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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–2159; Airspace Docket No. 24–AGL–20]

RIN 2120–AA66

Amendment of Class E Airspace; Zanesville, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Zanesville, OH. This action is the result of an airspace review conducted due to the decommissioning of the Zanesville very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the Zanesville Municipal Airport, Zanesville, OH, and the name of Genesis Health Care Heliport, Zanesville, OH, are also being updated to coincide with the FAA's aeronautical database. This action brings the airspace into compliance with FAA orders and supports instrument flight rule (IFR) procedures and operations.

DATES: Effective 0901 UTC, February 20, 2025. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FAA Order JO 7400.11J, 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, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

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 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 amends the Class E surface airspace and the Class E airspace extending upward from 700 feet above the surface at Zanesville Municipal Airport, Zanesville, OH, to support IFR operations at this airport.

History

The FAA published an NPRM for Docket No. FAA–2024–2159 in the **Federal Register** (89 FR 70585; August 30, 2024) proposing to amend the Class E airspace at Zanesville, OH. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received supporting the proposed airspace amendment with concerns around encroaching on operations at Riverside Airport, Zanesville, OH. The following response is provided:

The expansion of the Class E surface airspace radius at Zanesville Municipal Airport, Zanesville, OH, is required to comply with FAA Order JO 7400.2P, Procedures for Handling Airspace Matters, to protect IFR operations at the airport while the overall Class E surface

airspace is being reduced with the removal of the current extensions that are no longer required. The visual flight rule (VFR) operations from runway 3/21 at Riverside Airport were taken into consideration, and a 1-mile cutout is standard for VFR operations. The weather minimums for the Class E surface airspace at Zanesville Municipal Airport should not impede operations at Riverside Airport as it is limited to VFR operations.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024, and effective September 15, 2024. FAA Order JO 7400.11J is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This amendment to 14 CFR part 71: Modifies the Class E surface airspace to within a 4.5-mile (increased from a 4-mile) radius of Zanesville Municipal Airport, Zanesville, OH; removing the Zanesville NDB and associated extensions from the airspace legal description as they are no longer needed; removing the Zanesville VOR/DME and associated extensions from the airspace legal description; updating the geographic coordinates of Zanesville Municipal Airport to coincide with the FAA's aeronautical database; and removing the city associated with Riverside Airport, Zanesville, OH, from the header of the airspace legal description to comply with changes to FAA Order JO 7400.2P;

And modifies the Class E airspace extending upward from 700 feet above the surface to within a 7-mile (reduced from an 8.5-mile) radius of Zanesville Municipal Airport; removing the Zanesville VOR/DME and associated extension from the airspace legal description; adding an extension 4 miles each side of the 034° bearing from the airport extending from the 7-mile radius

to 11.4 miles northeast of the airport; adding an extension 4 miles each side of the 214° bearing from the airport extending from the 7-mile radius to 11.5 miles southwest of the airport; adding the Genesis Health Care Heliport, Zanesville, OH, point in space coordinates that had been inadvertently removed from the airspace legal description in a previous amendment to the header of the airspace legal description; updating the name of the Genesis Health Care Heliport (previous Bethesda Hospital) to coincide with the FAA's aeronautical database; and removing the exclusionary language as it is no longer required.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11J, Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designates as a Surface Area.

* * * * *

AGL OH E2 Zanesville, OH [Amended]

Zanesville Municipal Airport, OH

(Lat 39°56'40" N, long 81°53'32" W)

Riverside Airport, OH

(Lat 39°59'10" N, long 81°59'01" W)

Within a 4.5-mile radius of the Zanesville Municipal Airport excluding that airspace within a 1-mile radius of the Riverside Airport.

* * * * *

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

* * * * *

AGL OH E5 Zanesville, OH [Amended]

Zanesville Municipal Airport, OH

(Lat 39°56'40" N, long 81°53'32" W)

Genesis Health Care Heliport Point in Space Coordinates

(Lat 39°59'05" N, long 82°01'30" W)

That airspace extending upward from 700 feet above the surface within an 7-mile radius of the Zanesville Municipal Airport; and within 4 miles each side of the 034° bearing from the airport extending from the 7-mile radius of the airport to 11.4 miles northeast of the airport; and within 4 miles each side of the 214° bearing from the airport extending from the 7-mile radius of the airport to 11.5 miles southwest of the airport; and within a 6-mile radius of the Genesis Health Care Heliport point in space coordinates.

* * * * *

Issued in Fort Worth, Texas, on November 6, 2024.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–26146 Filed 11–12–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31574; Amdt. No. 4138]

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 November 13, 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 November 13, 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 October 25, 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
28–Nov–24 ...	NY	Monticello	Sullivan County Intl	4/8731	9/20/2024	RNAV (GPS) RWY 15, Amdt 1.
28–Nov–24 ...	MN	Morris	Morris Muni/Charlie Schmidt Fld.	4/9382	9/24/2024	VOR RWY 32, Amdt 6.

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 97**

[Docket No. 31573; Amdt. No. 4137]

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 November 13, 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 November 13, 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 or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

Lists of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on October 25, 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 28 November 2024

Old Town, ME, OLD, RNAV (GPS) RWY 12, Amdt 2
Old Town, ME, OLD, RNAV (GPS) RWY 30, Amdt 2
Old Town, ME, KOLD, Takeoff Minimums and Obstacle DP, Amdt 1A
Stanley, ND, 08D, RNAV (GPS) RWY 10, Orig
Stanley, ND, 08D, RNAV (GPS) RWY 28, Amdt 3

Effective 26 December 2024

Okeechobee, FL, OBE, RNAV (GPS) RWY 5, Amdt 1E
Adel, GA, 15J, RNAV (GPS) RWY 5, Amdt 2A
Adel, GA, 15J, RNAV (GPS) RWY 23, Amdt 2A
Griffin, GA, 6A2, RNAV (GPS) RWY 14, Amdt 1
Statesboro, GA, TBR, ILS OR LOC RWY 32, Amdt 4A
Peoria, IL, PIA, ILS OR LOC RWY 31, Amdt 8
Peoria, IL, PIA, VOR Z OR TACAN Z RWY 31, Amdt 10
Springfield, KY, 6I2, VOR/DME RWY 11, Amdt 4D, CANCELED
Thibodaux, LA, L83, RNAV (GPS) RWY 8, Orig
Thibodaux, LA, L83, VOR OR GPS–A, Amdt 1C, CANCELED
Detroit, MI, DET, ILS OR LOC RWY 15, Amdt 12
Detroit, MI, DET, ILS OR LOC RWY 33, Amdt 16
Detroit, MI, DET, RNAV (GPS) RWY 15, Amdt 1

Detroit, MI, DET, RNAV (GPS) RWY 33, Amdt 1
Detroit, MI, KDET, Takeoff Minimums and Obstacle DP, Amdt 7B
South Haven, MI, LWA, RNAV (GPS) RWY 5, Amdt 1F
South Haven, MI, LWA, RNAV (GPS) RWY 23, Amdt 1G
Winona, MS, 5A6, RNAV (GPS) RWY 3, Amdt 1C
Winona, MS, 5A6, RNAV (GPS) RWY 21, Amdt 1C
Ravenna, OH, POV, RNAV (GPS) RWY 9, Amdt 1
Ravenna, OH, POV, RNAV (GPS) RWY 27, Amdt 2
Ravenna, OH, POV, VOR–A, Amdt 7
Sand Springs, OK, KOWP, Takeoff Minimums and Obstacle DP, Amdt 4
Connellsville, PA, VVS, LOC RWY 5, Amdt 4D
Pittsburgh, PA, PIT, ILS OR LOC RWY 10R, ILS RWY 10R (SA CAT I), ILS RWY 10R (CAT II), ILS RWY 10R (CAT III), Amdt 11
Pittsburgh, PA, PIT, RNAV (GPS) RWY 10L, Amdt 5
Pittsburgh, PA, PIT, RNAV (GPS) RWY 14, Amdt 4
Pittsburgh, PA, PIT, RNAV (GPS) Y RWY 10C, Amdt 5
Pittsburgh, PA, PIT, RNAV (GPS) Y RWY 10R, Amdt 4
Pittsburgh, PA, PIT, RNAV (RNP) Z RWY 10C, Amdt 1
Pittsburgh, PA, PIT, RNAV (RNP) Z RWY 10R, Amdt 1
Selinsgrove, PA, SEG, RNAV (GPS) RWY 17, Amdt 1B
Selinsgrove, PA, SEG, RNAV (GPS) RWY 35, Amdt 1
Mount Pleasant, SC, LRO, RNAV (GPS) RWY 17, Orig-F
Mount Pleasant, SC, LRO, RNAV (GPS) RWY 35, Orig-G
Crossville, TN, CSV, ILS Y OR LOC Y RWY 26, Amdt 1
Crossville, TN, CSV, ILS Z OR LOC Z RWY 26, Amdt 15
Crossville, TN, CSV, RNAV (GPS) RWY 8, Orig
Crossville, TN, CSV, RNAV (GPS) RWY 26, Amdt 1
Crossville, TN, CSV, VOR–A, Amdt 9B, CANCELED
Paris, TN, PHT, RNAV (GPS) RWY 20, Amdt 1C
Giddings, TX, GYB, VOR/DME–A, Amdt 3B, CANCELED
Greenville, TX, GVT, RNAV (GPS) RWY 17, Amdt 3
Greenville, TX, GVT, RNAV (GPS) RWY 35, Amdt 2

[FR Doc. 2024–26153 Filed 11–12–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****31 CFR Part 525****Burma Sanctions Regulations**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is adopting a final rule amending the Burma Sanctions Regulations to further implement a February 10, 2021, Burma-related Executive Order. This rule replaces the Burma Sanctions Regulations that were published in abbreviated form on June 1, 2021 with a more comprehensive set of regulations that includes additional interpretive guidance and definitions, general licenses, and other regulatory provisions that will provide further guidance to the public. In addition, this amendment incorporates one directive regarding sectoral sanctions issued pursuant to the Burma-related Executive Order of February 10, 2021.

DATES: This rule is effective November 13, 2024.

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

SUPPLEMENTARY INFORMATION:**Electronic Availability**

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

Background

On June 1, 2021, OFAC issued the Burma Sanctions Regulations, 31 CFR part 525 (86 FR 29197, June 1, 2021) (the “Regulations”), to implement Executive Order (E.O.) 14014 of February 10, 2021, “Blocking Property With Respect to the Situation in Burma” (86 FR 9429, February 12, 2021), pursuant to authorities delegated to the Secretary of the Treasury in E.O. 14014. The Regulations were initially issued in abbreviated form for the purpose of providing immediate guidance to the public. OFAC is revising the Regulations to further implement E.O. 14014. OFAC is amending and reissuing the Regulations as a more comprehensive set of regulations that includes additional interpretive guidance and definitions, general licenses, and other regulatory provisions that will provide further guidance to the public. Due to the number of regulatory sections being updated or added, OFAC is reissuing the Regulations in their entirety.

E.O. 14014

On February 10, 2021, the President, invoking the authority of, *inter alia*, the International Emergency Economic

Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), issued E.O. 14014. In E.O. 14014, the President found that the situation in and in relation to Burma, and in particular the February 1, 2021 coup, in which the military overthrew the democratically elected civilian government of Burma and unjustly arrested and detained government leaders, politicians, human rights defenders, journalists, and religious leaders, thereby rejecting the will of the people of Burma as expressed in elections held in November 2020 and undermining the country's democratic transition and rule of law, constituted an unusual and extraordinary threat to the national security and foreign policy of the United States, and declared a national emergency to deal with that threat.

Section 1 of E.O. 14014 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State: (i) to operate in the defense sector of the Burmese economy or any other sector of the Burmese economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State; (ii) to be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, any of the following: (A) actions or policies that undermine democratic processes or institutions in Burma; (B) actions or policies that threaten the peace, security, or stability of Burma; (C) actions or policies that prohibit, limit, or penalize the exercise of freedom of expression or assembly by people in Burma, or that limit access to print, online, or broadcast media in Burma; or (D) the arbitrary detention or torture of any person in Burma or other serious human rights abuse in Burma; (iii) to be or have been a leader or official of: (A) the military or security forces of Burma, or any successor entity to any of the foregoing; (B) the Government of Burma on or after February 2, 2021; (C) an entity that has, or whose members have, engaged in any activity described in section (1)(a)(ii) of E.O. 14014 relating to the leader's or official's tenure; or (D) an entity whose property and interests in property are blocked pursuant to E.O. 14014 as a result of activities related to the leader's or official's tenure; (iv) to be a political subdivision, agency, or instrumentality of the Government of Burma; (v) to be a spouse or adult child of any person

whose property and interests in property are blocked pursuant to E.O. 14014; (vi) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of any person whose property and interests in property are blocked pursuant to E.O. 14014; or (vii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the military or security forces of Burma or any person whose property and interests in property are blocked pursuant to E.O. 14014. The blocked property and interests in property of the persons described above may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Section 2 of E.O. 14014 provides that the prohibition on any transaction or dealing in blocked property or interests in property includes the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to E.O. 14014, and the receipt of any contribution or provision of funds, goods, or services from any such person.

Section 4 of E.O. 14014 prohibits any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in E.O. 14014, as well as any conspiracy formed to violate such prohibitions.

In section 5 of E.O. 14014, the President determined that the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to E.O. 14014 would seriously impair the President's ability to deal with the national emergency declared in E.O. 14014. The President therefore prohibited the donation of such items except to the extent provided by statutes, or in regulations, rulings, instructions, orders, directives, or licenses that may be issued pursuant to E.O. 14014.

Section 8 of E.O. 14014 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of E.O. 14014. Section 8 of E.O. 14014 also provides that the Secretary of the Treasury may redelegate any of these functions within the Department of the Treasury.

