this part and to any requirement in this part that the RCE receive ASTP/ONC's prior authorization before taking a specific action.

Subpart B—Qualifications for Designation

§ 172.200 Applicability.

This subpart establishes Designation qualifications.

(a) *Applicant QHIN.* An Applicant QHIN must meet all requirements in § 172.201 to be Designated. An Applicant QHIN that proposes to offer Individual Access Services must also meet all requirements in § 172.202 to be Designated.

(b) *QHIN.* A QHIN must continue to meet all requirements in § 172.201 to maintain its Designation. A QHIN that offers Individual Access Services must also continue to meet all requirements in § 172.202 to maintain its Designation.

(c) *Performance of TEFCA Exchange.* The Designation qualifications in §§ 172.201 and 172.202 describe certain requirements for Designation.

§ 172.201 QHIN Designation requirements.

(a) *Ownership requirements.* An entity must:

(1) Be a U.S. Entity;

(2) Not be under Foreign Control.

(b) *Exchange requirements.* An entity must, beginning at the time of application, either directly or through the experience of its parent entity:

(1) Be capable of exchanging information among more than two unaffiliated organizations;

(2) Be capable of exchanging all Required Information;

(3) Be exchanging information for at least one Exchange Purpose authorized under TEFCA;

(4) Be capable of receiving and responding to transactions from other QHINs for all Exchange Purposes authorized under TEFCA; and

(5) Be capable of initiating transactions for the Exchange Purposes authorized under TEFCA that such entity will permit its Participants and Subparticipants to use through TEFCA Exchange.

(c) *Designated Network Services requirements.* An entity must:

(1) Maintain the organizational infrastructure and legal authority to operate and govern its Designated Network;

(2) Maintain adequate written policies and procedures to support meaningful TEFCA Exchange and fulfill all responsibilities of a QHIN in this part;

(3) Maintain a Designated Network that can support a transaction volume that keeps pace with the demands of network users;

(4) Maintain the capacity to support secure technical connectivity and data exchange with other QHINs;

(5) Maintain an enforceable dispute resolution policy governing Participants in the Designated Network that permits Participants to reasonably, timely, and fairly adjudicate disputes that arise between each other, the QHIN, or other QHINs;

(6) Maintain an enforceable change management policy consistent with the responsibilities of a QHIN;

(7) Maintain a representative and participatory group or groups with the authority to approve processes for governing the Designated Network;

(8) Maintain privacy and security policies that permit the entity to support TEFCA Exchange;

(9) Maintain data breach response and management policies that support meaningful TEFCA Exchange; and

(10) Maintain adequate financial and personnel resources to support all its responsibilities as a QHIN, including sufficient financial reserves or insurance-based cybersecurity coverage, or a combination of both.

§ 172.202 QHINs that offer Individual Access Services.

The following requirements apply to QHINs that offer Individual Access Services:

(a) A QHIN must obtain express consent from any individual before providing Individual Access Services.

(b) A QHIN must make publicly available a privacy and security notice that meets minimum TEFCA standards.

(c) A QHIN, that is the IAS provider for an Individual, must delete the individual's Individually Identifiable Information maintained by the QHIN upon request by the individual except as prohibited by Applicable Law or where such information is contained in audit logs.

(d) A QHIN must permit any Individual to export in a computable format all of the Individual's Individually Identifiable Information maintained by the QHIN as an Individual Access Services provider.

(e) All Individually Identifiable Information the QHIN maintains must satisfy the following criteria:

(1) All Individually Identifiable Information must be encrypted.

(2) Without unreasonable delay and in no case later than sixty (60) calendar days following discovery of the unauthorized acquisition, access, Disclosure, or Use of Individually Identifiable Information, the QHIN must notify in plain language each Individual whose Individually Identifiable Information has been or is reasonably believed to have been affected by unauthorized acquisition, access, Disclosure, or Use involving the QHIN.

(3) A QHIN must have an agreement with a qualified, independent third-party credential service provider and must verify, through the credential service provider, the identities of Individuals seeking Individual Access Services prior to the Individuals' first use of such services and upon expiration of their credentials.

Subpart C—QHIN Onboarding and Designation Processes

§ 172.300 Applicability.

This subpart establishes, as to QHINs, the application, review, Onboarding, withdrawal, and redetermination processes for Designation.

§ 172.301 Submission of QHIN application.

An entity seeking to be Designated as a QHIN must submit all of the following information in a manner specified by ASTP/ONC:

(a) Completed QHIN application, with supporting documentation, in a form specified by ASTP/ONC; and

(b) A signed copy of the Common Agreement.

§ 172.302 Review of QHIN application.

(a) ASTP/ONC (or an RCE) will review a QHIN application to determine if the Applicant QHIN has completed all parts of the application and provided the necessary supporting documentation. If the QHIN application is not complete, the applicant will be notified in writing of the missing information within thirty (30) calendar days of receipt of the application. This timeframe may be extended by providing written notice to the Applicant QHIN.

(b) Once the QHIN application is complete, ASTP/ONC (or an RCE) will review the application to determine whether the Applicant QHIN satisfies the requirements for Designation set forth in § 172.201 and, if the Applicant QHIN proposes to provide IAS, the requirements set forth in § 172.202. ASTP/ONC (or an RCE) will complete its review within sixty (60) calendar days of the Applicant QHIN being

provided with written notice that its application is complete. This timeframe may be extended by providing written notice to the Applicant QHIN.

(c) Additional information may be requested from the Applicant QHIN while ASTP/ONC (or an RCE) is reviewing the application. The timeframe for responding to the request and the manner to submit additional information will be provided to the applicant and may be extended on written notice to the Applicant QHIN.

(d) Failure to respond to a request within the proposed timeframe or in the manner specified is a basis for a QHIN Application to be deemed withdrawn, as set forth in § 172.305(c). In such situations, the Applicant QHIN will be provided with written notice that the application has been deemed withdrawn.

(e) If, following submission of the application, any information submitted by the Applicant QHIN becomes untrue or materially changes, the Applicant QHIN must notify ASTP/ONC (or an RCE) in the manner specified by ASTP/ONC (or an RCE) of such changes in writing within five (5) business days of the submitted material becoming untrue or materially changing.

§ 172.303 QHIN approval and Onboarding.

(a) An Applicant QHIN has the burden of demonstrating its compliance with all qualifications for Designation in § 172.201 and, if the Applicant QHIN proposes to provide IAS, the qualifications in § 172.202.

(b) If ASTP/ONC (or, with ASTP/ONC's prior authorization, an RCE) determines that an Applicant QHIN meets the requirements for Designation set forth in § 172.201, and if the Applicant QHIN proposes to provide IAS, the qualifications set forth in § 172.202, then ASTP/ONC (or, with ASTP/ONC's prior authorization, an RCE) will notify the applicant in writing that its application has been approved, and the Applicant QHIN may proceed with Onboarding.

(c) An approved Applicant QHIN must submit a signed version of the Common Agreement within a timeframe set by ASTP/ONC (or an RCE).

(d) An approved Applicant QHIN must complete the Onboarding process, including any tests required to ensure the Applicant QHIN's network can connect to those of other QHINs and other Applicant QHINs, within twelve (12) months of approval of its QHIN application, unless that timeframe is extended in ASTP/ONC's (or an RCE's) sole discretion by up to twelve (12) months.

§ 172.304 QHIN Designation.

(a) If all requirements of the Onboarding process specified in § 172.303 have been satisfied:

(1) The Common Agreement will be countersigned; and

(2) The Applicant QHIN will be provided with a written determination indicating that the applicant has been Designated as a QHIN, along with a copy of the countersigned Common Agreement.

(b) Within thirty (30) calendar days of receiving its Designation, each QHIN must demonstrate in a manner specified by ASTP/ONC (or, with ASTP/ONC's prior authorization, an RCE) that it has completed a successful transaction with all other in-production QHINs according to standards and procedures for TEFCA Exchange.

(c) If a QHIN is unable to complete the requirement in paragraph (b) of this section within the thirty (30)-day period provided, the QHIN must provide ASTP/ONC (or an RCE) with a written explanation of why the QHIN has been unable to complete a successful transaction with all other in-production QHINs within the allotted time and include a detailed plan and timeline for completion of a successful transaction with all other in-production QHINs. ASTP/ONC (or, with ASTP/ONC's prior authorization, an RCE) will review and either approve or reject the QHIN's plan based on the reasonableness of the explanation and the specific facts and circumstances, within five (5) business days of receipt. If the QHIN fails to provide its plan or the plan is rejected, ASTP/ONC (or, with ASTP/ONC's prior authorization, an RCE) will rescind its approval of the application, rescind the QHIN Designation, and deny the application. Within thirty (30) calendar days of end of the term of the plan, each QHIN must demonstrate in a manner specified by ASTP/ONC (or, with ASTP/ONC's prior authorization, an RCE) that it has completed a successful transaction with all other in-production QHINs according to standards and procedures for TEFCA Exchange.

(d) A QHIN Designation will become final sixty (60) days after a Designated QHIN has submitted its documentation that it has completed a successful transaction with all other in-production QHINs.

§ 172.305 Withdrawal of QHIN application.

(a) An Applicant QHIN may voluntarily withdraw its QHIN application by providing written notice in a manner specified by ASTP/ONC (or an RCE).

(b) An Applicant QHIN may withdraw its QHIN application at any point prior to Designation.

(c) Upon written notice to the Applicant QHIN, a QHIN application may be deemed withdrawn by ASTP/ONC (or, with ASTP/ONC's prior authorization, an RCE) as a result of the Applicant QHIN's failure to respond to requests for information from ASTP/ONC (or an RCE).

§ 172.306 Denial of QHIN application.

If an Applicant QHIN's application is denied, the Applicant QHIN will be provided with written notice that includes the basis for the denial.

§ 172.307 Re-application.

(a) Subject to paragraphs (b) through (d) of this section, applications may be resubmitted by Applicant QHINs by complying with the provisions of § 172.301 in the event that an application is denied or withdrawn.

(b) The Applicant QHIN may reapply at any time after it has voluntarily withdrawn its application as specified in § 172.305(a).

(c) If ASTP/ONC (or an RCE) deems a QHIN application to be withdrawn as a result of the Applicant QHIN's failure to respond to requests for information, then the Applicant QHIN may reapply by submitting a new QHIN application no sooner than six (6) months after the date on which its previous application was submitted. The Applicant QHIN must respond to the prior request for information and must include an explanation as to why no response was previously provided within the required timeframe.