Directive 1 Under E.O. 14014

On October 31, 2023, OFAC issued "Directive 1 Under E.O. 14014" (89 FR 27668, April 18, 2024) ("Directive 1") following the Director of OFAC's determination, in consultation with the Department of State, that sections 1(a)(iv), 1(b), and 8 of E.O. 14014 apply to Myanmar Oil and Gas Enterprise (MOGE) as a political subdivision, agency, or instrumentality of the Government of Burma. Directive 1 prohibits the provision, exportation, or reexportation, directly or indirectly, of financial services to or for the benefit of MOGE or its property or interests in property. Directive 1 also prohibits: (a) any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions contained in Directive 1; and (b) any conspiracy formed to violate any of the prohibitions in Directive 1.

Current Regulatory Action

In furtherance of the purposes of E.O. 14014, OFAC is revising 31 CFR part 525. The Regulations implement targeted sanctions that are directed at persons determined to meet the criteria set forth in §§ 525.201 and 525.202 of the Regulations, as well as sanctions that may be set forth in any further Executive orders issued pursuant to the national emergency declared in E.O. 14014. The sanctions in E.O. 14014 do not generally prohibit trade or the provision of banking or other financial services to the country of Burma. Instead, the sanctions in E.O. 14014 apply where the transaction or service in question involves property or interests in property that are blocked pursuant to these sanctions or are otherwise specifically prohibited.

Subpart A of the Regulations clarifies the relation of this part to other laws and regulations, refers to subpart C of part 501 for recordkeeping and reporting requirements, refers to subpart E of part 501 for applicable provisions relating to administrative procedures, contains a delegation of certain authorities of the Secretary of the Treasury, and sets forth a Paperwork Reduction Act notice.

Subpart B of the Regulations implements the prohibitions contained in sections 1 and 2 of E.O. 14014, as well as the prohibitions contained in any further Executive orders issued pursuant to the national emergency declared in E.O. 14014. *See, e.g.*, §§ 525.201, 525.202, and 525.208. Persons designated by or under the authority of the Secretary of the Treasury pursuant to E.O. 14014, or otherwise blocked pursuant to E.O.

14014, as well as persons who are blocked pursuant to any further Executive orders issued pursuant to the national emergency declared in E.O. 14014, are referred to throughout the Regulations as “persons whose property and interests in property are blocked pursuant to § 525.201.” The names of persons designated or identified as blocked pursuant to E.O. 14014, or any further Executive orders issued pursuant to the national emergency declared therein are published on OFAC’s Specially Designated Nationals and Blocked Persons List (SDN List), which is accessible via OFAC’s website. Those names also are published in the **Federal Register** as they are added to the SDN List.

Section 525.202 of subpart B implements Directive 1. Sections 525.203 and 525.204 of subpart B detail the effect of transfers of blocked property in violation of the Regulations and set forth the requirement to hold blocked funds, such as currency, bank deposits, or liquidated financial obligations, in interest-bearing blocked accounts. Section 525.205 of subpart B provides that all expenses incident to the maintenance of blocked tangible property shall be the responsibility of the owners and operators of such property, and that such expenses shall not be met from blocked funds, unless otherwise authorized. The section further provides that blocked property may, in OFAC’s discretion, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Section 525.206 of subpart B prohibits any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in the Regulations, and any conspiracy formed to violate such prohibitions. Section 525.207 of subpart B details transactions that are exempt from the prohibitions of the Regulations pursuant to section 203(b) of IEEPA (50 U.S.C. 1702(b)).

In subpart C of the Regulations, new definitions are being added to other key terms used throughout the Regulations. Because these new definitions were inserted in alphabetical order, the definitions that were in the prior abbreviated set of regulations have been renumbered. Similarly, in subpart D, which contains interpretive sections regarding the Regulations, certain provisions have been renumbered and others added to those in the prior abbreviated set of regulations. Section 525.411 of subpart D explains that the property and interests in property of an entity are blocked if the entity is

directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked, whether or not the entity itself is incorporated into OFAC’s SDN List.

Transactions otherwise prohibited by the Regulations but found to be consistent with U.S. policy may be authorized by one of the general licenses contained in subpart E of the Regulations or by a specific license issued pursuant to the procedures described in subpart E of 31 CFR part 501. OFAC is updating § 525.502 to conform with current OFAC statements of licensing policy and renumbering the general licenses at §§ 525.506 through 525.510 as §§ 525.507 through 525.511, respectively. OFAC is adding § 525.506, which authorizes the investment and reinvestment of assets blocked pursuant to § 525.201, subject to the certain conditions. OFAC is updating the renumbered § 525.508, which authorizes payment for legal services from funds originating outside the United States. OFAC is updating and renumbering the general license at § 525.512 as § 525.513. OFAC is also adding § 525.512 to incorporate Burma General License 3, which authorizes certain transactions in support of nongovernmental organizations’ activities, was previously issued on OFAC’s website on March 25, 2021, and will be removed upon publication of this rule. General licenses and statements of licensing policy relating to this part also may be available through the Burma sanctions page on OFAC’s website: <https://ofac.treasury.gov>.

Subpart G of the Regulations describes the civil and criminal penalties applicable to violations of the Regulations, as well as the procedures governing the potential imposition of a civil monetary penalty or issuance of a Finding of Violation. Subpart G also refers to appendix A of part 501 for a more complete description of these procedures.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of E.O. 12866 of September 30, 1993, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), as amended, and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the “Reporting, Procedures and Penalties Regulations”). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 525

Administrative practice and procedure, Banks, Banking, Blocking of assets, Burma, Credit, Foreign trade, Penalties, Reporting and recordkeeping requirements, Sanctions, Securities, Services.

■ For the reasons set forth in the preamble, OFAC revises 31 CFR part 525 to read as follows:

PART 525—BURMA SANCTIONS REGULATIONS

Sec.

Subpart A—General Provisions

- 525.101 Relation of this part to other laws and regulations.
- 525.102 Records and reports.
- 525.103 Procedures.
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Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 28 U.S.C. 2461 note (Pub. L. 101–410, 104 Stat. 890, as amended); E.O. 14014, 86 FR 9429, 3 CFR, 2021 Comp., p. 514.

Subpart A—General Provisions

§ 525.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures, which applies to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

§ 525.102 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

§ 525.103 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 525.104 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures, and other procedures, see § 501.901 of this chapter. 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 control number assigned by OMB.

§ 525.105 [Reserved]

§ 525.106 Delegation of certain authorities of the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to E.O. 14014 of February 10, 2021 and any further Executive orders relating to the national emergency declared therein may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart B—Prohibitions

§ 525.201 Prohibited transactions.

(a) *E.O. 14014*. All property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To operate in the defense sector of the Burmese economy, the jet fuel sector of the Burmese economy, or any other sector of the Burmese economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State;

(ii) To be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, any of the following:

(A) Actions or policies that undermine democratic processes or institutions in Burma;

(B) Actions or policies that threaten the peace, security, or stability of Burma;

(C) Actions or policies that prohibit, limit, or penalize the exercise of freedom of expression or assembly by people in Burma, or that limit access to print, online, or broadcast media in Burma; or

(D) The arbitrary detention or torture of any person in Burma or other serious human rights abuse in Burma;

(iii) To be or have been a leader or official of:

(A) The military or security forces of Burma, or any successor entity to any of the foregoing;

(B) The Government of Burma on or after February 2, 2021;

(C) An entity that has, or whose members have, engaged in any activity described in paragraph (a)(1)(ii) of this

section relating to the leader's or official's tenure; or

(D) An entity whose property and interests in property are blocked pursuant to this paragraph (a)(1) as a result of activities related to the leader's or official's tenure;

(iv) To be a political subdivision, agency, or instrumentality of the Government of Burma;

(v) To be a spouse or adult child of any person whose property and interests in property are blocked pursuant to this paragraph (a)(1);

(vi) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of any person whose property and interests in property are blocked pursuant to this paragraph (a)(1); or

(vii) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the military or security forces of Burma or any person whose property and interests in property are blocked pursuant to this paragraph (a)(1).

(b) The prohibitions in paragraph (a) of this section include prohibitions on the following transactions:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless authorized by this part or by a specific license expressly referring to this part, any dealing in securities (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any securities on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such securities may have or might appear to have assigned, transferred, or otherwise disposed of the securities.

(d) The prohibitions in paragraph (a) of this section apply except to the extent provided by statutes, or in regulations, rulings, instructions, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

(e) All transactions prohibited pursuant to any Executive order issued after February 10, 2021, pursuant to the national emergency declared in E.O. 14014 of February 10, 2021, are prohibited pursuant to this part.

Note 1 to § 525.201. The names of persons designated or identified as blocked pursuant to E.O. 14014, or any further Executive orders issued pursuant to the national emergency declared therein, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) using the following identifiers: for E.O. 14014: "[BURMA-EO14014]"; and for any further Executive orders issued pursuant to the national emergency declared in E.O. 14014: using the identifier formulation "BURMA-E.O.[E.O. number pursuant to which the person's property and interests in property are blocked]." The SDN List is accessible through the following page on OFAC's website: <https://ofac.treasury.gov/sanctions-list-service>. Additional information pertaining to the SDN List can be found in appendix A to part 501 of this chapter. See § 525.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

Note 2 to § 525.201. Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) authorizes the blocking of property and interests in property of a person during the pendency of an investigation. Except as described in Note 3 to this section, the names of persons whose property and interests in property are blocked pending investigation pursuant to this section are published in the **Federal Register** and incorporated into the SDN List using the following identifiers: for E.O. 14014 "[BPI-BURMA]"; and for any further Executive orders issued pursuant to the national emergency declared in E.O. 14014: using the identifier formulation "[BPI-BURMA-E.O.[E.O. number pursuant to which the person's property and interests in property are blocked pending investigation]]."

Note 3 to § 525.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will

be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202-622-2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 525.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to this section.

§ 525.202 Prohibited transactions related to financial services to or for the benefit of Myanmar Oil and Gas Enterprise (MOGE) (Directive 1).

The following activities by a U.S. person are prohibited on or after December 15, 2023: The provision, exportation, or reexportation, directly or indirectly, of financial services to or for the benefit of the Myanmar Oil and Gas Enterprise (MOGE) or its property or interests in property.

§ 525.203 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, ruling, instruction, order, directive, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 525.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or interest in property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 525.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, a license or other authorization issued by OFAC before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, ruling, instruction, order,

directive, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of OFAC each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with OFAC a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, order, directive, license, or other authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by OFAC; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

(e) The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(f) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property or interest in property blocked pursuant to § 525.201.

§ 525.204 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (e) or (f) of this section, or as otherwise directed or authorized by OFAC, any

U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 525.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For the purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For the purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For the purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 525.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 525.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as real or personal property, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds blocked pursuant to § 525.201 may not be held, invested, or reinvested in a manner that provides financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 525.201, nor may their

holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 525.205 Expenses of maintaining blocked tangible property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of tangible property blocked pursuant to § 525.201 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 525.201 may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 525.206 Evasions; attempts; causing violations; conspiracies.

(a) Any transaction on or after the effective date that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

§ 525.207 Exempt transactions.

International Emergency Economic Powers Act. The prohibitions contained in this part do not apply to any transactions that are exempt pursuant to section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)).

Note 1 to § 525.207. See §§ 525.512 and 525.513 for general licenses related to humanitarian assistance.

Note 2 to § 525.207. See § 525.510 and § 525.511 for general licenses authorizing transactions for the conduct of the official business of the United States Government and certain international organizations and entities, respectively.

Subpart C—General Definitions

§ 525.300 Applicability of definitions.

The definitions in this subpart apply throughout the entire part.

§ 525.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* mean any account or property subject to the prohibitions in § 525.201 held in the name of a person

whose property and interests in property are blocked pursuant to § 525.201, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

Note 1 to § 525.301. See § 525.411 concerning the blocked status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked pursuant to § 525.201.

§ 525.302 Effective date.

(a) The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(1) With respect to a person whose property and interests in property are blocked pursuant to § 525.201, the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked;

(2) With respect to transactions prohibited by § 525.202, December 15, 2023.

(b) For the purposes of this section, *constructive notice* is the date that a notice of the blocking of the relevant person's property and interests in property is published in the **Federal Register**.

§ 525.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 525.304 Financial, material, or technological support.

The term *financial, material, or technological support* means any property, tangible or intangible, including currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. "Technologies" as used in this section means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering

designs and specifications, manuals, or other recorded instructions.

§ 525.305 Financial Services.

The term *financial services*, as used in § 525.202, includes loans, transfers, accounts, insurance, investments, securities, guarantees, foreign exchange, letters of credit, and commodity futures or options.

§ 525.306 Foreign person.

The term *foreign person* means any person that is not a U.S. person.

§ 525.307 Government of Burma.

The term *Government of Burma* means the Government of Burma, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Myanmar, and any person owned or controlled by, or acting for or on behalf of, the Government of Burma.

§ 525.308 [Reserved]

§ 525.309 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (e.g., "an interest in property"), means an interest of any nature whatsoever, direct or indirect.

§ 525.310 Licenses; general and specific.

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's website: <https://ofac.treasury.gov>.

(c) The term *specific license* means any license or authorization issued pursuant to this part but not set forth in subpart E of this part or made available on OFAC's website: <https://ofac.treasury.gov>.

Note 1 to § 525.310. See § 501.801 of this chapter on licensing procedures.

§ 525.311 OFAC.

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

§ 525.312 Person.

The term *person* means an individual or entity.

§ 525.313 Property; property interest.

The terms *property* and *property interest* include money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers

acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership, or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 525.314 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 525.315 United States.

The term *United States* means the United States, its territories and

possessions, and all areas under the jurisdiction or authority thereof.

§ 525.316 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 525.317 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, purchasing or selling foreign exchange, securities, futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, money services businesses, operators of credit card systems, trust companies, insurance companies, securities brokers and dealers, futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 525.401 Reference to amended sections.

(a) Reference to any section in this part is a reference to the same as currently amended, unless the reference includes a specific date. *See* 44 U.S.C. 1510.

(b) Reference to any regulation, ruling, instruction, order, directive, or license issued pursuant to this part is a reference to the same as currently amended unless otherwise specified.

§ 525.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any regulation, ruling, instruction, order, directive, or license issued by OFAC does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification,

or revocation. All penalties, forfeitures, and liabilities under any such regulation, ruling, instruction, order, directive, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 525.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person whose property and interests in property are blocked pursuant to § 525.201, such property shall no longer be deemed to be property blocked pursuant to § 525.201, unless there exists in the property another interest that is blocked pursuant to § 525.201, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 525.201, such property shall be deemed to be property in which such person has an interest and therefore blocked.

§ 525.404 Transactions ordinarily incident to a licensed transaction.

(a) Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(1) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 525.201; or

(2) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(b) For example, a license authorizing a person to complete a securities sale involving Company A, whose property and interests in property are blocked pursuant to § 525.201, also authorizes other persons to engage in activities that are ordinarily incident and necessary to complete the sale, including transactions by the buyer, broker, transfer agents, and banks, provided that such other persons are not themselves persons whose property and interests in property are blocked pursuant to § 525.201.

§ 525.405 Provision and receipt of services.

(a) The prohibitions contained in § 525.201 apply to services performed in the United States or by U.S. persons, wherever located:

(1) On behalf of or for the benefit of any person whose property and interests in property are blocked pursuant to § 525.201; or

(2) With respect to property interests of any person whose property and interests in property are blocked pursuant to § 525.201.

(b) The prohibitions on transactions contained in § 525.201 apply to services received in the United States or by U.S. persons, wherever located, where the service is performed by, or at the direction of, a person whose property and interests in property are blocked pursuant to § 525.201.

(c) For example, U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to any person whose property and interests in property are blocked pursuant to § 525.201, or negotiate with or enter into contracts signed by a person whose property and interests in property are blocked pursuant to § 525.201.

Note 1 to § 525.405. *See* §§ 525.507 and 525.509 for general licenses authorizing the provision of certain legal and emergency medical services.

§ 525.406 Offshore transactions involving blocked property.

The prohibitions in § 525.201 on transactions or dealings involving blocked property, as defined in § 525.301, apply to transactions by any U.S. person in a location outside the United States.

§ 525.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 525.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

Note 1 to § 525.407. *See also* § 525.502(e), which provides that no license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

§ 525.408 Charitable contributions.

Unless specifically authorized by OFAC pursuant to this part, no charitable contribution of funds, goods,

services, or technology, including contributions to relieve human suffering, such as food, clothing, or medicine, may be made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 525.201. For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 525.201 if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from such a person.

§ 525.409 Credit extended and cards issued by financial institutions to a person whose property and interests in property are blocked.

The prohibition in § 525.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including charge cards, debit cards, or other credit facilities issued by a financial institution to a person whose property and interests in property are blocked pursuant to § 525.201.

§ 525.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. financial institution or other U.S. person, is a prohibited transfer under § 525.201 if effected after the effective date.

§ 525.411 Entities owned by one or more persons whose property and interests in property are blocked.

Persons whose property and interests in property are blocked pursuant to § 525.201 have an interest in all property and interests in property of an entity in which such persons directly or indirectly own, whether individually or in the aggregate, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 525.201, regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

§ 525.412 Entities of which one or more blocked persons is a member, leader, official, senior executive officer, or otherwise exercises control.

(a) The property and interests in property of an entity, including any political subdivision, agency, or instrumentality of a governmental entity, are not blocked solely because one or more persons whose property and interests in property are blocked pursuant to § 525.201 is a member, leader, official, senior executive officer, or otherwise exercises control.

Note 1 to paragraph (a). See § 525.411 concerning the blocked status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked pursuant to § 525.201.

(b) For example, U.S. persons may not, except as authorized or exempt pursuant to this part, engage in the following transactions with a person whose property and interests in property are blocked pursuant to § 525.201: enter into contracts that are signed by a blocked person, enter into negotiations with a blocked person, or process transactions, directly or indirectly, on behalf of a person whose property and interests in property are blocked pursuant to § 525.201. However, U.S. persons are not prohibited from engaging in a routine interaction with an agency in which a blocked person is an official, but which does not involve the blocked person directly or indirectly.

Note 2 to § 525.412. OFAC encourages U.S. persons to be cautious in engaging in transactions with any entity of which a person whose property and interests in property are blocked pursuant to § 525.201 is a member, leader, official, senior executive officer, or otherwise exercises control to ensure that U.S. persons are not engaged in transactions, directly or indirectly, with a blocked person, except as authorized or exempt pursuant to this part.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 525.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. General licenses and statements of licensing policy relating to this part also may be available through the Burma sanctions page on OFAC's website: <https://ofac.treasury.gov>.

§ 525.502 Effect of license or other authorization.

(a) No license or other authorization contained in this part, or otherwise issued by OFAC, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, order, directive, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, order, directive, or license is issued by OFAC and specifically refers to this part. No regulation, ruling, instruction, order, directive, or license referring to this part shall be deemed to authorize any transaction prohibited by any other part of this chapter unless the regulation, ruling, instruction, order, directive, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, order, directive, or license authorizing any transaction prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, order, directive, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property that would not otherwise exist under ordinary principles of law.

(d) Nothing contained in this part shall be construed to supersede the requirements established under any other provision of law or to relieve a person from any requirement to obtain a license or other authorization from another department or agency of the U.S. government in compliance with applicable laws and regulations subject to the jurisdiction of that department or agency. For example, exports of goods, services, or technical data that are not prohibited by this part or that do not require a license by OFAC nevertheless may require authorization by the U.S. Department of Commerce, the U.S. Department of State, or other agencies of the U.S. government.

(e) No license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

(f) Any payment relating to a transaction authorized in or pursuant to this part that is routed through the U.S. financial system should reference the

relevant OFAC general or specific license authorizing the payment to avoid the blocking or rejection of the transfer.

§ 525.503 Exclusion from licenses.

OFAC reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. OFAC also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 525.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 525.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note 1 to § 525.504. See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 525.204 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 525.505 Entries in certain accounts for normal service charges.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 525.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 525.204, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 525.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to a person whose property and interests in property are blocked pursuant to § 525.201.

§ 525.507 Provision of certain legal services.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 525.201 is authorized, provided that any receipt of payment of professional fees and reimbursement of incurred expenses must be authorized pursuant to § 525.508, which authorizes certain payments for legal services from funds originating outside the United States; via specific license; or otherwise pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 525.201, not otherwise authorized in this part, requires the issuance of a specific license.

(c) U.S. persons do not need to obtain specific authorization to provide related services, such as making filings and providing other administrative services, that are ordinarily incident to the provision of services authorized by paragraph (a) of this section. Additionally, U.S. persons who provide services authorized by paragraph (a) of this section do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. See § 525.404.

(d) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 525.201 is prohibited unless licensed pursuant to this part.

Note 1 to § 525.507. Pursuant to part 501, subpart E, of this chapter, U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of certain blocked funds for the payment of professional fees and reimbursement of incurred expenses for the provision of such legal services where alternative funding sources are not available.

§ 525.508 Payments for legal services from funds originating outside the United States.

(a) *Professional fees and incurred expenses.* (1) Receipt of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 525.507(a) to or on behalf of any person whose property and interests in property are blocked pursuant to § 525.201, is authorized from funds originating outside the United States, provided that the funds do not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 525.507(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order or statute.

(2) Nothing in this paragraph (a) authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 525.201, any other part of this chapter, or any Executive order or statute has an interest.

(b) *Records.* Consistent with §§ 501.601 and 501.602 of this chapter, U.S. persons who receive payments pursuant to paragraph (a) of this section must retain for 10 years from the date of the relevant payment, and furnish to OFAC on demand, a record that specifies the following for each payment:

(1) The individual or entity from whom the funds originated and the amount of funds received; and

(2) If applicable:

(i) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(ii) A general description of the services provided; and

(iii) The amount of funds paid in connection with such services.

§ 525.509 Emergency medical services.

The provision and receipt of nonscheduled emergency medical services that are prohibited by this part are authorized.

§ 525.510 Official business of the United States government.

All transactions prohibited by this part that are for the conduct of the official business of the United States government by employees, grantees, or contractors thereof are authorized.

§ 525.511 Official business of certain international organizations and entities.

All transactions prohibited by this part that are for the conduct of the official business of the following entities by employees, grantees, or contractors thereof are authorized:

(a) The United Nations, including its Programmes, Funds, and Other Entities and Bodies, as well as its Specialized Agencies and Related Organizations;

(b) The International Centre for Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA);

(c) The African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank Group (IDB Group), including any fund entity administered or established by any of the foregoing;

(d) The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies; and

(e) The Global Fund to Fight AIDS, Tuberculosis, and Malaria, and Gavi, the Vaccine Alliance.

§ 525.512 Certain transactions in support of nongovernmental organizations' activities.

(a) Except as provided in paragraph (c) of this section, all transactions prohibited by this part that are ordinarily incident and necessary to the activities described in paragraph (b) of this section by a nongovernmental organization are authorized, provided that the nongovernmental organization is not a person whose property or interests in property are blocked pursuant to this part.

(b) The activities referenced in paragraph (a) of this section are non-commercial activities designed to directly benefit the civilian population that fall into one of the following categories:

(1) Activities to support humanitarian projects to meet basic human needs, including disaster, drought, or flood relief; food, nutrition, or medicine distribution; the provision of health services; assistance for vulnerable or displaced populations, including individuals with disabilities and the elderly; and environmental programs;

(2) Activities to support democracy building, including activities to support rule of law, citizen participation, government accountability and transparency, human rights and fundamental freedoms, access to information, and civil society development projects;

(3) Activities to support education, including combating illiteracy, increasing access to education, international exchanges, and assisting education reform projects;

(4) Activities to support non-commercial development projects directly benefiting civilians, including those related to health, food security, and water and sanitation;

(5) Activities to support environmental and natural resource protection, including the preservation and protection of threatened or endangered species, responsible and transparent management of natural

resources, and the remediation of pollution or other environmental damage; and

(6) Activities to support disarmament, demobilization, and reintegration (DDR) programs and peacebuilding, conflict prevention, and conflict resolution programs.

(c) This section does not authorize funds transfers initiated or processed with knowledge or reason to know that the intended beneficiary of such transfers is a person blocked pursuant to this part, other than for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services.

(d) Specific licenses may be issued on a case-by-case basis to authorize nongovernmental or other entities to engage in other activities designed to directly benefit the civilian population, including support for the removal of landmines and economic development projects directly benefiting the civilian population.

Note 1 to § 525.512. This section does not relieve any person authorized thereunder from complying with any other applicable laws or regulations.

§ 525.513 Transactions related to the provision of agricultural commodities, medicine, medical devices, replacement parts and components, or software updates for personal, non-commercial use.

(a) All transactions prohibited by this part that are related to the provision, directly or indirectly, of agricultural commodities, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices to an individual whose property and interests in property are blocked pursuant to this part are authorized, provided the items are in quantities consistent with personal, non-commercial use.

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

(1) *Agricultural commodities.* For the purposes of this section, *agricultural commodities* are:

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

(ii) That are intended for ultimate use as:

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

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or
(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

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

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

Note 1 to § 525.513. This section does not relieve any person authorized thereunder from complying with any other applicable laws or regulations.

Subpart F—[Reserved]

Subpart G—Penalties and Findings of Violation

§ 525.701 Penalties.

(a) The penalties available under section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA) are applicable to violations of the provisions of any regulation, ruling, instruction, order, directive, or license issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any regulation in this part, ruling, instruction, order, directive, license, or prohibition issued under IEEPA.

(2) IEEPA provides for a maximum civil penalty not to exceed the greater of \$368,136 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(3) A person who willfully commits, willfully attempts to commit, willfully conspires to commit, or aids or abets in the commission of a violation of any regulation in this part, ruling, instruction, order, directive, license, or prohibition may, upon conviction, be fined not more than \$1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b)(1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Pub. L. 101–410, as amended).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Pursuant to 18 U.S.C. 1001, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, imprisoned, or both.

(d) Violations of this part may also be subject to other applicable laws.

§ 525.702 Pre-Penalty Notice; settlement.

(a) *When required*. If OFAC has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any regulation, ruling, instruction, order, directive, or license issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and determines that a civil monetary penalty is warranted, OFAC will issue a Pre-Penalty Notice informing the alleged violator of the agency’s intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see appendix A to part 501 of this chapter.

(b) *Response*—(1) *Right to respond*. An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to OFAC. For a description of the information that should be included in such a response, see appendix A to part 501 of this chapter.

(2) *Deadline for response*. A response to a Pre-Penalty Notice must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response*. A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier), or dated if sent by email, on or before the 30th day after the postmark

date on the envelope in which the Pre-Penalty Notice was mailed or date the Pre-Penalty Notice was emailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response*. If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response*. A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof (electronic signature is acceptable), contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and include the OFAC identification number listed on the Pre-Penalty Notice. The response must be sent to OFAC’s Enforcement Division by mail or courier or email and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement*. Settlement discussion may be initiated by OFAC, the alleged violator, or the alleged violator’s authorized representative. For a description of practices with respect to settlement, see appendix A to part 501 of this chapter.

(d) *Guidelines*. Guidelines for the imposition or settlement of civil penalties by OFAC are contained in appendix A to part 501 of this chapter.

(e) *Representation*. A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 525.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, OFAC determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, OFAC may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see appendix A to part 501 of this chapter. The issuance of

the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in Federal district court.

§ 525.70 4 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to OFAC, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

§ 525.705 Findings of Violation.

(a) *When issued.* (1) OFAC may issue an initial Finding of Violation that identifies a violation if OFAC:

(i) Determines that there has occurred a violation of any provision of this part, or a violation of the provisions of any regulation, ruling, instruction, order, directive, or license issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*);

(ii) Considers it important to document the occurrence of a violation; and

(iii) Based on the Guidelines contained in appendix A to part 501 of this chapter, concludes that an administrative response is warranted but that a civil monetary penalty is not the most appropriate response.

(2) An initial Finding of Violation shall be in writing and may be issued whether or not another agency has taken any action with respect to the matter. For additional details concerning issuance of a Finding of Violation, see appendix A to part 501 of this chapter.