(d) If ASTP/ONC (or an RCE) denies a QHIN application, the Applicant QHIN may reapply by submitting a new application consistent with the requirements in § 172.301 no sooner than six (6) months after the date shown on the written notice of denial. The application must specifically address the deficiencies that constituted the basis for denying the Applicant QHIN's previous application.

Subpart D—Suspension

§ 172.400 Applicability.

This subpart describes suspension responsibilities, notice requirements for suspension, and the effect of suspension.

§ 172.401 QHIN suspensions.

(a) ASTP/ONC (or, with ASTP/ONC's prior authorization, an RCE) may suspend a QHIN after determining that the QHIN is responsible for a Threat Condition.

(b) ASTP/ONC (or, with ASTP/ONC's prior authorization, an RCE) may direct the QHIN to suspend that Participant's or Subparticipant's authority to engage in TEFCA Exchange on determining that one of a QHIN's Participants or Subparticipants has done something or failed to do something that resulted in a Threat Condition.

(c) ASTP/ONC (or an RCE) will make a reasonable effort to notify a QHIN in writing in advance of an intent to suspend the QHIN or to provide direction to the QHIN to suspend one of the QHIN's Participants or Subparticipants, and to give the QHIN an opportunity to respond. Such notice will identify the Threat Condition giving rise to such suspension.

(d) ASTP/ONC (or, with ASTP/ONC's prior authorization, an RCE) shall lift a suspension of the QHIN, or provide direction to the QHIN to lift the suspension of one of the QHIN's Participants or Subparticipants, once the Threat Condition is resolved.

§ 172.402 Selective suspension of exchange between QHINs.

(a) A QHIN may, in good faith and to the extent permitted by Applicable Law, suspend TEFCA Exchange with another QHIN because of reasonable concerns related to the privacy and security of information that is exchanged.

(b) If a QHIN decides to suspend TEFCA Exchange with another QHIN, it is required to promptly notify, in writing, ASTP/ONC (or an RCE) and the QHIN with which it is suspending exchange of its decision and the reason(s) for making the decision.

(c) If a QHIN suspends TEFCA Exchange with another QHIN under paragraph (a) of this section, it must, within thirty (30) calendar days, initiate the TEFCA Dispute Resolution Process in order to resolve the issues that led to the decision to suspend, or the QHIN may end its suspension and resume TEFCA Exchange with the other QHIN within thirty (30) calendar days of suspending TEFCA Exchange with the QHIN.

(d) Provided that a QHIN suspends TEFCA Exchange with another QHIN in accordance with this section and in accordance with Applicable Law, such suspension will not be deemed a violation of the Common Agreement.

Subpart E—Termination

§ 172.500 Applicability.

This subpart establishes QHIN termination responsibilities, notice requirements for termination, and the effect of termination.

§ 172.501 QHIN self-termination.

A QHIN may terminate its own Designation at any time without cause by providing ninety (90) calendar days prior written notice.

§ 172.502 QHIN termination.

A QHIN's Designation will be terminated with immediate effect by ASTP/ONC (or, with ASTP/ONC's prior authorization, an RCE) giving written notice of termination to the QHIN if the QHIN:

(a) Fails to comply with any of the regulations of this part and fails to remedy such material breach within thirty (30) calendar days after receiving written notice of such failure; provided, however, that if a QHIN is diligently working to remedy its material breach at the end of this thirty- (30-) day period, then ASTP/ONC (or an RCE) must provide the QHIN with up to another thirty (30) calendar days to remedy its material breach; or

(b) A QHIN breaches a material provision of the Common Agreement where such breach is not capable of remedy.

§ 172.503 Termination by mutual agreement.

A QHIN's Designation may be terminated at any time and for any reason by mutual, written agreement between the QHIN and ASTP/ONC (or an RCE).

Subpart F—Review of RCE or ASTP/ONC Decisions

§ 172.600 Applicability.

This subpart establishes processes for review of RCE or ASTP/ONC actions, including QHIN appeal rights and the process for filing an appeal.

§ 172.601 ASTP/ONC review.

(a) ASTP/ONC may, in its sole discretion, review all or any part of any RCE determination, policy, or action. If ASTP/ONC reviews an RCE determination that required ASTP/ONC's prior authorization under this part, no ASTP/ONC officer, employee, or agent who was engaged with helping to evaluate or decide the prior authorization, or a prior authorization involving the same party(s) or underlying facts, may participate in deciding or advising ASTP/ONC on its review of that determination.

(b) ASTP/ONC may, in its sole discretion and on notice to affected QHINs or Applicant QHINs, stay any RCE determination, policy, or other action pending ASTP/ONC review. If ASTP/ONC stays an RCE determination that required ASTP/ONC's prior authorization under this part, no ASTP/ONC officer, employee, or agent who was engaged with helping to evaluate or decide the prior authorization, or a prior authorization involving the same party(s) or underlying facts, may participate in deciding or advising ASTP/ONC on whether it should stay that determination.

(c) ASTP/ONC may, in its sole discretion and on written notice, request that a QHIN, Applicant QHIN, or the RCE provide ASTP/ONC additional information regarding any RCE determination, policy, or other action.

(d) On completion of its review, ASTP/ONC may affirm, modify, or reverse the determination, policy, or other action under review. ASTP/ONC will provide notice to affected QHINs or Applicant QHINs that includes the basis for ASTP/ONC's decision.

(e) ASTP/ONC will provide written notice under this section to affected QHINs or Applicant QHINs in the same manner as the original RCE determination, policy, or other action under review.

(f) ASTP/ONC will issue a decision under this section within a timeframe agreed to by the affected Applicant QHIN or QHIN, as applicable, the RCE, and ASTP/ONC. ASTP/ONC may, at its sole discretion, extend the timeframe for a decision as circumstances necessitate.

§ 172.602 Basis for appeal by QHIN or Applicant QHIN.

(a) An Applicant QHIN or QHIN may appeal the following decisions to ASTP/ONC or a hearing officer, as appropriate:

(1) *Applicant QHIN.* An Applicant QHIN may appeal a denial of its QHIN application.

(2) *QHIN.* A QHIN may appeal:

(i) A decision to suspend the QHIN or to instruct the QHIN to suspend its Participant or Subparticipant.

(ii) A decision to terminate the QHIN's Common Agreement.

(b) [Reserved]

§ 172.603 Method and timing for filing an appeal.

(a) To initiate an appeal, an authorized representative of the Applicant QHIN or QHIN must submit electronically, in writing to ASTP/ONC, a notice of appeal that includes the date of the notice of appeal, the date of the decision being appealed, the Applicant QHIN or QHIN that is appealing, and the decision being appealed within fifteen (15) calendar days of the Applicant QHIN's or QHIN's receipt of the notice of:

(1) Denial of a QHIN application;

(2) Suspension or instruction to suspend its Participant or Subparticipant; or

(3) Termination. With regard to an appeal of a termination, the 15-calendar day timeframe may be extended by ASTP/ONC up to another fifteen (15) calendar days if the QHIN has been granted an extension for completing its remedy under § 172.502(a).

(b) An authorized representative of an Applicant QHIN or QHIN must submit electronically to ASTP/ONC, within thirty (30) calendar days of filing the intent to appeal, the following:

(1) A statement of the basis for appeal, including a description of the facts supporting the appeal with citations to documentation submitted by the QHIN or Applicant QHIN; and

(2) Any documentation the QHIN would like considered during the appeal.

(c) The Applicant QHIN or QHIN filing the appeal may not submit on appeal any evidence that it did not submit prior to the appeal except evidence permitted by the hearing officer under § 172.606.

§ 172.604 Effect of appeal on suspension and termination.

An appeal does not stay the suspension or termination, unless otherwise ordered by ASTP/ONC or the hearing officer assigned under § 172.605(b).

§ 172.605 Assignment of a hearing officer.

(a) On receipt of an appeal under § 172.603, ASTP/ONC may exercise its authority under § 172.601 to review an RCE determination being appealed. If ASTP/ONC exercises its authority under § 172.601 to review an RCE determination that required ONC's prior authorization under this part, no ASTP/ONC officer, employee, or agent who was engaged with helping to evaluate or decide the prior authorization, or a prior authorization involving the same party(s) or underlying facts, may participate in deciding or advising ASTP/ONC on its review of that determination. An appealing QHIN or Applicant QHIN that is not satisfied with ASTP/ONC's subsequent determination may appeal that determination to a hearing officer by filing a new notice of appeal and other appeal documents that comply with § 172.603.

(b) If ASTP/ONC declines review under paragraph (a) of this section, or if ASTP/ONC made the determination under review, ASTP/ONC will arrange for assignment of the case to a hearing officer to adjudicate the appeal.

(c) The hearing officer must be an officer appointed by the Secretary of Health and Human Services.

(d) The hearing officer may not be responsible to, or subject to the supervision or direction of, personnel engaged in the performance of investigative or prosecutorial functions for ASTP/ONC, nor may any officer, employee, or agent of ASTP/ONC engaged in investigative or prosecutorial functions in connection with any adjudication, in that adjudication or one that is factually related, participate or advise in the decision of the hearing officer, except as a counsel to ASTP/ONC or as a witness.

§ 172.606 Adjudication.

(a) The hearing officer will decide issues of law and fact *de novo* and will apply a preponderance of the evidence standard when deciding appeals.

(b) In making a determination, the hearing officer may consider:

(1) The written record, which includes:

(i) The RCE's or ASTP/ONC's determination and supporting information; and

(ii) Appeal materials submitted by the Applicant QHIN or QHIN under § 172.603.

(2) Any information from a hearing conducted in-person, via telephone, or otherwise. The hearing officer has sole discretion to conduct a hearing:

(i) To require either party to clarify the written record under paragraph (b)(1) of this section; or

(ii) If the hearing officer otherwise determines a hearing is necessary.

(c) The hearing officer will neither receive witness testimony nor accept any new information beyond what was provided in accordance with paragraph (b) of this section, except for good cause shown by the party seeking to submit new information.

§ 172.607 Determination by the hearing officer.

(a) The hearing officer will issue a written determination within a timeframe agreed to by the affected Applicant QHIN or QHIN, as applicable, and ASTP/ONC and approved by the hearing officer. The hearing officer may, at their sole discretion, extend the timeframe for a written determination as circumstances necessitate.