(b) *Response*—(1) *Right to respond.* An alleged violator has the right to contest an initial Finding of Violation by providing a written response to OFAC.

(2) *Deadline for response; default determination.* A response to an initial Finding of Violation must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond, and the initial Finding of Violation will become final and will constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

(i) *Computation of time for response.* A response to an initial Finding of

Violation must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier), or dated if sent by email, on or before the 30th day after the postmark date on the envelope in which the initial Finding of Violation was served or date the Finding of Violation was sent by email. If the initial Finding of Violation was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response.* A response to an initial Finding of Violation need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof (electronic signature is acceptable), contain information sufficient to indicate that it is in response to the initial Finding of Violation, and include the OFAC identification number listed on the initial Finding of Violation. The response must be sent to OFAC's Enforcement Division by mail or courier or email and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(4) *Information that should be included in response.* Any response should set forth in detail why the alleged violator either believes that a violation of the regulations in this part did not occur and/or why a Finding of Violation is otherwise unwarranted under the circumstances, with reference to the General Factors Affecting Administrative Action set forth in the Guidelines contained in appendix A to part 501 of this chapter. The response should include all documentary or other evidence available to the alleged violator that supports the arguments set forth in the response. OFAC will consider all relevant materials submitted in the response.

(c) *Determination*—(1) *Determination that a Finding of Violation is warranted.* If, after considering the response, OFAC determines that a final Finding of Violation should be issued, OFAC will issue a final Finding of Violation that will inform the violator of its decision. A final Finding of Violation shall constitute final agency action. The violator has the right to seek judicial

review of that final agency action in federal district court.

(2) *Determination that a Finding of Violation is not warranted.* If, after considering the response, OFAC determines a Finding of Violation is not warranted, then OFAC will inform the alleged violator of its decision not to issue a final Finding of Violation.

Note 1 to paragraph (c)(2). A determination by OFAC that a final Finding of Violation is not warranted does not preclude OFAC from pursuing other enforcement actions consistent with the Guidelines contained in appendix A to part 501 of this chapter.

(d) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific alleged violations contained in the initial Finding of Violation must be preceded by a written letter of representation, unless the initial Finding of Violation was served upon the alleged violator in care of the representative.

Lisa M. Palluconi,
Acting Director, Office of Foreign Assets Control.

[FR Doc. 2024–26127 Filed 11–12–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2024–0017;
256D0102DM DS61900000
DMSN00000.000000 DX61901; 70101–1261–
0000L6]

RIN 1018–BH67

Subsistence Management Regulations for Public Lands in Alaska—Subpart B, Federal Subsistence Board Membership; Correction

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The Departments of the Interior and Agriculture are correcting an amendatory instruction in the final rule that published in the **Federal Register** on October 17, 2024. That rule revises the regulations concerning the composition of the Federal Subsistence

Board, which has authority to administer the subsistence taking and uses of fish and wildlife on public lands in Alaska.

DATES: Effective November 18, 2024.

FOR FURTHER INFORMATION CONTACT:

Crystal Leonetti, Acting Director, Office of Subsistence Management; 907-786-3888; or subsistence@ios.doi.gov. For questions specific to National Forest System lands, contact Gregory Risdahl, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; 907-302-7354 or gregory.risdahl@usda.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 should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In the final rule that published in the **Federal Register** on October 17, 2024, at 89 FR 83622, on page 83628, in the first column, amendatory instruction 2 is corrected to read as follows:

2. In subpart B of 36 CFR part 242 and 50 CFR part 100, amend § _____.10 by:

- a. Revising paragraphs (a), (b), and (d)(2); and
- b. Adding paragraphs (d)(11) through (14).

The revisions and additions read as follows:

Joan Mooney,

*Principal Deputy Assistant Secretary,
Exercising the Delegated Authority of the
Assistant Secretary—Policy, Management
and Budget, Department of the Interior.*

Homer Wilkes,

*Undersecretary, Natural Resources and
Environment, Department of Agriculture.*

[FR Doc. 2024-26119 Filed 11-12-24; 8:45 am]

BILLING CODE 3410-11-P; 4334-13-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 79

RIN 2900-AR33

Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program

AGENCY: Department of Veterans Affairs

ACTION: Final rule

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with changes, an interim final rule (IFR) to implement a new authority requiring VA to award grants to eligible entities

that will provide certain legal services for homeless veterans and veterans at risk for homelessness.

DATES: This rule is effective December 13, 2024.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: In an IFR published in the **Federal Register** (FR) on June 1, 2022, (87 FR 33025), VA established, in new part 79 of title 38, Code of Federal Regulations (CFR), the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program, required by section 2022A of title 38, United States Code (U.S.C.). VA provided a 60-day comment period, which ended on August 1, 2022. VA received 12 comments, which are discussed in further detail below. Based on the comments, VA is making changes to part 79, as explained in more detail below.

Comments

Definition of Veteran

Two commenters suggested VA revise its definition of veteran in 38 CFR 79.5, which adopts the definition of veteran in 38 U.S.C. 101(2). Section 101(2) defines veteran as a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable. These commenters were concerned that the definition is too limited and would exclude former servicemembers who need or would benefit from the legal assistance provided under this grant program and who this program was designed to serve (that is, as described by the commenters, those who need assistance with discharge upgrades).

Instead of using the definition of veteran in 38 U.S.C. 101, one of these commenters recommended VA use the definition of veteran in 38 U.S.C. 2002(b) (which is applicable to VA benefits for homeless veterans) or in the alternative, use a more inclusive definition. The definition of veteran in 38 U.S.C. 2002(b) is used for purposes of sections 2011, 2012, 2013, 2044, 2061 of title 38, as well as 42 U.S.C. 1437f(o)(19)(D). Sections 2011, 2012, 2013, 2044, and 2061 apply to VA benefits for homeless veterans such as the supportive services for veteran families grant program and the homeless

providers grant and per diem program. Section 1437(o)(19)(D) of 42 U.S.C. authorizes rental vouchers for certain eligible homeless veterans.

The definition of veteran in 38 U.S.C. 2002 defines veteran to mean a person who served in the active military, naval, air, or space service, regardless of length of service, and who was discharged or released therefrom, and excludes a person who received a dishonorable discharge from the Armed Forces; or was discharged or dismissed from the Armed Forces by reason of the sentence of a general court-martial.

We acknowledge that the current definition of veteran in 38 CFR 79.5 limits those individuals who are eligible for legal services under the grant program, including legal services relating to requests to upgrade the characterization of a discharge. However, we are unable to revise the definition as this commenter recommends (e.g., by using the 38 U.S.C. 2002(b) definition of veteran or a more inclusive definition). Section 2022A does not define veteran. Title 38 has already provided a definition for veteran in section 101(2). Without indicating an alternate definition for the term in statute, Congress's use of "veteran" in section 2022A can only lead VA to surmise that it intended the legal services enumerated in section 2022A to be provided to veterans who meet the requirements of section 101(2), as well as other criteria for being homeless or at risk for homelessness. Thus, we must use the definition of veteran in section 101 rather than the definition in section 2002(b) or a more inclusive definition.

Furthermore, section 2002(b) explicitly limits its applicability to specific sections in chapter 20 (for example, sections 2011, 2012, 2013, 2044, and 2061) and does not include section 2022A. Given that Congress remained silent on the subject, "veteran" in section 2022A must be read as using the available definition in section 101(2). Short of future statutory change, the definition of veteran in 38 U.S.C. 2002(b) does not apply to this grant program authorized by 2022A.

We make no changes to the definition of veteran based on this comment.

The other commenter recommended that VA define veteran in the same way as the U.S. Interagency Council on Homelessness, which defines veteran as all individuals who served in the military regardless of the length of service or their discharge status.

In defining veteran, section 101(2) refers to a person who was discharged or released therefrom under conditions other than dishonorable. This excludes

those who received a dishonorable discharge from the Armed Forces or who have been found by VA to have been discharged under dishonorable conditions. Thus, those individuals would be ineligible to receive services provided through this legal services grant program since we are applying the definition of veteran under section 101(2). Since we must use that definition for purposes of this grant program for the reasons previously explained, we are unable to remove the restrictions on discharge status in the section 101(2) definition.

We are also unable to remove the length of service requirements as those set forth in 38 U.S.C. 5303A apply to this grant program. These requirements apply to the administration of VA benefits and services unless otherwise explicitly made inapplicable. See 38 U.S.C. 5303A(a) (“Notwithstanding any other provision of law, any requirements for eligibility for or entitlement to any benefit under this title or any other law administered by the Secretary that are based on the length of active duty served by a person who initially enters such service after September 7, 1980, shall be exclusively as prescribed in this title.”) and 5303A(b)(3). Section 2022A is not excluded from the length of service requirements in section 5303A(b)(3). Moreover, section 2022A did not explicitly exclude eligible veterans from these length of service requirements. Thus, section 2022A must be read as requiring the length of service requirements described in 38 U.S.C. 5303A. We make no changes to the definition of veteran based on this comment.

Eligible Veterans and 38 CFR 79.55

One commenter stated that grantees should be tasked with establishing their own criteria for eligibility and the methods used to confirm and document eligibility under § 79.15. This commenter opined that grantees should establish their own criteria for determining eligibility and should only have to determine it at the time the veteran engages with them, particularly because requiring grantees to recertify eligibility after intake may cause ethical issues for the grantee and result in frustration, hardship, and damages to the veteran being served by that grantee. This same commenter also suggested that if the veteran is eligible at the time of intake, the legal services should continue until the legal issue is completed.

VA requires grantees verify and document a veteran’s eligibility for legal services prior to providing legal

services. See § 79.55(a)(1). VA also requires that services continue to be provided through completion of the legal services so long as the participant continues to be eligible and if, at any point, the grantee finds the participant is ineligible, they must document such ineligibility and provide the individual with information on other available programs/resources or provide a referral. See § 79.55(a)(2) and (3). Because the statutory authority, 38 U.S.C. 2022A, is clear about eligibility for legal services, as further set forth in 38 CFR 79.15, VA does not believe it would be appropriate for grantees to establish their own eligibility criteria, which could vary and lack consistency among grantees. This could lead to grantees providing services to veterans who are not actually eligible pursuant to VA’s authority and therefore would place an undue burden on VA to conduct an independent determination of each grantee’s eligibility criteria to ensure it is consistent and does not exceed the bounds of VA’s authority. In addition, this could lead to disparate treatment of veterans as grantees could otherwise set more restrictive or broad criteria than others. In such instances, eligibility for legal services would depend on the organization from which veterans sought services. To ensure compliance with the law and that veterans are treated the same for purposes of eligibility for legal services provided under this grant program, VA believes it is appropriate to have the same eligibility criteria for all veterans rather than have grantees establish their own.

For these same reasons, VA will provide grantees with various methods that can be used to determine eligibility. Such information will be included in a program guide that will be provided to grantees. The program guide is the appropriate location for such information rather than regulation since the methods that may be used to determine eligibility are subject to change.

While we expect grantees to determine eligibility based on the criteria in § 79.15 prior to the provision of legal services, we do not expect grantees to verify or confirm eligibility on a frequent, on-going basis. However, if a grantee becomes aware that an individual was never eligible due to, for example, a military discharge as a result of general court-martial, but by mistake was initially determined eligible, we expect the grantee to take appropriate action by ending services and making appropriate referrals to other organizations that are able to assist the individual with legal services, in

compliance with § 79.55(a)(3). It was and is not our intent to have grantees take similar actions if an individual is initially found to be eligible for services but due to improvement in their housing situation, they may no longer be eligible under § 79.15(a)(1). Because these individuals may continue to be at risk for homelessness under § 79.15(a)(2), we want grantees to continue to provide legal services to these individuals. For all participants, we expect legal services to continue to be provided through completion or as the need for such services comes to an end, so long as the individuals remain eligible for such services. See § 79.55(a)(2).

We do not make changes to the regulations based on these comments. However, this information will be included in the grant program guide and as part of technical assistance.

Two commenters raised concerns about the definition of at risk for homelessness included in § 79.15. The definition of at risk for homelessness means an individual who does not have sufficient resources or support networks, *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the definition of “homeless” in 24 CFR 576.2 and meets one or more of nine conditions set forth in 38 CFR 79.15(b)(1) through (9).

It was suggested by both commenters that VA remove the requirement in § 79.15(b)(3) that the veteran be notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the application for assistance or add a period longer than 21 days. The commenter stated that this requirement causes undue confusion, added burden on staff, and that housing statutes and requirements often require landlords provide more than 21 days’ notice.

As an initial matter, the language in § 79.15(b)(3) is not a requirement that all veterans must meet to be determined at risk for homelessness. Instead, it is one of nine conditions, of which a veteran must meet only one. Thus, a veteran can meet the definition of at risk for homelessness if they meet one of those other eight conditions. We believe that if a veteran did not meet § 79.15(b)(3) because they live in a place where more than 21 days’ notice is required to terminate their right to occupy their current housing or living situation and they find themselves in such situation, they may very likely meet one of the other eight conditions. As we have largely adopted the definition of at risk

for homelessness from the Department of Housing and Urban Development's (HUD) definition of at risk for homelessness, including this specific requirement in § 79.15(b)(3), we make no changes based on this comment as we defer to HUD's definition given they are the leading Federal agency on this subject matter. We acknowledge one difference in that 24 CFR 576.2 does include an income limitation. We chose to remove that limitation in 38 CFR 79.15(b) due to situations where a veteran earns an income beyond the limitation in 24 CFR 576.2(i) but is still unable to maintain housing because of a high cost of living where they reside. See 87 FR 33028. We still note that this definition is consistent with other VA grant programs that provide services to veterans at risk for homelessness. Thus, to be consistent with both HUD and VA's existing grant programs, we make no changes based on this comment. However, if we find that this criterion is a barrier for eligibility for services under this grant program, we will consider revising the criterion and make any such revisions in a future rulemaking.