(b) The hearing officer's determination on appeal is the final decision of HHS unless within ten (10) business days, the Secretary, in the Secretary's sole discretion, chooses to review the determination. ASTP/ONC will notify the appealing party if the Secretary chooses to review the determination and will provide notice of the Secretary's final determination.

Subpart G—QHIN Attestation for the Adoption of the Trusted Exchange Framework and Common Agreement

§ 172.700 Applicability.

This subpart applies to QHINs.

§ 172.701 Attestation submission and acceptance.

(a) *Applicability.* This subpart establishes:

(1) The attestation submission requirements for QHINs.

(2) The review and acceptance processes that ASTP/ONC will follow for TEFCA attestations.

(b) *Submission of QHIN attestation.* (1) In order to be listed in the QHIN Attestation Directory described in § 172.702, a QHIN must submit all of the following information to ASTP/ONC:

(i) Attestation affirming its adoption of the Common Agreement and Trusted Exchange Framework.

(ii) General identifying information, including:

(A) Name, address, city, state, zip code, and a hyperlink to its website.

(B) Designation of an authorized representative, including the representative's name, title, phone number, and email address.

(iii) Documentation confirming its Designation as a QHIN.

(2) A QHIN must provide ASTP/ONC with written notice of any changes to its identifying information provided in accordance with this paragraph (b) within thirty (30) business days of the change(s) to its identifying information.

(c) *Submission method.* A QHIN must electronically submit its attestation and documentation either via an email address identified by ASTP/ONC or via a submission on the ASTP/ONC website, if available.

(d) *Review and acceptance.* (1) Within thirty (30) business days, ASTP/ONC will either accept or reject an attestation submission.

(2) ASTP/ONC will accept an attestation if it determines that the QHIN has satisfied the requirements of paragraphs (b) and (c) of this section. ASTP/ONC will provide written notice to the applicable QHIN's authorized representative that the attestation has been accepted.

(3) ASTP/ONC will reject an attestation if it determines that the requirements of paragraph (b) or (c) of this section, or both, have not been satisfied.

(4) ASTP/ONC will provide written notice to the QHIN's authorized representative of the determination along with the basis for the determination.

(5) An ASTP/ONC determination under this section is final agency action

and not subject to further administrative review, except the Secretary may choose to review the determination as provided in § 172.607(b). However, a QHIN may, at any time, resubmit an attestation in accordance with paragraphs (b) and (c) of this section.

§ 172.702 QHIN Attestation Directory.

(a) *Applicability.* This subpart establishes processes for publishing a directory on the ASTP/ONC website of QHINs that voluntarily elect to adopt the Common Agreement and Trusted Exchange Framework and attest to such adoption.

(b) *Publication.* (1) Within fifteen (15) calendar days of notifying a QHIN that its QHIN submission has been accepted, ASTP/ONC will publish, at a minimum, the QHIN's name in the QHIN Attestation Directory on the ASTP/ONC website.

(2) ASTP/ONC will identify within the QHIN Attestation Directory those QHINs that are suspended under the Common Agreement.

(c) *Removal from the QHIN Attestation Directory.* (1) A QHIN whose Common Agreement has been terminated no longer qualifies to be included in the QHIN Attestation Directory as it is no longer considered a QHIN and will be removed from the QHIN Attestation Directory.

(2) Upon termination of a QHIN's Common Agreement, ASTP/ONC (or an RCE) will send a written a statement of intent to remove the QHIN from the QHIN Attestation Directory to the authorized representative of the QHIN.

(3) Any written statement given under paragraph (c)(2) of this section shall consist of the following, as appropriate:

(i) The name of the terminated QHIN and the name and contact information of the authorized representative of the QHIN.

(ii) A short statement setting forth findings of fact with respect to any violation of the Common Agreement or other basis for the QHIN's termination under the Common Agreement and justifying the termination on the basis of those findings of facts.

(iii) Other materials as ASTP/ONC (or the RCE) may deem relevant.

(d) *Duration.* A QHIN that is removed from the QHIN Attestation Directory will remain removed until a new attestation is accepted by ASTP/ONC in accordance with the processes specified in this subpart.

(e) *Final agency action.* An ASTP/ONC determination under this section is final agency action and not subject to further administrative review, except the Secretary may choose to review the determination as provided in § 172.607(b).

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–29163 Filed 12–11–24; 8:45 am]

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Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2024–0051, Sequence No. 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2025–02; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2025–02. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

RULES LISTED IN FAC 2025–02

Item	Subject	FAR case	Analyst
I	Training to Prevent Human Trafficking For Certain Air Carriers	2019–017	Jones.
II	Certification of Service-Disabled Veteran-Owned Small Businesses	2022–009	Moore.
III	Technical Amendments.		

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2025–02 amends the FAR as follows:

Item I—Training To Prevent Human Trafficking For Certain Air Carriers (FAR Case 2019–017)

This final rule amends the FAR to implement section 111 of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 (Pub. L. 115–425), enacted January 8, 2019. Section 111 requires that domestic carriers who contract with the Federal Government to provide air transportation submit an annual report with certain information related to prevention of human trafficking to the Administrator of General Services, the Secretary of Transportation, the Secretary of Labor, the Administrator of the Transportation Security Administration, and the Commissioner of U.S. Customs and Border Protection. Section 111 does not apply to contracts awarded by the Department of Defense.

This rule creates a new contract clause at FAR 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking, to implement the statutory reporting requirement. Contracting officers will include this clause in solicitations and contracts for the transportation by air of passengers. The reporting requirement applies to U.S.-flag air carriers, including small business air carriers. The final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Item II—Certification of Service-Disabled Veteran-Owned Small Businesses (FAR Case 2022–009)

This FAR rule adopts, without change, an interim rule that amended the FAR to implement the Governmentwide certification requirement for service-disabled veteran-owned small business (SDVOSB) concerns seeking sole-source and set-aside awards under the SDVOSB Program. Effective January 1, 2024, an SDVOSB concern must have either been certified by the Small Business Administration (SBA), or have both submitted an application for certification to SBA on or before December 31, 2023, and represented that it is an SDVOSB in the System for Award Management (SAM), in order to be eligible for sole-source or set-aside awards under the SDVOSB Program. This rule required that an SDVOSB concern update its status in SAM no later than two days after the date of a final determination that the concern does not meet the requirements of the status the concern claims to hold. This rule also provided new SDVOSB protest and appeal procedures.

Item III—Technical Amendments

Administrative changes are made at FAR 13.302–5, 25.101, 36.603, 49.601–2, 52.204–2, 52.204–7, 52.204–8, 52.204–19, 52.212–5, 52.225–3, 52.225–4, and 52.225–18.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2025–02 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2025–02 is effective December 16, 2024 except for Items I and III, which are effective January 3, 2025.

John M. Tenaglia,

Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Karla Smith Jackson,

Assistant Administrator for Procurement, Senior Procurement Executive/Deputy CAO, National Aeronautics and Space Administration.

[FR Doc. 2024–29372 Filed 12–13–24; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 12, 22, 47, and 52

[FAC 2025–02; FAR Case 2019–017, Item I; Docket No. FAR–2019–0017; Sequence No. 1]

RIN 9000–AO00

Federal Acquisition Regulation: Training To Prevent Human Trafficking for Certain Air Carriers

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, which requires that domestic carriers who contract with the Federal Government to provide air transportation must submit an annual report with certain information related to prevention of human trafficking.

DATES: Effective January 3, 2025.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Malissa Jones, Procurement Analyst, at 571–882–4687 or by email at *malissa.jones@gsa.gov.* For information pertaining to status or publication schedules contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2025–02, FAR Case 2019–017.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 88 FR 52102 on August 7, 2023, to implement section 111 of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 (Pub. L. 115–425), enacted January 8, 2019. Section 111 amends 49 U.S.C. 40118 to require that domestic carriers who contract with the Federal Government to provide air transportation submit an annual report to the Administrator of General Services, the Secretary of Transportation, the Secretary of Labor, the Administrator of the Transportation Security Administration, and the Commissioner of U.S. Customs and Border Protection. Per 41 U.S.C. 40118(g) (as amended through Pub. L. 118–63), the annual report shall include: the number of personnel trained in the detection and reporting of potential severe forms of human trafficking in persons and sex trafficking; the number of notifications of potential human trafficking victims received from staff or other passengers; and, for each notification, whether the air carrier notified the National Human Trafficking Hotline or law enforcement at the relevant airport of the potential human trafficking victim, and if so, when the notification was made. Section 111 does not apply to contracts awarded by the Department of Defense. For further details please see the proposed rule. Four respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

The following significant changes from the proposed rule are made in the final rule at 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking:

1. Definitions

The definition of ''potential human trafficking'' in paragraph (a) of the clause at FAR 52.247–69 has been removed, and definitions of ''human trafficking,'' ''severe forms of trafficking in persons,'' and ''sex trafficking'' have been added in its place. The definitions of ''severe forms of trafficking in persons'' and ''sex trafficking'' added to FAR 52.247–69 in this final rule are the same as the definitions of these terms as implemented in FAR subpart 22.17, Combating Trafficking in Persons, which come from 22 U.S.C. 7102. ''Human trafficking'' as used in the clause at FAR 52.247–69, is defined to mean ''severe forms of trafficking in persons'' or ''sex trafficking.'' The change in the final rule aligns with 49 U.S.C. 40118(g), which refers to the definitions of ''severe forms of trafficking in persons'' and ''sex trafficking'' in 22 U.S.C. 7102 when describing ''human trafficking.'' Section 108 of the Justice for Victims of Trafficking Act of 2015 (Pub. L. 114–22) has further amended the definition of ''sex trafficking'' at 22 U.S.C. 7102. Amendments to the definitions at 22.1702 and 52.222–50 are not included; those changes are being implemented under FAR Case 2024–004, titled ''Combating Trafficking in Persons—Definition and Agency Responsibilities.'' The proposed rule was published July 18, 2024, at 89 FR 58323.

2. Clarification Regarding ''Staff''

Paragraph (b)(2)(ii) of the clause at FAR 52.247–69 has been revised to use the term ''staff or other passengers'' to align with the statute. The terms ''contractor personnel'' and ''subcontractors'' have been removed from the final rule to avoid unintended confusion.

3. Time Period for Reporting

Paragraph (b)(2) of the clause at FAR 52.247–69 has been revised to include the time period for reporting. The proposed rule included the date by which the annual report must be submitted to the five Government agencies, but did not specify the time period in which the contractors are reporting.

B. Analysis of Public Comments

1. Support for the Rule

Comment: One respondent expressed support for the rule.

Response: The Councils acknowledge the respondent's support for the rule.

2. Definition of ''Potential Human Trafficking''

Comment: One respondent recommended deletion of paragraph (a), Definitions, in the clause at FAR 52.247–69 because the definition of ''potential human trafficking'' in the proposed rule is overly complicated. The respondent noted that the definition merely refers to a statute and otherwise does not reflect plain language. The respondent further asserted that the definition is ''meaningless'' because the word ''potential'' does not appear in the statutory definitions of ''severe forms of trafficking in persons'' and ''sex trafficking'' that together comprised the definition of ''potential human trafficking'' as stated in the proposed rule.

Response: The Councils acknowledge the respondent's concern and have replaced the definition of ''potential human trafficking'' in the final rule at FAR 52.247–69(a) with a definition of ''human trafficking'' that encompasses the definitions of ''severe forms of trafficking in persons'' and ''sex trafficking'' at FAR subpart 22.17. See

discussion of change in section II.A.1. of this preamble.

3. Proposed Regulation Differs From 49 U.S.C. 40118(g)

a. Application of the Rule to Contractors and Subcontractors

Comment: One respondent stated that the ''proposed regulation differs from 49 U.S.C. 40118(g)(2)'', because it uses the terms ''contractor personnel'' and ''subcontractors,'' while the current statute only requires reporting for those notifications ''received from staff or other passengers.''

Response: Changes have been made in paragraph (b)(2)(ii) of the clause at FAR 52.247–69 to use the term ''staff or other passengers'' to align with the statute and remove the terms ''contractor personnel'' and ''subcontractors.''

b. Date and Method of Notification of Potential Human Trafficking Instances

Comment: One respondent suggested that the proposed rule expands the reporting requirements under 49 U.S.C. 40118(g) resulting in additional burden not required by the statute. For example, the respondent stated that the rule improperly expands upon statutory requirements by requiring reporting the date and method of notification of potential human trafficking instances.

Response: The specific reporting requirements in the rule align with the requirements in 49 U.S.C. 40118(g). In particular, 49 U.S.C. 40118(g)(2) requires reporting of ''the number of notifications of potential human trafficking victims received from staff or other passengers.'' Further, 49 U.S.C. 40118(g)(3) requires the annual report include ''whether the air carrier notified the National Human Trafficking Hotline or law enforcement at the relevant airport of the potential human trafficking victim for each such notification of potential human trafficking, and if so, when the notification was made.'' In implementing these reporting requirements, FAR 52.247–69(b)(2)(iii) seeks the number of notifications received by the contractor; the date of any such notification; and the method by which the notification was made. The Government interprets the statutory language ''when the notification was made'' in 49 U.S.C. 41108(g)(3) as requiring the ''date'' the notification was made. The Government interprets the statutory language ''whether the air carrier notified the National Human Trafficking Hotline or law enforcement at the relevant airport'' in 49 U.S.C. 41108(g)(3) as requiring the ''method'' by which the contractor made the notification, *e.g.,* whether the Contractor notified the Global Human Trafficking Hotline, another comparable hotline, or law enforcement at the relevant airport. These are reasonable interpretations of the statute and are not viewed as creating burden beyond what is required by 49 U.S.C. 40118(g).

c. Vicarious Liability

Comment: One respondent recommended that the Government ''adopt what is required by statute (49 U.S.C. 40118(g)(2–3)) without any amendment as imparting vicarious liability on air carriers in a regulatory framework lacks foundational predicate.''

Response: As explained in the responses to the public comments summarized in paragraphs a. and b. of this section, changes have been made at FAR 52.247–69(b)(2)(ii) to align the final rule with the statute by removing the terms ''contractor personnel'' and ''subcontractors'' and using the term ''staff or other passengers'' instead. Therefore, this rule does not amend the statute in a manner that imparts additional vicarious liability.

4. Retroactive Applicability

Comment: One respondent recommended clarifying the applicability of the reporting requirements to existing contracts. Additionally, the respondent requested that the final rule, if adopted, apply only to new contracts.

Response: In accordance with FAR 1.108(d), FAR changes made by this rule apply to solicitations issued on or after the effective date of the rule unless otherwise specified. The effective date of this final rule is November 1, 2024; therefore the first report will be due October 30, 2025 (see FAR 52.247–69(b)).

5. Reporting Requirements

a. Reporting Requirements for Nonscheduled Freight Air Transportation

Comment: One respondent stated that requiring contractors who provide nonscheduled air transportation for wildfire suppression to comply with section 111 of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 would be ''unnecessary and inefficient.'' The respondent asserted that contracts for these aircraft involve freight (retardant or water) or passenger (firefighters) services used to support wildfire suppression. The respondent suggested the rule should include the possibility of waiver for nonscheduled freight air transportation.

Response: 49 U.S.C. 41108 does not include an exception, or allow for waiver, for passengers, regardless of the reason they are travelling (*i.e.,* firefighter passengers) on nonscheduled air transportation for wildfire suppression, and the suggestion to allow for the possibility of waiver is therefore declined.

b. Practicality of Requirement to Report Notifications

Comment: One respondent stated that the requirement to report notifications of potential human trafficking instances is ''not operationally reasonable'' without substantiating or investigating the notification.

Response: This rule requires the air carrier or contractor to report the number of employees trained and the number of notifications they receive from their staff and other passengers. This rule does not create a training requirement nor does the contract clause at FAR 52.247–69 create a mandatory reporting requirement to hotlines and law enforcement; training requirements already existed prior to section 111 (*e.g.,* 49 U.S.C. 44734(a)(4)) and apply to all U.S.-flag air carriers, regardless of whether they are contractors of the Federal Government. The statute and implementing FAR rule do not require contractors to substantiate or investigate notifications of potential human trafficking victims. This rule simply requires data related to the training that has occurred and notifications that have been made.

c. Duplicate Reporting Requirements

Comment: One respondent appeared to interpret that the proposed rule sought to amend 41 U.S.C. 1906 to expand the reporting requirement to commercial services. The respondent believed this would result in duplicate reporting from Federal Government contractors and non-Federal Government contractors. For this reason, the respondent recommended not implementing section 111 in the FAR.

Response: 49 U.S.C. 41108 requires that domestic carriers who contract with the Federal Government to provide air transportation must submit an annual report with certain information related to prevention of human trafficking. The changes to the FAR under this rule are necessary to implement this statute. 41 U.S.C. 1906 requires DoD, GSA, NASA, and the Office of Federal Procurement Policy to make a determination if it is in the best interest of the Federal Government to exempt commercial contracts. Section III of the proposed rule notified the public that DoD, GSA,

NASA, and the Office of Federal Procurement Policy intend to make a determination that it would not be in the best interest of the Federal Government to exempt contracts for the acquisitions of commercial services from the requirements of 49 U.S.C. 40118(g). DoD, GSA, NASA, and the Office of Federal Procurement Policy have made that determination with this final rule (see section III of this preamble). No similar determination is made for commercial products.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This final rule adds a new clause at FAR 52.247–69, Reporting Requirement for U.S-Flag Air Carriers Regarding Training to Prevent Human Trafficking, to implement 49 U.S.C. 40118(g). The clause is prescribed at FAR 47.405(b) for use in solicitations and contracts with a U.S.-flag air carrier for the transportation by air of passengers. This clause is not applicable to solicitations issued or contracts awarded by the Department of Defense.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the Federal Acquisition Regulatory Council (FAR Council) makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law. The FAR Council has made a determination to apply this statute to acquisitions at or below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Products, Including Commercially Available Off-The-Shelf (COTS) Items, and Commercial Services

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services and is intended to limit the applicability of laws to contracts for the acquisition of commercial products and commercial services. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial contracts, the provision of law will apply to contracts for the acquisition of commercial products and commercial services. 41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement Policy makes a written determination and finds that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items. The FAR Council has made a determination to apply this statute to acquisitions for commercial services only. The Administrator for Federal Procurement Policy did not make a determination to apply this statute to acquisitions for COTS items.

C. Determinations

Section 111 of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 added 49 U.S.C. 40118(g) to require that domestic carriers who contract with the Federal Government to provide air transportation submit an annual report to the Administrator of General Services, the Secretary of Transportation, the Secretary of Labor, the Administrator of the Transportation Security Administration, and the Commissioner of U.S. Customs and Border Protection, with the following information:

- The number of personnel trained in the detection and reporting of potential severe forms of human trafficking and sex trafficking (as described in 22 U.S.C. 7102 in the paragraphs titled ''Severe forms of trafficking in persons'' and ''Sex trafficking''), including the training required under 49 U.S.C. 44734(a)(4);
- The number of notifications of potential human trafficking victims received from staff or other passengers; and
- Whether the air carrier notified the National Human Trafficking Hotline or law enforcement at the relevant airport of the potential human trafficking victim for each such notification of potential human trafficking, and if so, when the notification was made.

The purpose of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 is to combat human trafficking. Section 111 of the Act is meant to further that objective. The purpose of this rule is to implement 49 U.S.C. 40118(g) as added by section 111.

The law is silent on the applicability of these requirements to acquisitions at or below the SAT. The law does not include terms making express reference to 41 U.S.C. 1905 and its applicability to acquisitions at or below the SAT, nor does the law independently provide for criminal or civil penalties. Therefore, the law does not apply to acquisitions at or below the SAT unless the FAR Council makes a written determination as required by 41 U.S.C. 1905. Application of the law to contracts at or below the SAT, currently $250,000, will further the important public policy objective of combating trafficking of persons. According to the Federal Procurement Data System, approximately seventy percent (70%) of the contracts for air transportation (as identified either by the Product Service Codes of V121 (Air Charter), V211 (Air Passenger), and V221 (Passenger air charter) or by North American Industry Classification System codes in the 4811XX and 4822XX fields (Scheduled Air Transportation and Nonscheduled Air Transportation industries) were at or below the SAT during fiscal years 2021 and 2022. Failure to apply 49 U.S.C. 40118(g) to contracts at or below the SAT would exclude a significant number of U.S. flag air-carriers who are awarded contracts at or below the SAT, which would undermine the important public policy objective of combating human trafficking. For this reason, it is in the best interest of the Federal Government to apply the requirements of the rule to contracts at or below the SAT. With regard to subcontracts at or below the SAT, it is determined to not be in the best interest of the Federal Government to apply section 111 to such acquisitions. Based on FPDS data for fiscal years 2021 and 2022, agencies reviewed seventy-five (75) of the likely acquisitions for air transportation. The results of that review reflected that only 0.3% of the awards were further subcontracted out to another air carrier. Based on the above evidence, section 111 will not apply to subcontracts at or below the SAT.