One of the commenters raised concerns about 38 CFR 79.15(b)(5) which excludes veterans residing in hotels or motels paid for by non-profit organizations and government entities based on low income. This language in paragraph (b)(5) is consistent with HUD and VA's other grant programs focused on veterans at risk for homelessness. Additionally, the definition of at risk for homelessness provides nine separate ways to meet the definition, which is fairly broad. However, similar to the discussion on paragraph (b)(3) above, if we find that this criterion is a barrier for eligibility for services under this grant program, we will consider revising the criterion and make any such revisions in a future rulemaking.

One commenter stated that it should be sufficient for veterans to only meet one of the criteria in § 79.15(b)(1) through (9), rather than also having to meet the requirement in § 79.15(b) that an individual does not have sufficient resources or support networks (*for example*, family, friends, faith-based or other social networks) immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the definition of "homeless" in 24 CFR 576.2. This commenter suggested removing the latter criterion based on the assertion that it is subjective, hard to apply, and requires assessment of a veteran's resources. They also stated that it is irrelevant to a veteran's ability to access legal services or their need for

legal help, as availability of resources does not mean they will have support.

As discussed above, this language was included to be consistent with HUD and VA's other grant programs focused on veterans at risk for homelessness. We acknowledge that this criterion is subjective, which is beneficial to veterans as it allows grantees to look at the totality of a veteran's circumstances. However, we disagree that this criterion is hard to apply and requires assessment of a veteran's resources. Instead, this criterion requires a screening, rather than an in-depth analysis or assessment of the veteran's resources and finances. To assist in determining whether a veteran is at risk for homelessness for purposes of this grant program, we will make available to grantees a short screening tool. This tool will be similar to tools that have been utilized effectively by other VA homeless programs, but it will be modified for purposes of the definition of at risk for homelessness in part 79. As this criterion is consistently used and applied in other VA and HUD programs, we do not believe it is or should be hard to apply, especially as an in-depth analysis is not required and the determination on whether this criterion is met is a judgment call made by the grantee.

We acknowledge and agree with the commenter that potential availability of resources to a veteran does not equate to support. However, we note that the requirement is only for the veteran to lack either "sufficient resources or support networks" to actually prevent homelessness or moving to an emergency shelter; the veteran need not lack both of those things. Even if a veteran's family member may have resources or support, this criterion would not necessarily presume that the veteran has the ability to access such resources or support. To continue to be consistent with HUD and VA's other programs, we do not make changes to this definition based on this comment.

Another commenter recommended that services provided under this grant program be available to deported veterans with no income limitations, as they noted there are veterans and servicemembers who are not citizens, are at risk for homelessness, and may be deported.

As an initial matter, we do not impose any income limitations to be eligible for legal services provided under this grant program. As described in § 79.15, an individual is eligible for services under part 79 if they are a homeless veteran (defined consistent with 42 U.S.C. 11302) or a veteran at risk for homelessness (defined consistent with

24 CFR 576.2). Section 11302 of 42 U.S.C. does not include any income limitations in its definition of homeless. As noted above, while 24 CFR 576.2 does include an income limitation, we removed that limitation in 38 CFR 79.15(b) because VA recognized that there may be situations where a veteran earns an income beyond the limitation in 24 CFR 576.2(i) but is still unable to maintain housing because of a high cost of living where they reside. See 87 FR 33028. Because part 79 does not include any income limitations for purposes of eligibility for legal services, we do not make any changes based on this part of the comment.

As written, part 79 does not prohibit grantees from providing legal services, including immigration-specific legal services, to deported veterans or those veterans without U.S. citizenship who live in the United States who meet the eligibility criteria in § 79.15. Part 79 also does not require grantees to provide immigration-specific legal services, to deported veterans or those veterans without U.S. citizenship who meet the eligibility criteria in § 79.15. We understand that relatively few potential grantees may have the capacity and experience to serve such individuals effectively in those circumstances. However, if a grantee is able to do so effectively and in a way that meets all other requirements imposed by this grant program, they would be permitted to do so. Thus, because the provision of legal services, including immigration-specific legal services, to deported veterans or those veterans without U.S. citizenship meeting the eligibility criteria in § 79.15 would be at the discretion of the grantee, we would not regulate this and do not make any changes to part 79 based on this comment.

Eligible Entities

One commenter inquired about whether two non-profits can partner for this grant program. We assume this commenter is inquiring as to whether two organizations can submit a joint grant application for this grant program. Consistent with how VA administers other grant programs, two organizations will not be able to submit a joint application for a legal services grant. However, an organization that is an eligible entity, as defined in part 79, and is awarded a grant may be the primary grantee and may work directly with a subcontractor to administer the grant. As part of the application process, grantees are expected to identify any subcontractors in their application. See 38 CFR 79.25(a)(7). While we do not allow a joint application for two

primary grantees, we do not find it necessary to update the regulations in part 79 to clarify this point, especially as we have not done so in any of our other grant program regulations. This clarification will be further provided through technical assistance and in Frequently Asked Questions.

Legal Services

One commenter recommended VA remove the word “defense” from criminal defense in the list of allowable legal services contained in § 79.20. This commenter stated that use of defense may be misleading to non-criminal legal problems that provide legal services to address the removal of barriers to homelessness associated with interacting with the criminal justice system.

The authorizing statute, 38 U.S.C. 2022A(d)(4), includes certain criminal defense legal services as part of this grant program. Consistent with section 2022A(d)(4), 38 CFR 79.20(d) states that legal services include those relating to criminal defense, including defense in matters symptomatic of homelessness, such as outstanding warrants, fines, driver’s license revocation, and citations. To reduce recidivism and facilitate the overcoming of reentry obstacles in employment or housing, covered legal services relating to criminal defense also include legal assistance with requests to expunge or seal a criminal record.

We are unclear what the commenter is referring to with regards to non-criminal legal problems that provide legal services to address the removal of barriers to homelessness associated with interacting with the criminal justice system. We included in our definition of legal services defense in matters symptomatic of homelessness, such as outstanding warrants, fines, driver’s license revocation, and citations. We believe this covers those instances in which a veteran may be interacting with the criminal justice system but are considered non-criminal legal problems. However, based on this comment, we revise this language to include the word “assistance” to better clarify that these legal services are not restricted to only defense. We believe that this change is a logical outgrowth of the IFR and does not warrant an additional comment period because the change is directly related to a concern presented by a commenter and is otherwise within the scope of the IFR.

We would not remove “defense” as suggested by the commenter since that would be inconsistent with our statutory authority for this program. Because we are making additional

changes to § 79.20(d) as subsequently explained, all of the revisions to § 79.20(d), including the word “assistance”, are described in one consolidated revision further below.

This same commenter also recommended VA clarify that criminal defense includes the resolution of criminal matters symptomatic of homelessness either at any time during a criminal proceeding or post-adjudication and sentencing.

We understand the commenter’s concern and note that § 79.20(d) includes defense in matters symptomatic of homelessness, such as outstanding warrants, fines, and driver’s license revocation, to reduce recidivism and facilitate the overcoming of reentry obstacles in employment or housing. However, similar to the changes discussed directly above, based on this comment, we revise § 79.20(d) to indicate that resolution of matters symptomatic of homelessness is included as part of the legal services that may be provided under this grant program. We believe revising the language to include resolution is appropriate, would better clarify that these legal services are not restricted to only defense, and would cover resolution of criminal matters symptomatic of homelessness either at any time during a criminal proceeding or post-adjudication and sentencing. We believe that this change is a logical outgrowth of the IFR and does not warrant an additional comment period because the change is directly related to a concern presented by a commenter and is otherwise within the scope of the IFR.

Because § 79.20(d) places no limits on when in criminal proceedings legal assistance may be provided, we decline to add language to clarify that legal services under paragraph (d) may be provided at any time during a criminal proceeding or post-adjudication and sentencing.

Based on the previously described changes to § 79.20(d) to include the word “assistance” and those described in a preceding paragraph, § 79.20(d) is revised to state the following: Legal services relating to criminal defense, including defense and resolution of, and assistance with, matters symptomatic of homelessness, such as outstanding warrants, fines, driver’s license revocation, and citations. To reduce recidivism and facilitate the overcoming of reentry obstacles in employment or housing, covered legal services relating to criminal defense also include legal assistance with requests to expunge or seal a criminal record.

We make no further changes based on these comments.

Another commenter suggested VA expand the discharge upgrade legal services under § 79.20 to include those under 10 U.S.C. 1552. This commenter opined that limiting grantees to only serve those seeking discharges under 10 U.S.C. 1553 seems arbitrary, unfairly favors recent-era veterans, especially as it would require grantees to turn away clients who separated over 15 years ago and would limit a grantee’s ability to help appeal wrongful denials.

As an initial matter, we note that the authorizing statute for this grant program includes as legal services those relating to requests to upgrade the characterization of a discharge or dismissal of a former member of the Armed Forces under 10 U.S.C. 1553. Such requests are reviewed by a Discharge Review Board (DRB). Only former members of the Armed Services who were discharged or dismissed within the prior 15 years and are appealing their discharge or dismissal (other than one given by sentence of a General Court Martial) are eligible to submit their request for an upgrade to a DRB. All other requests for corrections of military records or for an upgrade to the characterization of a discharge or dismissal of a former member of the Armed Forces who was discharged or dismissed more than 15 years prior may be reviewed and corrected pursuant to 10 U.S.C. 1552. Section 1552 allows former members of the Armed Forces to apply to the Board for Correction of Military Records (BCMR) for a correction of the former member’s military record when it is considered necessary to correct an error or remove an injustice. BCMRs can upgrade any character of discharge or dismissal; change any reason for discharge or dismissal, re-enlistment codes, the date of discharge or dismissal; remove mistakes in a former member’s record; and add or remove a note of medical retirement.

While Congress did not explicitly include 10 U.S.C. 1552 in the list of legal services authorized under 38 U.S.C. 2022A, based on the comment above, we believe it is appropriate to include as legal services those relating to requests to correct the military record of a former member of the Armed Forces under 10 U.S.C. 1552. We have the authority to do so pursuant to our discretionary authority in 38 U.S.C. 2022A(d)(6), which explains that grants under this section shall be used to provide homeless veterans and veterans at risk for homelessness such other legal services as the Secretary determines appropriate. We use that authority to

add new paragraph (f)(6) to § 79.20 to include legal services relating to requests for corrections to military records of a former member of the Armed Forces under 10 U.S.C. 1552. We believe this is an appropriate legal service to add under this grant program due to the language in 38 U.S.C. 1553 that limits requests for upgrades to those who have been discharged or dismissed within the prior 15 years. We believe it is appropriate to add legal assistance with section 1552 requests so that those former members who were discharged or dismissed more than 15 years prior are able to receive legal assistance with their correction of military records or requests for upgrades, similar to those who were discharged or dismissed within the prior 15 years. This would allow grantees to assist eligible veterans with requests submitted to DRBs and BCMRs.

We believe that this change is a logical outgrowth of the IFR and does not warrant an additional comment period because the change is directly related to a concern presented by a commenter and is otherwise within the scope of the IFR. Further, the IFR provided, in 38 CFR 79.20, that covered legal services would include “[o]ther covered legal services as determined appropriate by the Secretary,” and this change merely reflects the exercise of that authority expressly stated in the IFR.

We would not limit assistance with 10 U.S.C. 1552 requests to only requests for upgrades since the statute is broader than requests for upgrades. Former members of the Armed Forces, regardless of when they were discharged or dismissed, are able to request corrections to other military records under section 1552, and we would allow grantees to use funds to provide assistance with such requests. We make no further changes based on this comment.

Applications (38 CFR 79.25) and Scoring Criteria (38 CFR 79.35)

Another commenter asked what documentation is needed as proof of previous services rendered. We assume this commenter is referring to the language in the sections of part 79 concerning applications for legal services grants (§ 79.25) and scoring criteria for legal services grant applicants (§ 79.35). Section 79.25(a)(6) explains that a complete legal services grant application package includes documentation describing the experience of the applicant and any identified subcontractors in providing legal services to eligible veterans. Section 79.35(a)(2)(ii) explains that as

part of scoring applications, VA will use criteria including whether the applicant, and any identified subcontractors, have experience providing legal services, including providing such services to veterans, or individuals who are homeless, at risk for homelessness or who have very low income.

As part of the application process, we do not require specific documentation to be provided regarding prior experience. However, as part of the application, applicants can provide information and documents to support their prior experience, which we will review when scoring applications. For example, in the application form, we included a section in which applicants can explain their prior experience. Additionally, we will review such documents as memoranda of understanding, memoranda of agreement, staff resumes, position descriptions, and any other documents the applicant submits as part of their application.

Since we do not require any specific documentation to support an applicant’s prior experience, we do not revise these regulations.

General Operation Requirements

Another commenter recommended VA eliminate the requirement in § 79.55(d)(1) that grantees disclose VA as a funding source, as it could cause confusion and create a barrier to legal services. While we understand the commenter’s concerns, this is standard practice for our grant programs (and statutorily required for some of our grant programs), and we believe that disclosing this is important information that eligible veterans should be aware of, particularly as this can positively impact their relationship and interactions with VA. Thus, we do not make any changes based on this comment.

Other Comments

One commenter recommended that the NOFO state that a pass-through entity is an eligible entity. This same commenter also recommended VA have a central prime awardee and suggested VA provide a higher cap (more than \$150k) on the amount of funds that can be awarded to those entities applying as pass-through entities.

While the comment concerns the NOFO, and thus is considered outside the scope of this rulemaking, we note that the NOFO will address whether applicants can operate as a pass-through entity if awarded a grant under this grant program. We are not awarding grants to organizations that would operate as a central prime awardee

because we do not believe it would be appropriate for a single agency to administer this grant program on behalf of VA. While the commenter references a cap of \$150,000, we did not set forth in regulation any cap on the amount of funds we will award grantees. Instead, we stated that this information on estimated amounts of legal services grant funding available, including the maximum grant funding available per award, would be included in the NOFO. See 38 CFR 79.65(c). As there is no such cap in the regulations, particularly as the funds available and awarded can vary annually, we make no changes based on this comment.

Lastly, this commenter also recommended that funds under this program be allowed to cover attorney training and professional development and that this be clarified in the NOFO.