The law is silent on the applicability of these requirements to acquisitions of commercial products and commercial services. The law does not include terms making express reference to 41 U.S.C. 1906 and its application to acquisitions of commercial products or commercial services, nor does the law independently provide for criminal or civil penalties. Therefore, this law does not apply to acquisitions of commercial products and commercial services unless the FAR Council makes a written determination as required by 41 U.S.C. 1906. Considering that air transportation, such as passenger air

travel, is a commercial service, failing to apply 49 U.S.C. 40118(g) to the acquisition of commercial services would be failing to implement section 111 in its entirety. For this reason, the FAR Council has determined that it is in the best interest of the Federal Government not to exempt acquisitions of commercial services from the requirements of 49 U.S.C. 40118(g). No similar determination is made for contracts for commercial products. As such, this rule will apply to acquisitions of commercial services, but not acquisitions of commercial products.

The law is silent on the applicability of this requirement to acquisitions of COTS items. The law does not include terms making express reference to 41 U.S.C. 1907 and its application to acquisitions of COTS items, nor does the law independently provide for criminal or civil penalties. Therefore, it does not apply to acquisitions of COTS items unless the Administrator for Federal Procurement Policy makes a written determination as provided at 41 U.S.C. 1907. Considering that air transportation does not meet the definition of a COTS item (*i.e.,* it is a service, not a product), 49 U.S.C. 40118(g) cannot apply to acquisitions of such items regardless of the requirements at 41 U.S.C. 1907. Therefore, a determination is unnecessary. This rule is not applicable to acquisitions of COTS items.

IV. Expected Impact of the Rule

A. Requirement

This final rule creates a new contract clause at FAR 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking, that requires domestic carriers who contract with the Federal Government (excluding DoD) for air transportation to provide to five Federal Government agencies the annual report required by 49 U.S.C. 40118(g). The report must contain the number of personnel trained in the detection of human trafficking, the number of notifications of human trafficking the contractor received from staff and other passengers, and the actions the contractor took with regards to those notifications.

This rule does not create any new training requirements for domestic air carrier personnel, nor does it mandate that domestic air carriers report potential human trafficking to hotlines or law enforcement. U.S.-flag air carriers are already required by statute to train certain personnel on recognizing and responding to potential human trafficking victims. 49 U.S.C. 44734(a)(4) requires air carriers to provide such training on an annual basis to flight attendants that are employed or contracted by the air carrier, regardless of whether the air carrier has contracted with the Federal Government to provide air transportation. 49 U.S.C. 44738 further requires air carriers to provide this training to ticket counter agents, gate agents, and other air carrier workers whose jobs require regular interaction with passengers. This final rule simply requires domestic air carriers to report by October 30th each year the total number of personnel who received the training in the previous Government fiscal year (October 1–September 30).

The annual report required by the new clause at FAR 52.247–69 must also include the number of notifications that the air carrier received from staff and other passengers and whether the air carrier notified the Global Human Trafficking Hotline (or comparable hotline) or law enforcement at the relevant airport. If the air carrier notified a hotline or law enforcement, then the air carrier must also report when and how the notification was made. Again, this final rule does not mandate that the air carrier report the notifications it receives from staff or other passengers to the hotline or law enforcement, nor does this rule direct air carriers to seek out whether their staff or other passengers notified a hotline or law enforcement. However, this final rule does require air carriers to report basic information about any notifications made in the previous Government fiscal year (October 1–September 30).

B. Impact

According to the Department of Transportation (DOT), as of March 2022, there are approximately 183 U.S. Certificated Air Carriers or U.S.-Flag Air Carriers (see DOT list available at *https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list*). According to data available in the Federal Procurement Data System (FPDS) for fiscal years 2021 and 2022, civilian agencies contracted with 121 and 177 unique entities, respectively, in the Scheduled Air Transportation and Nonscheduled Air Transportation Industries (North American Industry Classification System (NAICS) codes 4811XX and 4822XX). Considering this information, the Government assumes that approximately 180 U.S.-flag air carriers may be required to submit the annual report required by the clause at FAR 52.247–69. These air carriers will need to ensure that they are able to report annually on the number of personnel trained in detecting and responding to potential human trafficking, the number of notifications of potential human trafficking received from staff and other passengers, and whether and how the air carrier notified a hotline or law enforcement at the relevant airport for each notification received.

1. Public Cost

In the proposed rule, the Government estimated that, on average, the public reporting burden for this collection of information is five hours per response, which includes two hours to compile and report information related to the number of personnel trained in the previous year and three hours to compile and report information on notifications made to hotlines or law enforcement in the previous year (see section VII of the proposed rule preamble). The following is a summary of the estimated burden and cost associated with these reporting requirements for the 180 air carriers.

a. Reports on Training

Given the existing statutory requirements for domestic air carriers to provide training to its personnel, it is anticipated that domestic air carriers already have procedures in place that enable them to capture the total number of employees receiving training. The Government anticipates that the contractor employee compiling and reporting the data is in a position equivalent to a General Schedule (GS) Grade 12/Step 5 position in the Federal Government. In the final rule, the fully burdened hourly rate is calculated using the Office of Personnel Management (OPM) GS–12/step 5 employee hourly rate for the rest of the United States for calendar year 2024, plus a 36.25 percent fringe factor and a 12 percent overhead rate. The revised loaded hourly rate is $72 ($47.22/hour * 1.3625 * 1.12, rounded to the nearest whole dollar). Therefore, the total estimated public cost of this annual reporting requirement on training is $25,920 per year (180 air carriers * 1 report/air carrier * 2 hours per report on training * $72/hour).

b. Reports on Notifications

It is also anticipated that most domestic air carriers have procedures in place to track when staff and passengers notify the air carrier of potential human trafficking. According to information available on domestic air carrier websites, many already have procedures in place to encourage staff to report potential human trafficking to a hotline, leadership, or by other means. For example, some air carriers participate in

the Blue Lightning Initiative (BLI) promoted by the Department of Transportation (DOT) and the Department of Homeland Security (DHS). As part of the BLI, air carrier personnel receive training on detecting and reporting human trafficking; these employees are encouraged to follow their organization's internal reporting protocol and to contact the Homeland Security Investigations (HSI) Tip Line (see *https://www.dhs.gov/blue-campaign/blue-lightning-initiative*). It is expected that air carriers will leverage their existing internal reporting protocols to gather the required information on notifications received by the air carrier.

The Government anticipates that the contractor employee compiling and reporting this information is also in a position equivalent to a GS–12/Step 5 position in the Federal Government. The Government estimates that the air carrier will spend three hours compiling and submitting the annual report. Therefore, the total estimated public cost of this annual reporting requirement is $38,880 per year (180 air carriers * 1 report/air carrier * 3 hours per report * $72/hour).

2. Government Cost

The 180 air carriers are to submit their reports to the Administrator of General Services, the Secretary of Transportation, the Secretary of Labor, the Administrator of the Transportation Security Administration, and the Commissioner of U.S. Customs and Border Protection by October 30th each year. Since there is no statutory requirement for these agencies to use or process the information in the reports in any specific manner, it is estimated that each agency will spend 15 minutes to review and log each report. The employee who is reviewing the report is anticipated to be a GS–12/Step 5 Government employee. Therefore, the total estimated Government cost associated with reviewing the reports from domestic air carriers is $16,200 (5 agencies * 180 report * 0.25 hours/report * $72/hour).

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

DoD, GSA and NASA are amending the Federal Acquisition Regulation (FAR) to implement section 111 of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 (Pub. L. 115–425). Section 111 requires that domestic carriers who contract with the Federal Government to provide transportation by air of passengers must submit an annual report with certain information related to prevention of human trafficking. Section 111 does not apply to contracts awarded by the Department of Defense.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis (IRFA).

The rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will impact domestic air carriers (*i.e.,* U.S.-flag air carriers as described in 49 U.S.C. 41102), including small business U.S.-flag air carriers.

Based on a review of the Department of Transportation (DOT) Certificated Air Carrier List (see *https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list*), the Government estimates that there may be approximately 180 U.S. Flag Air Carriers that contract with the Federal Government each year for air transportation. Of these air carriers, approximately 62 are small businesses for the NAICS codes for Scheduled Air Transportation and Nonscheduled Air Transportation industries (4811XX and 4822XX). Therefore, the estimated number of total small entities to which this rule could apply is 62.

This rule does not include any recordkeeping or other compliance requirements for small businesses. However, the rule does contain a reporting requirement for small businesses.

Small business U.S.-flag air carriers who contract with the Federal Government (except for DoD) for air transportation will be required to provide an annual report to five agencies, on the number of personnel trained in the detection of human trafficking, the number of notifications of human trafficking the contractor received, and actions the contractor took with regards to those notifications. This rule is not creating a training requirement nor does this contract clause create a mandatory reporting requirement to hot lines and law enforcement; those requirements already existed prior to section 111 (*e.g.,* 49 U.S.C. 44734(a)(4)), and are applied to all U.S.-flag air carriers, regardless of whether they are contractors of the Federal Government. This rule simply requires data related to the training that has occurred and notifications that have been made.

DoD, GSA, and NASA were unable to identify any alternatives to the rule that would reduce the impact on small entities and still meet the requirements of the statute.

The rule does not duplicate, overlap, or conflict with any other Federal rules. However, Section 108 of the Justice for Victims of Trafficking Act of 2015 (Pub. L. 114–22) has amended the definition of ''Sex trafficking'' at 22 U.S.C. 7102. Those amendments are not included in this final rule; those changes are being implemented under FAR Case 2024–004, titled ''Combating Trafficking in Persons—Definition and Agency Responsibilities.'' The proposed rule was published July 18, 2024, at 89 FR 58323.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) applies. The rule contains information collection requirements. The Office of Management and Budget (OMB) has provided pre-approval of the revised information collection requirements under OMB Control Number 9000–0061, FAR Part 47 Transportation Requirements.

A. OMB Control Number, Title, and Any Associated Form(s)

OMB Control Number 9000–0061, FAR Part 47 Transportation Requirements.