While we make no changes to the regulation based on this comment, we would allow grantees to use legal funds for attorney training and professional development. However, those costs must be covered under the administrative costs. We will provide further guidance on such allowable administrative costs, including attorney training and professional development, in the program guidance and through technical assistance.

One commenter expressed their support for the rule but suggested that VA require its employees to provide information on this grant program if domestic violence is disclosed to them. This comment is outside the scope of this rulemaking, and such a requirement would be more appropriate for internal VA policy. We will work with VA’s Intimate Partner Violence Assistance Program to ensure they have information on this program that can be shared with veterans if domestic violence is disclosed to VA employees. We make no changes to part 79 based on this comment.

Two commenters, who identified as veterans, separately expressed their need for assistance as they were at risk for homelessness. While we consider these comments outside the scope of the rulemaking, to the extent these commenters provided contact information, VA did reach out to them. We further encourage these veterans and others who may be in similar situations to contact their nearest VA facility for further assistance in addressing their needs. We also refer such veterans to VA’s website for additional information on VA’s homeless programs. See <https://www.va.gov/homeless>. We do not make any changes to part 79 based on these comments.

Changes to 38 CFR Part 79 Not Based on Comments

VA makes several changes not based on comments. These do not create any burdens or restrictions on grantees under this grant program and address issues VA has identified with implementation. Several of these changes remove requirements and limitations that would restrict grantees and their ability to effectively provide legal services under this grant program. These changes are a logical outgrowth from the IFR, and even if they are not, given their nature, advance notice and the opportunity to comment is unnecessary under the terms of 5 U.S.C. 553(b)(B).

Changes to § 79.10(c)

Pursuant to 38 U.S.C. 2022A(c), VA established in 38 CFR 79.10 the criteria for an entity to be considered an eligible entity under part 79. One such entity that is eligible for a grant under part 79 is a non-profit private entity. However, Congress did not define this term in 38 U.S.C. 2022A. Thus, as explained in the IFR, VA defined non-profit private entity to mean an entity that meets the requirements of 26 U.S.C. 501(c)(3) or (19). 87 FR 33028. These are designations used by the Internal Revenue Service for purposes of tax exemptions and include such entities as corporations; foundations; and certain posts and organizations of members of the Armed Forces; in which no part of the net earnings inure to the benefit of any private shareholder or individual. Id.

When we promulgated the IFR, we believed that non-profit private entities, such as bar associations, that specialize in providing legal services to veterans who are homeless or at risk for homelessness, including Native veterans, women veterans, and those who live in rural areas, would meet the requirements of 38 CFR 79.10(c). However, since implementing part 79, we have found that such entities may not be eligible to apply for, or receive, a grant because they do not meet the criteria of a non-profit private entity, as defined in 38 CFR 79.10(c), nor do they meet any other criteria to be considered an eligible entity under § 79.10. Instead, such entities may meet the requirements of 26 U.S.C. 501(c)(6), which refers to business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

To ensure that such entities are eligible to apply for, and receive, a grant under part 79, we revise 38 CFR 79.10(c) to include non-profit private entities that meet the requirements of 26 U.S.C. 501(c)(6). While we did not receive any comments on this issue, we consider this change to be removing a restriction in its regulation that excludes other non-profit private entities that commonly provide legal services from applying for, and receiving, a grant. These entities such as bar associations are important to the implementation of this grant program, as they would likely have the capacity to effectively administer a grant under part 79 and often provide legal services to those who may not otherwise have access to such services, such as those who are homeless or at risk for homelessness. We believe this revision to 38 CFR 79.10(c) thus aligns with the intent of the 38 U.S.C. 2022A(a) and (c), as VA is required to award grants to eligible *entities that provide legal services to homeless veterans and veterans at risk for homeless*, and VA may only award grants if the applicant is a public or *nonprofit private entity with the capacity (as determined by the Secretary) to effectively administer a grant under section 2022A* (emphasis added).

Changes to §§ 79.25, 79.75, and 79.95

Sections 79.75 and 79.95 include information collections subject to the Paperwork Reduction Act (PRA). When the IFR published, these information collections had not yet been approved by the Office of Management and Budget (OMB). In §§ 79.75 and 79.95, we thus included language noting that OMB had approved the information collection provisions in these sections but did not identify specific control numbers. However, these information collections have been approved and designated with control numbers. Thus, in this final rule, we revise the language in §§ 79.75 and 79.95 to state that OMB has approved the information collection provisions in this section under control number 2900–0905.

Additionally, we are amending § 79.25 to state that OMB has approved the information collection provisions in this section under control number 2900–0905. We inadvertently left this sentence out of the section when we published the IFR. As § 79.25 addresses applications, which are subject to PRA, we now add this language to reflect the approved collection.

Changes to § 79.80

Section 79.80 explains that faith-based organizations are eligible to

participate in the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program and describes the conditions for use of these grants as they relate to religious activities. Subsequent to the publication of the interim final rule establishing part 79, VA finalized regulations updating 38 CFR part 50. See 89 FR 15671 (March 4, 2024). Part 50 also explains that faith-based organizations are eligible to participate in VA's grant-making programs on the same basis as any other organizations, that VA will not discriminate against faith-based organizations in the selection of service providers, and that faith-based and other organizations may request accommodations from program requirements and may be afforded such accommodations in accordance with Federal law. Because all VA grant programs, including the grant program in part 79, are subject to part 50, we revise 38 CFR 79.80 to refer to part 50 rather than restate the provisions of part 50. Thus, in the event that part 50 is further amended, we would not need to amend part 79.

We do not regard notice and comment on this change as necessary because the public was already given notice and an opportunity to comment as part of the rulemaking to amend part 50.

Relatedly, we also remove in 38 CFR 79.5 the terms “Direct Federal financial assistance” and “Indirect Federal financial assistance” and their definitions, as such terms and definitions were only included in § 79.5 to define the use of these terms in § 79.80. Since we are revising § 79.80 to reference 38 CFR part 50, as explained above, and current part 50 includes definitions for these terms, we remove these terms and their definitions from 38 CFR 79.5 as they will no longer be used in part 79.

Changes to 38 CFR 79.90

Section 79.90 describes financial management and administrative costs related to this grant program. Paragraph (d) limits the administrative costs to no more than 10 percent of the total amount of the legal services grant. This 10 percent cap aligned with other VA grant programs such as the Supportive Services for Veteran Families program (see 38 CFR 62.10), as well as 2 CFR 200.414(f), which sets the de minimis rate for indirect costs (also commonly referred to as administrative costs) for non-Federal entities that receive Federal financial assistance. Effective October 1, 2024, the rate in § 200.414(f) will increase from 10 percent to 15 percent. See 89 FR 30046 (April 22, 2024).

Additionally, 2 CFR 200.414(c) requires that negotiated rates for indirect costs between one Federal awarding agency and a grantee must be accepted by all Federal awarding agencies unless a different rate is required by statute or regulation. Thus, in instances when a legal services grantee has negotiated with another Federal awarding agency a rate other than the de minimis rate set forth in § 200.414(f), VA could accept that rate pursuant to § 200.414(f). However, as VA established the 10 percent rate in current 38 CFR 79.90(d), VA is unable to accept any negotiated rates a grantee may have with another Federal awarding agency. This could limit the number of organizations to which VA could provide funds under this instant grant program, as some organizations, including those who have current and/or past experience providing the services authorized under this grant program, may choose not to apply for a grant under part 79.

Thus, VA is revising § 79.90(d) to state “Costs for administration by a grantee will be consistent with 2 CFR part 200.” This will provide VA flexibility to quickly implement the 15 percent as the de minimis rate for indirect costs, and any subsequent changes to that rate, in § 200.414(f) without first having to conduct rulemaking to change 38 CFR part 79. VA would not reference the specific section of 2 CFR part 200 as that is subject to change.

This will also allow VA to utilize negotiated rates pursuant to § 200.414(f), as applicable, which will align VA with other Federal agencies who provide funds to organizations for the similar type of services that are authorized under this instant grant program, as VA will be able to apply the negotiated rate pursuant to 2 CFR 200.414(c), when applicable. This revision will also align the instant grant program with similar changes VA is making to other grant programs, such as the Sergeant Parker Gordon Fox Suicide Prevention Grant program. See for example, 38 CFR 78.140(d).

This change is within VA’s discretion under 38 U.S.C. 2022A(b), which requires VA to establish criteria and requirements for grants under [such] section. Section 2022A does not place limits on the percentage of the grants funds that may be used for administrative costs. VA makes no further changes to 38 CFR 79.90.

Administrative Procedure Act

VA has considered all relevant input and information contained in the comments submitted in response to the

IFR (87 FR 33025) and, for the reasons set forth in the foregoing responses to those comments, has concluded that changes to the IFR are warranted based on those comments. VA is also making changes to the regulation, as explained above, that do not require notice and comment before implementation. These changes are a logical outgrowth from the IFR, and even if they are not, they relieve limitations and requirements previously established through the IFR, and advance notice and opportunity to comment is unnecessary under the terms of 5 U.S.C. 553(b)(B) because the amendments generally align with the statutory authority and do not create any burdens or restrictions on grantees under this program. Changes to 38 CFR 79.80 were already effectively subject to notice and comment as well through the rulemaking to amend part 50, as discussed above. Accordingly, based upon the authorities and reasons set forth in issuing the IFR (87 FR 33025), as supplemented by the additional reasons provided in this document in response to comments received and based on the rationale set forth in this rule, VA is adopting the provisions of the IFR as a final rule with changes.

Executive Orders 12866, 13563, and 14094

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

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This final rule will only impact those entities that choose to participate in the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program. Small entity applicants will not be affected to a greater extent than large entity applicants. Small entities must elect to participate. To the extent this final rule would have any impact on small entities, it would not have an impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

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

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Except for emergency approvals under 44 U.S.C. 3507(j), VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The interim final rule included provisions constituting new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that required approval by OMB (the provisions in the interim final rule are 38 CFR 79.25, 79.75, and 79.95). Accordingly, under 44 U.S.C. 3507(d), VA submitted a copy of the IFR to OMB for review, and VA requested that OMB approve the collections of information on an emergency basis. VA did not receive any comments on the collections of information contained in the interim final rule. OMB approved the collections of information under control number 2900–0905.

Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this document are 64.056.

Congressional Review Act

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

List of Subjects in 38 CFR Part 79

Administrative practice and procedure; Grant programs-social services; Grant programs-veterans; Homeless; Legal services; Public assistance programs; Reporting and recordkeeping requirements; Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on October 31, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

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

For the reasons stated in the preamble, the interim rule amending 38 CFR chapter 1, which was published at 87 FR 33025 (June 1, 2022), is adopted as final with the following changes:

PART 79—LEGAL SERVICES FOR HOMELESS VETERANS AND VETERANS AT-RISK FOR HOMELESSNESS GRANT PROGRAM

- 1. The general authority citation for part 79 continues to read as follows:

Authority: 38 U.S.C. 501, 38 U.S.C. 2022A, and as noted in specific sections.

§ 79.5 [Amended]

- 2. Amend § 79.5 by removing the definitions of “Direct Federal financial assistance” and “Indirect Federal financial assistance”.

§ 79.10 [Amended]

- 3. Amend § 79.10 in paragraph (c) by removing “26 U.S.C. 501(c)(3) or (19)” and adding in its place “26 U.S.C. 501(c)(3), (6), or (19)”.

- 4. Amend § 79.20 by revising paragraph (d) and adding paragraph (f)(6) to read as follows:

§ 79.20 Legal services.

* * * * *

(d) Legal services relating to criminal defense, including defense and resolution of, and assistance with, matters symptomatic of homelessness, such as outstanding warrants, fines, driver’s license revocation, and citations. To reduce recidivism and facilitate the overcoming of reentry obstacles in employment or housing, covered legal services relating to criminal defense also include legal assistance with requests to expunge or seal a criminal record.

* * * * *

(f) * * *

(6) Legal services relating to requests for corrections to military records of a former member of the Armed Forces under 10 U.S.C. 1552.

- 5. Amend § 79.25 by adding an information collection authority to the end of the section to read as follows:

§ 79.25 Application for legal services grants.

* * * * *

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0905)

§ 79.75 [Amended]

- 6. Amend § 79.75 in the information collection authority at the end of the section by removing “2900–TBD” and adding in its place “2900–0905”.

- 7. Revise § 79.80 to read as follows:

§ 79.80 Faith-based organizations.

Organizations that are faith-based are eligible, on the same basis as any other organization, to participate in the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program under this part in accordance with 38 CFR part 50.

- 8. Amend § 79.90 by revising the first sentence of paragraph (d) to read as follows:

§ 79.90 Financial management and administrative costs.

* * * * *

(d) Costs for administration by a grantee will be consistent with 2 CFR part 200. * * *

§ 79.95 [Amended]

- 9. Amend § 79.95 in the information collection authority at the end of the section by removing “2900–TBD” and adding in its place “2900–0905”.

[FR Doc. 2024–25964 Filed 11–12–24; 8:45 am]

BILLING CODE 8320–01–P

GENERAL SERVICES ADMINISTRATION**41 CFR Parts 300–2, 302–2, 302–3, and 302–15**

[FTR Case 2023–01; Docket No. GSA–FTR–2024–0009, Sequence No. 1]

RIN 3090–AK75

Federal Travel Regulation; Removing References to Title and Narrative Format and Other Changes Addressing Relocation

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The Federal Travel Regulation (FTR) was originally written in title and narrative format. The entire FTR has since been re-written in question and answer format to align with plain language standards. This final rule removes the remaining references to the defunct title and narrative format, clarifies the applicability of the FTR, and clarifies multiple provisions regarding relocation authorization and allowances. Finally, the final rule makes various editorial changes to better align the regulatory question with its corresponding answer.

DATES: *Effective date:* December 13, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Davis, Program Analyst, Office of Government-wide Policy, at 202–669–1653 or travelpolicy@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite “FTR Case 2023–01.”