B. Need and Uses

The rule creates a new contract clause at FAR 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking, that requires domestic

carriers who contract with the Federal Government (excluding DoD), for air transportation to provide to five Federal Government agencies the annual report required by 49 U.S.C. 40118(g). The report must contain the number of personnel trained in the detection of human trafficking, the number of notifications of human trafficking the contractor received from staff and other passengers, and the actions the contractor took with regards to those notifications.

C. Annual Burden

Public reporting burden for this collection of information includes the time to compile and report information related to the number of personnel trained in the previous year and the time to compile and report information on notifications made to hotlines or law enforcement in the previous year. The following is a summary of the estimated burden associated with these reporting requirements for 180 air carriers.

Respondents: 180.
Total annual responses: 180.
Estimated hrs/response: 5.
Estimated total burden/hrs: 900.

D. Public Comment

As part of the proposed rule, a 60-day notice was published in the **Federal Register** at 88 FR 52102, on August 7, 2023. One comment was received. Specifically, one respondent suggested that the proposed rule expands the reporting requirements under 49 U.S.C. 40118(g) resulting in additional burden not required by the statute.

For example, the respondent stated that the rule improperly expands upon statutory requirements by requiring reporting of the date and method of notification of potential human trafficking instances.

Response: The specific reporting requirements in the rule align with the requirements in 49 U.S.C 40118(g). In particular, 49 U.S.C. 40118(g)(2) requires reporting of ''the number of notifications of potential human trafficking victims received from staff or other passengers.'' Further, 49 U.S.C. 40118(g)(3) requires the annual report include ''whether the air carrier notified the National Human Trafficking Hotline or law enforcement at the relevant airport of the potential human trafficking victim for each such notification of potential human trafficking, and if so, when the notification was made.'' In implementing these reporting requirements, FAR 52.247–69(b)(2)(iii) seeks the number of notifications received by the contractor; the date of any such notification; and the method by which the notification was made. The Government interprets the statutory language ''when the notification was made'' in 49 U.S.C. 41108(g)(3) as requiring the ''date'' the notification was made. The Government interprets the statutory language ''whether the air carrier notified the National Human Trafficking Hotline or law enforcement at the relevant airport'' in 49 U.S.C. 41108(g)(3) as requiring the ''method'' by which the contractor made the notification, *e.g.,* whether the Contractor notified the Global Human Trafficking Hotline, another comparable hotline, or law enforcement at the relevant airport. These are reasonable interpretations of the statute and are not viewed as creating burden beyond what is required by 49 U.S.C. 40118(g). No changes were made to the final rule because of this public comment. Written comments and recommendations for these information collections should be sent within 30 days of publication of this rule to *www.reginfo.gov/public/do/PRAMain.* Find these information collections by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

E. 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 Number 9000–0061, Federal Acquisition Regulation Part 47 Transportation Requirements.

List of Subjects in 48 CFR Parts 1, 12, 22, 47, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are amending 48 CFR parts 1, 12, 22, 47, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 12, 22, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 1— FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. In section 1.106 amend in the table following the introductory text, by adding in numerical order, an entry for ''52.247–69'' to read as follows.

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
52.247–69	9000–0061
* * * * *	

* * * * *

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 3. Amend section 12.503 by revising paragraph (b)(4) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial products and commercial services.

* * * * *

(b) * * *

(4) 49 U.S.C. 40118, Requirement for a clause under provisions of the Government-financed air transportation statute, commonly referred to as the Fly America Act, except that 49 U.S.C. 40118(g) is applicable to the acquisition of commercial services (see 47.405).

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 4. Amend section 22.1703 by revising the introductory text to read as follows:

22.1703 Policy.

The United States Government has adopted a policy prohibiting trafficking in persons, including the trafficking-related activities below. Additional information about trafficking in persons may be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at *http://www.state.gov/j/tip/.* See 47.405(b) for contract reporting requirements concerning training to prevent human trafficking for domestic carrier air transportation; 47.405(b) is not applicable to contracts awarded by the Department of Defense or contracts for commercial products. Government solicitations and contracts shall—

* * * * *

PART 47—TRANSPORTATION

■ 5. Amend section 47.101 by revising paragraph (g) to read as follows:

47.101 Policies.

* * * * *

(g) Agencies shall comply with the requirements for Government-financed air transportation (commonly referred to as the Fly America Act), the Cargo Preference Act, and related statutes as prescribed in subparts 47.4, Air Transportation by U.S.-Flag Carriers, and 47.5, Ocean Transportation by U.S.-Flag Vessels.

* * * * *

■ 6. Add section 47.400 to subpart 47.4 to read as follows:

47.400 Scope of subpart.

This subpart prescribes policies and procedures for implementing 49 U.S.C. 40118, Government-financed air transportation, commonly referred to as the Fly America Act.

■ 7. Amend section 47.401 by revising the definition of ''U.S.-flag air carrier'' to read as follows:

47.401 Definitions.

* * * * *

U.S.-flag air carrier means an entity granted authority to provide air transportation in the form of a certificate of public convenience and necessity under 49 U.S.C. 41102.

■ 8. Revise section 47.402 to read as follows:

47.402 Policy.

Federal employees and their dependents, consultants, contractors, grantees, and others must use U.S.-flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, if available (49 U.S.C. 40118, Government-financed air transportation, commonly referred to as the Fly America Act).

■ 9. Revise section 47.405 to read as follows:

47.405 Contract clauses.

(a) The contracting officer shall insert the clause at 52.247–63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the contract. This clause does not apply to contracts awarded using the simplified acquisition procedures in part 13 or contracts for commercial products (see part 12).

(b) The contracting officer shall insert the clause at 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking, in solicitations and contracts with a U.S.-flag air carrier for the transportation by air of passengers. This clause is not applicable to solicitations issued or contracts awarded—

(1) By the Department of Defense; or

(2) For commercial products.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Amend section 52.212–5 by revising the date of the clause and adding paragraph (c)(10) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (JAN 2025)

* * * * *

(c) * * *

__(10) 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking (JAN 2025) (49 U.S.C. 40118(g)).

* * * * *

■ 11. Amend section 52.213–4 by revising the date of the clause; and adding paragraph (b)(1)(xxiv) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms And Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (JAN 2025)

* * * * *

(b) * * *

(1) * * *

(xxiv) 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking (JAN 2025) (49 U.S.C. 40118(g)). (Applies to contracts with a U.S.-flag carrier for the transportation by air of passengers; does not apply to contracts awarded by the Department of Defense or contracts for commercial products).

* * * * *

■ 12. Amend section 52.247–63 by—

■ a. In the introductory text, removing ''47.405'' and adding ''47.405(a)'' in its place;

■ b. Revising the date of the clause;

■ c. In paragraph (a), revising the definition of ''U.S.-flag air carrier'';

■ d. Revising paragraph (b); and

■ e. Adding headings to paragraphs (c), (d) and (e).

The revisions read as follows:

52.247–63 Preference for U.S.-Flag Air Carriers.

* * * * *

Preference for U.S.-Flag Air Carriers (JAN 2025)

(a) * * *

U.S.-flag air carrier means an entity granted authority to provide air transportation in the form of a certificate of public convenience and necessity under 49 U.S.C. 41102.

(b) *U.S. Government-financed international air transportation.* 49 U.S.C. 40118, Government-financed air transportation (commonly referred to as the Fly America Act), requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the General Services Administration to issue regulations that, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) *Use of U.S.-flag carriers for international air transportation.* * * *

(d) *Statement of unavailability of U.S.-flag air carriers.* * * *

(e) *Subcontracts.* * * *

* * * * *

■ 13. Add section 52.247–69 to read as follows:

52.247–69 Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking.

As prescribed in 47.405(b), insert the following clause:

Reporting Requirement for U.S.-Flag Air Carriers Regarding Training To Prevent Human Trafficking (JAN 2025)

(a) *Definitions.* As used in this clause—

Human trafficking means ''Severe forms of trafficking in persons'' or ''Sex trafficking.''

Severe forms of trafficking in persons means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Annual reporting requirement.*

(1) In accordance with 49 U.S.C. 40118(g), the Contractor shall provide the annual

report described in paragraph (b)(2) of this clause by October 30th, via email, to the following agencies:

(i) General Services Administration: *TraffickingPreventionReport@gsa.gov;*

(ii) U.S. Department of Transportation: *trafficking@dot.gov;*

(iii) Department of Labor: *AirCarrier-HTreports@dol.gov;*

(iv) Transportation Security Administration: *ics-cchtfams@tsa.dhs.gov;*

(v) U.S. Customs and Border Protection: *CLP@cbp.dhs.gov;* and

(vi) DHS Center for Countering Human Trafficking: *Info@CCHT.dhs.gov.*

(2) The annual report shall include information from the preceding Government fiscal year (October 1 through September 30) regarding—

(i) The number of personnel trained in the detection and reporting of potential human trafficking, including the training required under 49 U.S.C. 44734(a)(4);

(ii) The number of notifications of potential human trafficking victims received from staff or other passengers; and

(iii)(A) Whether the Contractor notified the Global Human Trafficking Hotline, another comparable hotline, or law enforcement at the relevant airport of the potential human trafficking victim for each such notification of potential human trafficking; and

(B) If the Contractor made a notification, the date the notification was made and the method of notification (*e.g.,* text to Hotline, call to law enforcement).

(c) *Training.* In accordance with 49 U.S.C. 44734 and 44738, personnel trained in the detection and reporting of potential human trafficking should include the following:

(1) Flight attendants;

(2) Ticket counter agents;

(3) Gate agents; and

(4) Other air carrier workers whose jobs require regular interaction with passengers.

(End of clause)

[FR Doc. 2024–29373 Filed 12–13–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 6, 9, 18, 19, and 52

[FAC 2025–02; FAR Case 2022–009, Item II; Docket No. FAR–2022–0009; Sequence No. 1]

RIN 9000–AO46

Federal Acquisition Regulation: Certification of Service-Disabled Veteran-Owned Small Businesses

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the final rules published by the Small Business Administration to implement sections of the National Defense Authorization Acts for Fiscal Years 2021 and 2022.