SUPPLEMENTARY INFORMATION:**I. Background**

Consistent with Executive Order 12866, *Regulatory Planning and Review*, and the June 1, 1998, *Memorandum on Plain Language in Government Writing*, and its implementing guidance, GSA began rewriting the FTR in plain language, which resulted in format changes from title and narrative to question and answer. On August 21, 2014, with FTR Amendment 2014–01 (79 FR 49640), GSA changed the last remaining part of the FTR to question and answer format. However, outdated references to title and narrative format in FTR part 300–2 still remain; this final rule removes them.

This final rule also refines the answer to the question “Who is subject to the FTR,” clarifying that, as to executive

agencies (as defined in 5 U.S.C. 105), those agencies and civilian employees of those executive agencies are subject to the FTR. This does not include uniformed military members, who are subject to U.S.C., title 10, or employees of other than an “executive agency” as defined in 5 U.S.C. 105. This is merely a clarification and does not change the present understanding of who is subject to the FTR.

This final rule moves the section on relocation service agreements in FTR part 302–3 to part 302–2, as the section is a better fit under part 302–2. As a result, § 302–3.500 was updated to remove the limitation for agencies to implement policies only as to part 302–3 because paragraph (a) refers to one of the regulations that was moved to part 302–2. The heading for § 302–3.500 was also updated to add “authorization” in addition to “payment” of relocation payments as the section addresses both. Also, additional discretionary items for househunting and property management services were added to § 302–3.101, Table C, Column 2, to match the same discretionary items noted in parts 302–5 and 302–15. These additions are not new discretionary allowances; they were inadvertently left off the table when FTR Amendment 2021–02 (86 FR 73678) was published. FTR § 302–15.10 is also amended to clarify the time periods for which agencies may pay for property management services; the FTR now specifically addresses the time period for those employees transferring from a foreign area post to an official station in the U.S. if other than the one from which they were transferred for their foreign tour of duty.

II. Discussion of the Final Rule

A. Summary of Significant Changes

There are no significant changes; a summary of changes is included in the Background section.

B. Analysis of Public Comments

This rule addresses matters of agency management or personnel and consequently is exempt from the notice and comment requirements of the Administrative Procedure Act. As such, notice and comment was not sought prior to publication of this final rule.

C. Expected Cost Impact to the Public

There is no cost impact expected as a result of these changes.

III. Executive Orders 12866, 13563, and 14094

Executive Order (E.O.) 12866 (Regulatory Planning and Review) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 (Modernizing Regulatory Review) amends section 3(f) of Executive Order 12866 and supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. The Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA), has determined that this rule is not a significant regulatory action and, therefore, it is not subject to review under section 6(b) of E.O. 12866.

IV. Congressional Review Act

OIRA has determined that this rule is not a “major rule” under 5 U.S.C. 804(2). Title II, Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, unless excepted, 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. This rule is excepted from CRA reporting requirements prescribed under 5 U.S.C. 801 as it relates to agency management or personnel under 5 U.S.C. 804(3)(B).

V. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule is also exempt from the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management or personnel. Therefore, an Initial Regulatory Flexibility Analysis was not performed.

VI. Paperwork Reduction Act

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

List of Subjects in 41 CFR Parts 300–2, 302–2, 302–3, and 302–15

Government employees, Relocation, Travel and transportation expenses.

Robin Carnahan,

Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR parts 300–2, 302–2, 302–3, and 302–15 as follows:

- 1. Revise part 300–2 to read as follows:

PART 300–2—HOW TO USE THE FTR

Sec.

300–2.1 How is the FTR formatted?

300–2.2 How are the rules in this part expressed in the Q&A format?

300–2.3 Who is subject to the FTR?

300–2.4 How is the user addressed in the FTR?

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 121(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

§ 300–2.1 How is the FTR formatted?

The FTR is written in a question and answer (Q&A) format, which is an effective way to engage the reader and present the information in digestible pieces.

§ 300–2.2 How are the rules in this part expressed in the Q&A format?

The rules in this part are expressed in both the question and answer.

§ 300–2.3 Who is subject to the FTR?

As to executive agencies (see § 300–3.1 of this chapter), civilian employees of an executive agency, and the executive agency itself, are subject to the FTR. Since the user may be an employee or an agency, portions of the FTR have been separated into employee and agency sections. However, while the employee provisions are addressed to the employee, the rules expressed in those provisions apply to the agency as well. The following lists the relevant employee and agency sections of the FTR:

TABLE 1 TO § 300–2.3

For	The employee provisions contained in	And the agency provisions are contained in
Chapter 300	N/A	Subchapter B.
Chapter 301	Subchapters A, B, and C	Subchapter D.
Chapter 302	Subchapters A, B, C, D, E, and F	Subchapters A, B, C, D, E, and F.
Chapter 303	N/A	Part 303–70.
Chapter 304	Subchapter A	Subchapters B and C.

§ 300–2.4 How is the user addressed in the FTR?

The FTR asks questions in the first person, as the user would. It then

answers the questions in the second and third person. In the employee sections, the employee is addressed in the singular, and in the agency sections, the

agency is addressed in the plural. The following describes how employee and agency are addressed in both sections:

TABLE 1 TO § 300–2.4

When you are in the	And you are looking at a	The employee is referred to using	And the agency is referred to using
Employee section	Question	I, me, or my	Agency.
	Answer	You or your	Agency.
Agency section	Question	Employee or their	We, us, or our.
	Answer	Employee or their	You or your.

PART 302–2—EMPLOYEE ELIGIBILITY REQUIREMENTS

- 2. The authority citation for part 302–2 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

- 3. Revise the heading of part 302–2 to read as set forth above.

Subpart B—Agency Responsibilities

- 4. Add an undesignated center heading and §§ 302–2.107 through 302–2.109 to read as follows:

Service Agreements**§ 302–2.107 Must we require employees to sign a service agreement?**

Yes, you must require employees to sign a service agreement if the employee is receiving reimbursement for relocation travel expenses, except as provided in § 302–2.17 and §§ 302–3.300 (see the note to table F in § 302–3.101 of this chapter; no service agreement is required for separation or relocation where the gaining agency does not authorize relocation expenses) and 302–3.410 of this chapter.

§ 302–2.108 What information should we include in a service agreement?

The service agreement should include, but not be limited to the following:

- (a) The employee's name;
- (b) The employee's effective date of transfer or appointment;
- (c) The employee's actual place of residence at the time of appointment;

(d) The name of all dependents that are authorized to travel under the TA;

(e) Detailed information regarding the employee's obligation to repay funds spent on the employee's relocation as a debt due the Government if the service agreement is violated;

(f) The employee's agreed period of time (see § 302–2.109) to remain in service; and

(g) The employee's signature accepting the terms of the agreement.

§ 302–2.109 How long must we require an employee to agree to the terms of a service agreement?

You must require an employee to agree to the terms of a service agreement:

(a) Within CONUS for a period of service of not less than 12 months following the effective date of appointment or transfer;

(b) OCONUS for an agreed upon period of service of not more than 36 months or less than 12 months following the effective date of appointment or transfer;

(c) Department of Defense Overseas Dependent School System teachers for a period of not less than one school year as determined under 20 U.S.C. chapter 25;

(d) For renewal agreement travel, a period of not less than 12 months from the date of return to the same or different overseas official station; and

(e) For assignment under the Government Employees Training Act (GETA), not less than three times the length of the training period as prescribed by the head of the agency.

§ 302–2.110 [Redesignated as § 302–2.111]

- 5. Redesignate § 302–2.110 as § 302–2.111.

- 6. Add new § 302–2.110 under the undesignated center heading “Service Agreements” to read as follows:

§ 302–2.110 May we pay relocation expenses if the employee violates their service agreement?

If an employee does not fulfill the terms of the service agreement, the employee is indebted to the Government for all relocation expenses that have been reimbursed to the employee or that have been paid directly by the Government. However, if the reasons for not fulfilling the terms of the service agreement are beyond the employee's control and acceptable to the agency, you may release the employee from the service agreement and waive any indebtedness.

PART 302–3—RELOCATION ALLOWANCE BY SPECIFIC TYPE

- 7. The authority citation for part 302–3 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

- 8. Amend § 302–3.101 in table C by revising entries 5 and 6 and footnote 1 to read as follows:

302–3.101 As a transferred employee or other relocated employee what relocation allowances must my agency pay or reimburse to me?

* * * * *

TABLE C—TRANSFER FROM OCONUS OFFICIAL STATION TO AN OFFICIAL STATION IN CONUS

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
5. Extended storage of household goods only when assigned to a designated isolated official station in CONUS (part 302–8 of this chapter). 6. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	5. Househunting per diem & transportation, employee & spouse only when transfer is from an OCONUS non-foreign area (part 302–5 of this chapter). 6. Property Management Services (part 302–15 of this chapter).¹

¹ **Note to Column 1, Item 3, and Column 2, Item 6:** Allowed when old and new official stations are located in the United States. Also allowed when instead of being returned to the former official station in the United States, an employee is transferred in the interest of the Government to a different official station in the United States than the official station from which an employee was transferred when assigned to the foreign official station.

* * * * *

§ 302–3.213 [Amended]

■ 9. Amend § 302–3.213 by removing “item five of Tables A and B” and adding “table E” in its place.

§ 302–3.221 [Amended]

■ 10. Amend § 302–3.221 by removing “(other than your actual place of residence).”.

■ 11. Revise § 302–3.227 to read as follows:

§ 302–3.227 If I become divorced from my spouse or terminate my committed relationship with my domestic partner while OCONUS will I receive reimbursement to return my former spouse or domestic partner and dependents to the U.S.?

Yes, if you become divorced from your spouse or terminate your committed relationship with your domestic partner while OCONUS, you will receive reimbursement of transportation expenses to return your former spouse or domestic partner and other immediate family members to your place of actual residence within or outside CONUS. Early return expenses for the immediate family are limited to transportation and shipment of household goods and personal effects. Early return expenses do not include other relocation expenses such as TQSE and miscellaneous expense allowance.

■ 12. Amend § 302–3.500 by revising the section heading, introductory text, and paragraph (a) to read as follows:

§ 302–3.500 What governing policies and procedures must we establish for authorization and payment of relocation allowances?

You must establish governing policies and procedures that determine:

(a) When you will pay relocation expenses if an employee violates their service agreement (see § 302–2.110 of this chapter);

* * * * *

§§ 302–3.503 through 302–3.506 [Removed]

■ 13. Remove the undesignated center heading “SERVICE AGREEMENTS” and §§ 302–3.503 through 302–3.506.

§§ 302–3.507 through 302–3.517 [Redesignated as §§ 302–3.503 through 302–3.513]

■ 14. Redesignate §§ 302–3.507 through 302–3.517 as §§ 302–3.503 through 302–3.513.

§ 302–3.505 [Amended]

■ 15. Amend newly redesignated § 302–3.505 by removing from paragraph (b) “8 U.S.C. 1101(33)” and adding “8 U.S.C. 1101(a)(33)” in its place.

§ 302–3.510 [Amended]

■ 16. Amend newly redesignated § 302–3.510 by removing from paragraph (c) “302–3.515” and adding “302–3.511” in its place.

PART 302–15—ALLOWANCE FOR PROPERTY MANAGEMENT SERVICES

■ 17. The authority citation for part 302–15 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

■ 18. Revise § 302–15.10 to read as follows:

§ 302–15.10 How long may my agency pay for property management services under this part?

The length of time your agency may pay for property management services under this part depends on the type of transfer.

(a) If you transfer within the United States, your agency may pay for a period not to exceed one year from your effective date of transfer, with up to a 1-year extension, under the same conditions required in § 302–11.21 of this chapter.

(b) If you transfer to a foreign area post of duty, including successive

foreign area tours of duty for which you signed a new service agreement (see § 302–15.4), your agency may pay from your effective date of transfer until you return to the last official station in the United States from which you transferred.

(c) If you transfer from a foreign area post of duty, including successive foreign area tours of duty for which you signed a new service agreement (see § 302–15.4), to a different official station in the United States than the one from which you were transferred from for your foreign area tour of duty (see § 302–15.6), your agency may pay for a period not to exceed one year from your effective date of transfer to the US, with up to a 1-year extension, under the same conditions required in § 302–11.21 of this chapter.

(d) If you transfer to a foreign area post of duty, complete your service agreement, and remain there without signing a new service agreement, your agency may pay from the effective date of your transfer to when your service agreement is completed.

(e) If you transfer to a foreign area post of duty and separate from Government service before completing your service agreement, your agency may pay from the effective date of your transfer to the date of your separation.

(f) If you transfer within the United States or from a foreign area post of duty to a different official station in the United States than the one from which you were transferred for your foreign area tour of duty, and you separate from Government service before the time periods stated in paragraphs (a) and (c) of this section, your agency may pay from the effective date of your transfer to the date of your separation.

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Proposed Rules

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Wednesday, November 13, 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-2024-2492; Airspace Docket No. 24-AGL-27]

RIN 2120-AA66

Establishment of Class E Airspace; Faith, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Faith, SD. The FAA is proposing this action due to the development of new public instrument procedures at Faith Municipal Airport, Faith, SD, and to support instrument flight rule (IFR) operations.

DATES: Comments must be received on or before December 30, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA-2024-2492 and Airspace Docket No. 24-AGL-27 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instruction 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 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, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

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 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 establish Class E airspace extending upward from 700 feet above the surface at Faith Municipal Airport, Faith, SD, to support IFR operations at this airport.

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 received 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 post 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-14FDMS), 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 Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 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 subsequently 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.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Faith Municipal Airport, Faith, SD.

This action is supports the development of new public instrument procedures at this airport and to support IFR operations.

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), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11J, Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

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

* * * * *

AGL SD E5 Faith, SD [Establish]

Faith Municipal Airport, SD
(Lat 45°02′07″ N, long 102°01′14″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Faith Municipal Airport.

* * * * *

Issued in Fort Worth, Texas, on November 7, 2024.

Steven T. Phillips,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2024–26205 Filed 11–12–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 500 and 515

[FHWA Docket No. FHWA–2024–0048]

RIN 2125–AG00

Asset Management Plans; Management and Monitoring Systems

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM); request for comments.