DATES: Effective December 16, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Carrie Moore, Procurement Analyst, at 571–300–5917, or by email at *carrie.moore@gsa.gov*. For information pertaining to status or publication schedules contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov*. Please cite FAC 2025–02, FAR Case 2022–009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule at 89 FR 13950 on February 23, 2024, to implement regulatory changes made by the Small Business Administration (SBA) in its final rules published on November 29, 2022, at 87 FR 73400 and at 88 FR 42592 on July 3, 2023, to implement section 862 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283; 15 U.S.C. 657f). This final rule also partially implements section 863 of the NDAA for FY 2022 (Pub. L. 117–81; 15 U.S.C. 634(i)), as implemented by SBA in its final rule published on April 27, 2023, at 88 FR 26164. For further details please see the interim rule. Three respondents submitted comments on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

There are no significant changes from the interim rule.

B. Analysis of Public Comments

1. Exceptions to Implementation

Comment: One respondent recommended the grace period for certification be extended to allow businesses additional time to comply with the new requirements.

Response: This rule implements section 862 of the NDAA for FY 2021. Section 862 provides for a one-year grace period after the transfer date of January 1, 2023, for service-disabled veteran-owned small businesses (SDVOSBs) to submit an application for certification to SBA.

Therefore, since the grace period is statutory, it cannot be extended by the Councils.

Comment: One respondent recommended that SBA expand its outreach and support services to ensure that all interested businesses are able to successfully navigate the certification process.

Response: To implement SDVOSB certification, SBA established a website at *https://veterans.certify.sba.gov.* This website streamlines and facilitates the SDVOSB certification process and provides links for SDVOSBs to obtain assistance, including both online and telephonic support.

2. Outside the Scope of the Rule.

Comment: One respondent submitted a comment that is unrelated to this case.

Response: This comment is outside of the scope of this rule.

Comment: One respondent took exception to the certification requirements for SDVOSBs and took exception to the three-year certification period for SDVOSBs, indicating that it is too long and may result in fraud.

Response: This rule implements regulatory changes made by the SBA in its final rules published on November 29, 2022, at 87 FR 73400 and at 88 FR 42592 on July 3, 2023. SBA regulations regarding the Veteran Small Business Certification Program, including SDVOSB certification requirements, are addressed at 13 CFR part 128. SBA's regulations regarding recertification requirements are implemented at 13 CFR 128.306. This rule simply implements SBA's regulations; therefore, this comment is outside the scope of this rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This rule amends the following provisions and clauses at FAR: 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services; 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services; 52.213–4, Terms and Conditions-

Simplified Acquisitions (Other Than Commercial Products and Commercial Services); 52.219–1, Small Business Program Representations; 52.219–8, Utilization of Small Business Concerns; 52.219–27, Notice of Set-Aside for, or Sole-Source Award to, Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns Eligible Under the SDVOSB Program; 52.219–28, Post-Award Small Business Program Rerepresentation; and 52.244–6, Subcontracts for Commercial Products and Commercial Services. These provisions and clauses continue to apply to acquisitions at or below the SAT and to acquisitions for commercial products, including COTS items, and commercial services.

This rule applies section 862 of the NDAA for FY 2021 and section 863 of the NDAA for FY 2022, as implemented by this rule, to contracts at or below the SAT and to commercial services and commercial products, including COTS items.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the Federal Acquisition Regulatory Council (FAR Council) makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law. The FAR Council has made a determination to apply this statute to acquisitions at or below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Products and Commercial Services, Including Commercially Available Off-the-Shelf (COTS) Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services, and is intended to limit the applicability of laws to contracts for the acquisition of commercial products and commercial services. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial contracts, the provision of law will apply to contracts for the acquisition of commercial products and commercial services.

41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement Policy makes a written determination and finds that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items.

The FAR Council has made a determination to apply this statute to acquisitions for commercial products and commercial services. The Administrator for Federal Procurement Policy has made a determination to apply this statute to acquisitions for COTS items.

IV. Expected Impact of the Rule

This rule is expected to impact Government and contractor operations.

As of January 1, 2024, contracting officers are required to check the System for Award Management (SAM) to verify that a concern is designated as an SDVOSB certified by SBA for sole-source or set-aside awards under the SDVOSB Program. If the concern is not designated in SAM as a certified SDVOSB, the contracting officer will be required to check SBA's Veteran Small Business Certification Program database to determine if the concern submitted an application for certification to SBA on or before December 31, 2023. If a concern submitted an application for certification to SBA on or before December 31, 2023, and represented its status as an SDVOSB concern in SAM, contracting officers may rely on a concern's representation in SAM.

As of January 1, 2024, a small business concern that pursues a sole-source or set-aside award under the SDVOSB Program is required to be certified by SBA, or the concern must have both submitted a complete application for certification to SBA on or before December 31, 2023, and represented its status as an SDVOSB concern in SAM. A small business concern that submitted a complete application for certification to SBA on or before December 31, 2023, may continue to represent its status as an SDVOSB in SAM until SBA makes its final eligibility determination. This rule will not impact previous participants in the Department of Veterans Affairs (VA) VIP Verification Program as the requirements for the new SBA certification program are nearly identical to those of the VA. The only change that will impact small businesses is the certification requirement for SDVOSB concerns. As indicated in SBA's final rule, SBA does not anticipate the requirement for SBA certification to significantly impact small business concerns seeking SDVOSB certification. To minimize the potential impact on small businesses, SDVOSB concerns previously certified by the VA are reflected as certified in the SBA Veteran Small Business Certification Program database during the time that remains in the firm's three-year term of eligibility. To facilitate the transition of those firms already verified by the VA prior to the transfer date that have an eligibility period that expires in the first year of the Program, SBA extended the eligibility of those verified firms for an additional period of one year. The one-year grace period allows concerns that are not yet certified by the SBA to continue to represent their status as an SDVOSB in SAM while preparing their applications for SDVOSB certification. Furthermore, SBA did not change the documentation requirements for certification. Additionally, firms that represent their status in SAM likely have the documentation necessary for certification as that documentation is necessary to be able to represent their status as an SDVOSB in SAM. Therefore, concerns will only have to enter the information already in hand to apply to be included in SBA's Veteran Small Business Certification Program database.

The public cost associated with obtaining SDVOSB certification is accounted for under SBA's final rule implementing the certification requirements (87 FR 73400). SBA's final rule advises concerns that effective January 1, 2024, only a certified SDVOSB or a concern that has submitted a complete application for certification to SBA on or before December 31, 2023, may seek a set-aside or sole-source award under the SDVOSB Program. SBA estimates it will take a concern approximately one hour to complete the application process.

Small business concerns are also required to update SAM within two days of an SBA determination of ineligibility. Small business concerns are already required to update representations in SAM at least annually and ensure that representations are current, accurate, and complete. SBA's final rule published on April 27, 2023, at 88 FR 26164, advised small business concerns of the requirement to remove their designation from SAM within two days of an SBA decision regarding ineligibility.

Given SBA's notice to small business concerns, the cost to the public associated with the FAR implementation of SBA's final rules is

de minimis and is limited to the cost of regulatory familiarization.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

DoD, GSA, and NASA are adopting, without change, an interim rule published on February 23, 2024 (89 FR 13950), that amended the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) in its final rules published on November 29, 2022, at 87 FR 73400, and on July 3, 2023, at 88 FR 42592, to implement section 862 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283; 15 U.S.C. 657f) and to partially implement section 863 of the NDAA for FY 2022 (Pub. L. 117–81; 15 U.S.C. 634(i)), as implemented by SBA in its final rule published April 27, 2023, at 88 FR 26164.

The objective of this rule is to finalize the FAR implementation of SBA's Governmentwide certification program for SDVOSB concerns, update SDVOSB protest procedures, and to require an SDVOSB concern determined ineligible by SBA to update its status in the System for Award Management (SAM) within two days of the eligibility determination.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

This rule impacts small business concerns that seek a sole-source or set-aside award under the SDVOSB Program. Effective January 1, 2024, an SDVOSB concern must be certified as an SDVOSB concern by SBA, or have both represented that it is an SDVOSB concern in SAM and submitted a complete application for certification to SBA on or before December 31, 2023, in order to be eligible for these types of awards. SBA has minimized the impact on SDVOSB concerns by accepting verifications of eligibility already determined by the Department of Veterans Affairs (VA). SBA granted a one-year extension on certification for VA verified firms and by providing firms that represent their status in SAM a one-year grace period to apply for certification. In addition, this rule impacts SDVOSB concerns that SBA determines are not eligible for SDVOSB certification, as these concerns will be ineligible for set-aside and sole-source awards under the SDVOSB Program. A concern determined ineligible for SDVOSB certification, however, may continue to represent its SDVOSB status in SAM and be eligible for set-aside and sole-source awards outside of the SDVOSB Program.

The cost to concerns seeking SDVOSB certification should be de minimis because the eligibility documentation requirements currently exist under the VA's VIP Verification Program. In addition, the initial application, program examination, and recertification requirement will remain the same under SBA's management of the program. Firms likely have the documentation required for application, examination, and recertification through the transferred program because either such documentation was already required for certification through the VA's VIP Verification Program, or such documentation is likely needed for a firm to represent its status as an SDVOSB in SAM. Further, SBA anticipates that the application process should only require one hour of the concern's time. The cost to concerns to update their status in SAM is de minimis as concerns are already responsible for maintaining their representations in SAM to ensure that they are current, accurate, and complete.

According to SAM, there are 32,284 concerns registered as SDVOSBs. Of the 32,284 SDVOSB concerns registered in SAM, 10,635 are already verified SDVOSBs in VA's verification program, which leaves 21,649 SDVOSB concerns that represent their socioeconomic status in SAM. Of the 21,649 that represent their socioeconomic status as an SDVOSB in SAM, 181 are veteran-owned small business concerns that are SDVOSB certified in the VA's certification database. Therefore, there are 21,468 SDVOSBs that represent their status in SAM that are not currently in the VA's verification program and that may submit an application for certification to SBA. However, the number of SDVOSB concerns that will submit applications for certification is unknown as is the number of potential new SDVOSB entrants; therefore, the number of small business entities impacted by this rule may be greater than or less than the 21,468 SDVOSBs that currently represent their status in SAM.

As of January 1, 2024, this rule requires small business concerns that submit an offer for a set-aside or sole-source requirement under the SDVOSB Program to either be certified by SBA, or have both submitted an application for certification to SBA on or before December 31, 2023, and represented their SDVOSB status in SAM. Concerns found ineligible to be a certified SDVOSB by SBA must update their status in SAM within two days of the eligibility determination. SDVOSB protests will be decided by OHA instead of SBA's Director of Government Contracting.

SBA implemented a certification and information collection platform that replicates the VA's Center for Verification and Evaluation currently approved information collection and recordkeeping requirements under OMB Control Number 2900–0675.

There are no known significant alternative approaches to this rule that would accomplish the stated objectives of the applicable statutes and which would minimize any significant economic impact of this interim rule on small entities, as the economic impact is not anticipated to be significant.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521). These changes to the FAR do not impose additional information collection requirements to the associated paperwork burdens previously approved under Office of Management and Budget (OMB) Control Numbers 2900–0675, VETBIZ Vendor Information Pages Verification Program; 9000–0136, Commercial Acquisitions; FAR Sections Affected: 52.212–3(b)(2); 9000–0034, Examination of Records by Comptroller General and Contract Audit: FAR Section(s) Affected: 52.212–5(d), 52.214–26, 52.215–2; and 9000–0163, Small Business Size Rerepresentation; FAR Sections Affected 19.301 and 52.219–28.

List of Subjects in 48 CFR Parts 2, 6, 9, 18, 19, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 2, 6, 9, 18, 19,

and 52 which was published in the **Federal Register** at 89 FR 13950 on February 23, 2024, is adopted as a final rule without change.

[FR Doc. 2024–29374 Filed 12–13–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 13, 25, 36, 49, and 52

[FAC 2025–02; Item III; Docket No. FAR–2024–0052; Sequence No. 4]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the Federal Acquisition Regulation (FAR) to make needed editorial changes.

DATES: *Effective:* January 3, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2025–02, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes editorial changes to 48 CFR parts 13, 25, 36, 49, and 52.

List of Subjects in 48 CFR Parts 13, 25, 36, 49, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 13, 25, 36, 49, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 13, 25, 36, 49, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.302–5 [Amended]

■ 2. Amend section 13.302–5, in paragraph (d)(4) by removing ''52.213–4(b)(1)(xvii)(B)'' and adding ''52.213–4(b)(1)(xviii)(B)'' in its place.

PART 25—FOREIGN ACQUISITION

25.101 [Amended]

■ 3. Amend section 25.101, in paragraph (d)(2)(ii) by removing ''52.213–4(b)(1)(xvii)(B)'' and adding ''52.213–4(b)(1)(xviii)(B)'' in its place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.603 [Amended]

■ 4. Amend section 36.603, in paragraph (c) introductory text, by removing from the last sentence ''SF's 254 and 255'' and adding ''SF 330'' in its place.

PART 49—TERMINATION OF CONTRACTS

49.601–2 [Amended]

■ 5. Amend section 49.601–2 by—
■ a. Removing from the end of the introductory text, the undesignated text ''LINE ITEMS, ETC.'' '' and adding ''Notice of Termination to Prime Contractors'' in its place; and
■ b. Removing from the undesignated text before paragraph (a) ''items, etc.'' and adding ''line items, etc.'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204–2 [Amended]

■ 6. Amend section 52.204–2 by removing from the introductory text the word ''clauses'' and adding ''clause'' in its place.

52.204–7 [Amended]

■ 7. Amend section 52.204–7 by adding the phrase ''(End of provision)'' after paragraph (d) and before the Alternate I.

■ 8. Amend section 52.204–8 by revising the date of the provision, and removing from paragraph (c)(1)(xix) the phrase ''include the clause at 52.204–7'' and adding ''include the provision at 52.204–7'' in its place.

The revision reads as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (JAN 2025)

* * * * *

52.204–19 [Amended]

■ 9. Amend section 52.204–19 by removing from the introductory text ''clause.'' and adding ''clause:'' in its place.

■ 10. Amend section 52.212–5 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraph (b)(30) ''(15 U.S.C. 657s)'' and adding ''(15 U.S.C. 637(a)(17))'' in its place; and
■ c. Removing from paragraph (b)(49)(iii) the date ''DEC 2022'' and in its place adding (JAN 2025).

The revision reads as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (JAN 2025)

* * * * *

■ 11. Amend section 52.225–3 in Alternate II by—
■ a. Revising the date of the Alternate; and
■ b. Removing from paragraph (c) the phrase ''provision entitled ''Buy American—Free Trade Agreements—Israeli Trade Act.'' '' and adding the phrase ''provision entitled ''Buy American—Free Trade Agreements—Israeli Trade Act Certificate.'' '' in its place.

The revision reads as follows:

52.225–3 Buy American—Free Trade Agreements—Israeli Trade Act.

* * * * *

Alternate II (JAN 2025) * * *

* * * * *

■ 12. Amend section 52.225–4—
■ a. In Alternate II by—
■ i. Revising the date of the Alternate; and
■ ii. Removing from paragraph (b) the phrases '' ''Buy American—Free Trade Agreements—Israeli Trade Act—Balance of Payments Program'':'' and ''*Israeli End Products*'' and adding the phrases '' ''Buy American—Free Trade Agreements—Israeli Trade Act''.'' and ''Israeli End Products:'' in their place.
■ b. In Alternate III by—
■ i. Revising the date of the Alternate; and
■ ii. Removing from paragraph (b) '' ''Buy American—Free Trade Agreements—Israeli Trade Act'':'' and adding '' ''Buy American—Free Trade Agreements—Israeli Trade Act''.'' in its place.

The revisions read as follows:

52.225–4 Buy American—Free Trade Agreements—Israeli Trade Act Certificate.

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Alternate II (JAN 2025) * * *

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Alternate III (JAN 2025) * * *

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52.225–18 [Amended]

■ 13. Amend section 52.225–18 by removing from the introductory text ''solicitation provision'' and adding ''provision'' in its place.

[FR Doc. 2024–29375 Filed 12–13–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2024–0051, Sequence No. 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2025–02; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide (SECG).

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2025–02, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2025–02, which precedes this document.

DATES: December 16, 2024.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2025–02 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

RULES LISTED IN FAC 2025–02

Item	Subject	FAR case	Analyst
*I	Training to Prevent Human Trafficking For Certain Air Carriers	2019–017	Jones.
*II	Certification of Service-Disabled Veteran-Owned Small Businesses	2022–009	Moore.
III	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2025–02 amends the FAR as follows:

Item I—Training To Prevent Human Trafficking For Certain Air Carriers (FAR Case 2019–017)

This final rule amends the FAR to implement section 111 of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 (Pub. L. 115–425), enacted January 8, 2019. Section 111 requires that domestic carriers who contract with the Federal Government to provide air transportation submit an annual report with certain information related to prevention of human trafficking to the Administrator of General Services, the Secretary of Transportation, the Secretary of Labor, the Administrator of the Transportation Security Administration, and the Commissioner of U.S. Customs and Border Protection. Section 111 does not apply to contracts awarded by the Department of Defense.

This rule creates a new contract clause at FAR 52.247–69, Reporting Requirement for U.S.-Flag Air Carriers Regarding Training to Prevent Human Trafficking, to implement the statutory reporting requirement. Contracting officers will include this clause in solicitations and contracts for the transportation by air of passengers. The reporting requirement applies to U.S.-flag air carriers, including small business air carriers. The final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Item II—Certification of Service-Disabled Veteran-Owned Small Businesses (FAR Case 2022–009)

This FAR rule adopts, without change, an interim rule that amended the FAR to implement the Governmentwide certification requirement for service-disabled veteran-owned small business (SDVOSB) concerns seeking sole-source and set-aside awards under the SDVOSB Program. Effective January 1, 2024, an SDVOSB concern must have either been certified by the Small Business Administration (SBA), or have both submitted an application for certification to SBA on or before December 31, 2023, and represented that it is an SDVOSB in the System for Award Management (SAM), in order to be eligible for sole-source or set-aside awards under the SDVOSB Program. This rule required that an SDVOSB concern update its status in SAM no later than two days after the date of a final determination that the concern does not meet the requirements of the status the concern claims to hold. This rule also provided new SDVOSB protest and appeal procedures.

Item III—Technical Amendments

Administrative changes are made at FAR 13.302–5, 25.101, 36.603, 49.601–2, 52.204–2, 52.204–7, 52.204–8, 52.204–19, 52.212–5, 52.225–3, 52.225–4, and 52.225–18.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2024–29376 Filed 12–13–24; 8:45 am]

BILLING CODE 6820–EP–P

FEDERAL REGISTER

Vol. 89 Monday,
No. 241 December 16, 2024

Part V

The President

Memorandum of December 11, 2024—Delegation of Functions and Authorities Under Sections 1352 and 1353 of the National Defense Authorization Act for Fiscal Year 2024

Federal Register
Vol. 89, No. 241
Monday, December 16, 2024

Presidential Documents

Title 3—

The President

Memorandum of December 11, 2024

Delegation of Functions and Authorities Under Sections 1352 and 1353 of the National Defense Authorization Act for Fiscal Year 2024

Memorandum for the Secretary of State[,] the Secretary of Defense[,] the Secretary of Energy[, and] the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code:

Section 1. (a) I hereby delegate to the Secretary of State, in consultation with the Secretaries of Defense and Energy, the functions and authorities vested in the President by section 1352(a) of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118–31) (the ''Act'').

(b) I hereby delegate to the Secretary of Defense, in consultation with the Secretaries of State and Energy and the Director of the Office of Management and Budget, the functions and authorities vested in the President by section 1352(e)(1)(A) of the Act.

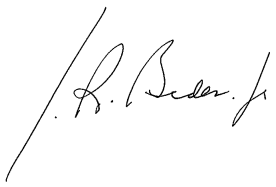
(c) I hereby delegate to the Secretary of Energy, in consultation with the Secretary of Defense and the Director of the Office of Management and Budget, the functions and authorities vested in the President by section 1352(f)(2) of the Act.

(d) I hereby delegate to the Secretary of Defense for funds transferred to Department of Defense accounts and to the Secretary of Energy for funds transferred to Department of Energy accounts, in coordination with the Director of the Office of Management and Budget, the functions and authorities vested in the President by sections 1353(c), 1353(e)(1)(D), and 1353(e)(3) of the Act.

(e) I hereby delegate to the Director of the Office of Management and Budget, in consultation with the Secretaries of Defense and Energy, as appropriate, the functions and authorities vested in the President by sections 1353(a), 1353(e)(1)(A), 1353(e)(2), and 1353(f)(1) of the Act.

Sec. 2. The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as the provision referenced in this memorandum.

Sec. 3. The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, December 11, 2024

[FR Doc. 2024–29930
Filed 12–13–24; 11:15 am]
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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text is available at *https://www.govinfo.gov/app/collection/plaw*. Some laws may not yet be available.

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