SUMMARY: The Federal Highway Administration (FHWA) is proposing to amend its regulations governing risk-based Asset Management Plans (AMP). State departments of transportation (State DOT) are required to develop and implement a risk-based AMP for the National Highway System (NHS) to improve or preserve the condition of the assets and the performance of the NHS. Through this notice, FHWA is proposing to amend its AMP regulations

to add and revise definitions in the rule and update the processes State DOTs are required to use in developing an AMP, the required content of the AMP, procedures for State DOTs to submit AMPs to FHWA to ensure that State DOTs are implementing AMPs consistent with law, and procedures for State DOTs to recertify their processes for developing the AMP. The FHWA is proposing these revisions to implement changes in law, advance current policies, and increase the flexibility for State DOTs to comply with AMP regulations. The FHWA is also making minor technical corrections and changes to the rule to improve readability. Finally, FHWA proposes to remove obsolete regulations governing transportation management and monitoring systems.

DATES: Comments must be received on or before January 13, 2025.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE, Washington, DC 20590, or submit electronically at <http://www.regulations.gov>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Tashia J. Clemons, Office of Infrastructure, 202–493–0551, tashia.clemons@dot.gov; or Mariya Tikhonova, Office of the Chief Counsel, 202–366–1356, mariya.tikhonova@dot.gov, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or access all comments received by the DOT online through: <http://www.regulations.gov>. Electronic submission and retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded from the **Federal Register's** home page at: <http://www.federalregister.gov>.

Background and Legal Authority

Asset Management Plans

The term “asset management” means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the lifecycle of the assets at minimum practicable cost. The Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112–141) amended section 119(e) of Title 23, United States Code (U.S.C.), to establish a requirement for States to develop and implement risk-based AMP to improve or preserve the condition of NHS assets and the performance of the system. 23 U.S.C. 119(e)(1). Section 119(e)(4) of Title 23, U.S.C., establishes the minimum requirements for the contents of a State’s AMP and clearly delegates to FHWA the authority to determine the appropriate form of the AMP.¹ On October 24, 2016, FHWA published a final rule (81 FR 73196) that implemented requirements established by MAP-21 and codified at 23 U.S.C. 119(e) for States to develop and implement AMPs to improve or preserve the condition of NHS assets and the performance of the system in accordance with 23 U.S.C. 119(e)(1). The 2016 final asset management rule implements AMP requirements, including the processes State DOTs must use to develop their plans and meet Federal requirements, and is codified at title 23, Code of Federal Regulations (CFR), part 515.

The provisions of 23 U.S.C. 119(e) and 23 CFR part 515 require FHWA to certify, and periodically recertify, the processes a State DOT uses to develop an AMP and to evaluate a State DOT’s development and implementation of its AMP. The first step is for FHWA to

certify/recertify a State DOT’s AMP development process. *See* 23 U.S.C. 119(e)(6); 23 CFR 515.13(a). The FHWA must certify at least every 4 years, and whenever the State DOT amends its AMP development processes, that the State DOT’s processes for developing AMP meet applicable requirements. *See* 23 U.S.C. 119(e)(6)(B); 23 CFR 515.13(c). The second step is for FHWA to conduct an annual consistency determination, which evaluates whether the State DOT has developed and implemented an AMP that is consistent with the requirements of 23 U.S.C. 119. *See* 23 U.S.C. 119(e)(5); 23 CFR 515.13(b). If a State DOT has not developed and implemented an AMP consistent with the requirements in 23 U.S.C. 119(e) and 23 CFR part 515, the State receives a reduced Federal share for National Highway Performance Program (NHPP) projects and activities carried out during the fiscal year in which the State DOT did not meet the AMP requirements. *See* 23 U.S.C. 119(e)(5)(A); 23 CFR 515.15(a).

In 2018, State DOTs submitted their first AMP for review and approval according to the requirements of the 2016 final rule. Since then, FHWA has developed training, hosted regional workshops and Webinars, developed guidance documents, and produced a number of resource documents to prepare State DOTs for recertification. State DOTs have also undergone, on an annual basis, a consistency evaluation to ensure certified AMPs are developed and implemented consistent with 23 U.S.C. 119 and 23 CFR part 515.

Events following the promulgation of the asset management rule in 2016 require updating 23 CFR part 515. On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, also known as the “Bipartisan Infrastructure Law”) (BIL) into law. The BIL amended the minimum requirements for an AMP, by requiring that the AMP’s life-cycle cost and risk management analyses take into consideration extreme weather and resilience.² In addition, Executive Order (E.O.) 14008 of January 27, 2021, Tackling the Climate Crisis at Home and Abroad (86 FR 7619), directs Federal Agencies to take action addressing the crisis of climate change by, among other activities, increasing resilience to the impacts of climate change, including through the delivery of sustainable infrastructure. *See* E.O. 14008, § 201. The FHWA has identified the AMP rule as an opportunity to advance current policies to address impacts of the

present climate crisis through planning for a transportation system that is more resilient to the effects of sea level rise, extreme weather events, flooding, wildfires, or other natural disasters.³

The development and updating of the AMP is also an opportunity to advance the policies of E.O. 13985 of January 20, 2021, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009), which directed Federal Agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for underserved communities and to use this information to develop policies and programs that deliver resources and benefits equitably to all. *See* E.O. 13985, § 1. Consistent with the goals of E.O. 13985, State DOTs are encouraged to consider how the processes for developing an AMP and the content of the AMP can promote equity for users of assets included in the AMP and the communities impacted by the management of those assets, particularly with respect to the AMP’s investment strategies. The FHWA requests comments on the consideration of equity in the AMP, including information from State DOTs that are already considering equity in the development of their AMPs and in particular, their AMP’s investment strategies.

Management and Monitoring Systems

In 1991, Congress passed the Intermodal Surface Transportation Efficiency Act (Pub. L. 102–240), which added section 303 to 23 U.S.C., requiring the Secretary of Transportation to issue regulations for State development, establishment, and implementation of systems to manage highway pavements and bridges, highway safety, traffic congestion, public transportation facilities and equipment, and intermodal transportation facilities and systems. Section 303 also required the Secretary to issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment. The FHWA and the Federal Transit Administration (FTA) subsequently promulgated a final rule to implement 23 U.S.C. 303 (61 FR 67166, Dec. 19, 1996) and codified the regulations at 23 CFR part 500. Section 303 was subsequently repealed by MAP-21, § 1519(b)(1)(A), and FHWA and FTA no longer use the regulations

¹ Under 49 CFR 1.85(a)(1), the FHWA Administrator is delegated the authority of the Secretary of Transportation to administer Chapter 1 of Title 23, U.S.C., which includes section 119.

² *See* BIL, § 11105(3) (codified at 23 U.S.C. 119(e)(4)(D)).

³ *See* 23 U.S.C. 119(b)(4).

governing the management and monitoring systems at 23 CFR part 500.

Purpose of the Regulatory Action

Through this NPRM, FHWA is proposing to implement the amendments to 23 U.S.C. 119(e) in BIL to require that an AMP's risk management and life-cycle planning analysis take into consideration extreme weather and resilience. The incorporation of resilience considerations into the AMP is also consistent with the policy of E.O. 14008. In addition, FHWA is proposing several updates to the AMP rule, which has not been revised since its initial promulgation in 2016. These updates will remove outdated references, increase flexibility for State DOTs, and clarify and streamline the process for State DOTs to submit, and for FHWA to review, AMPs for the annual consistency determination and AMP processes for periodic recertification. Finally, as part of its ongoing efforts to ensure its regulations are up to date and do not contain unnecessary information, FHWA is proposing to remove outdated regulations in 23 CFR part 500. The regulations in 23 CFR part 500 would be removed and part 500 would be reserved for future use.

Section-by-Section Discussion

23 CFR Part 500

As discussed above, FHWA is proposing to remove and reserve 23 CFR part 500, management and monitoring systems, because the underlying statutory authority for promulgating part 500 has been repealed and neither FHWA nor FTA rely on part 500 for regulating management systems under their respective jurisdictions.

23 CFR Part 515

Section 515.1 Purpose

In § 515.1, FHWA is proposing to change "State transportation department" to "State department of transportation." This change is nonsubstantive and is being proposed so that FHWA uses consistent terminology throughout title 23, CFR.

Section 515.3 Applicability

The FHWA proposes to remove the language "and effective date" from the section heading and related language from the text of § 515.3. This language is no longer needed because all State DOTs are fully in compliance with the statutory and regulatory requirements to develop and implement their AMPs.

Section 515.5 Definitions

The FHWA proposes to add definitions for five terms specific to the process for developing AMPs and revise existing definitions to implement statutory requirements and policy priorities.

The FHWA proposes to add a definition for *climate change*. This definition is taken from FHWA Order 5520, Transportation System Preparedness and Resilience to Climate Change and Extreme Weather Events (December 15, 2014).⁴ Climate Change would mean "any significant change in the measures of climate lasting for an extended period of time. Climate change includes major variations in temperature, precipitation, or wind patterns, among other environmental conditions, that occur over several decades or longer. Climate change may manifest as a rise in sea level, as well as increase the frequency and magnitude of extreme weather events now and in the future." Given the connection between climate change and the potential for the increased frequency of extreme weather events, and in light of the new requirement in BIL that an AMP's lifecycle cost and risk management analyses must take into consideration extreme weather and resilience, it is appropriate to include a definition for climate change.

The FHWA proposes to add a definition for *extreme weather events*, which would be defined as "events that can include significant anomalies in temperature, precipitation, and winds and can manifest as heavy precipitation and flooding, heatwaves, drought, wildfires, and windstorms (including tornadoes and tropical storms). Consequences of extreme weather events can include safety concerns, damage, destruction, and/or economic loss. Climate change can also cause or influence extreme weather events." This definition is also found in FHWA Order 5520, and it highlights the connection between climate change and changing temperature, precipitation, and winds, and intensification of precipitation, flooding, heatwaves, drought, wildfires, and windstorms. Adding a definition for extreme weather events to § 515.5 is necessary to implement the requirement in BIL that an AMP's lifecycle cost and risk management analyses take into consideration extreme weather and resilience.

The FHWA proposes to add a definition for *implementation period* to assist State DOTs in gathering information to demonstrate

implementation of the AMP for a 12-month period as required by 23 U.S.C. 119(e)(5) and 23 CFR 515.13(b). Implementation period would mean the 12-month period, beginning on June 1 and ending on May 31 of the following year, covered by an AMP for purposes of plan implementation and the annual consistency determination.

Because FHWA is proposing to include references to the long-range statewide transportation plan in part 515 (see the section-by-section discussion for §§ 515.9 and 515.19 below), FHWA proposes to add a definition for *long-range statewide transportation plan*, which would have the same meaning as the term is defined in 23 CFR 450.104.

The FHWA proposes to define the term *resilience* to help State DOTs incorporate resiliency as part of their AMP's system-level evaluation and to meet the statutory requirement for State DOTs to consider resilience as part of lifecycle planning and risk management analysis. The definition proposed here has the same meaning as defined in 23 U.S.C. 101(a)(24) except that under this part, resiliency is evaluated on the system level rather than with respect to a project.

In addition to the definitions proposed to be added to 23 CFR 515.5, FHWA is proposing changes to existing definitions to implement BIL, advance current priorities, and improve the rule.

The FHWA proposes to amend the definition of *Asset class* so that the example asset class of "Intelligent Transportation (IT)" would read "Intelligent Transportation Systems (ITS)." This is a technical change that is not intended to have any substantive impact.

The FHWA proposes to amend the definition for *life-cycle planning* to mean "a process to analyze strategies for managing an asset class or asset sub-group over their whole life with demonstrated consideration for extreme weather events and resilience, minimizing cost while preserving or improving their condition, and extending the life of the assets. It includes analyzing life-cycle cost, condition, and other life-cycle benefits of alternative strategies that vary by work type and timing." The FHWA proposed change reflects the requirements in 23 U.S.C 119(e)(4)(D) for State DOTs to consider extreme weather and resilience when analyzing estimated cost for the whole life of an asset class or asset sub-group.

The FHWA proposes to edit the definition of *risk management* to reflect the requirement 23 U.S.C. 119(e)(4)(D) for State DOTs to consider extreme

⁴ <https://www.fhwa.dot.gov/legregs/directives/orders/5520.cfm>.

weather and resilience for risk management analysis. Currently, risk management means the identification, analysis, evaluation, and management of risks to assets and system performance. The FHWA proposes to revise the definition to mean “the processes and framework for managing potential risks, such as adverse impacts associated with extreme weather events and other risks to system resilience. Risk management includes the identification, analysis, evaluation, and management of risks to assets and system performance.”

Finally, FHWA proposes to edit the definition of *work types* to provide additional flexibility for States to improve physical assets. Work types would be defined as “the categories of work utilized by a State DOT to strategically and systematically operate, maintain, and improve physical assets. Work type categories may include initial construction, maintenance, preservation, rehabilitation, and reconstruction.” This proposed change would make the specified work types included in the original definition examples for consideration rather than an exclusive list. It would allow State DOTs to categorize the work in their AMPs in a way that is appropriate for their particular circumstances, so long as the categories allow the State DOTs to describe how they will use the categories to strategically and systematically operate, maintain, and improve the physical assets that are included in the AMP.

Section 515.7 Process for Developing the Asset Management Plan

Section 515.7 describes the processes State DOTs are required to use in developing their AMPs and that are subject to certification by FHWA pursuant to 23 U.S.C. 119(e)(6). State DOTs use their certified processes to produce information it needs to develop the contents of the AMP required under 23 U.S.C. 119(e)(4) and part 515. The FHWA is proposing changes to § 515.7 that implement updates to 23 U.S.C. 119 made by BIL, advance current priorities, and clarify rule language.

The FHWA is proposing several changes to improve the clarity and readability of § 515.7. First, FHWA proposes to remove the first sentence of § 515.7's introductory text, which describes in general terms the overall requirement for State DOTs to develop risk-based AMPs. This language is unnecessary because the precise requirements for the processes State DOTs must use to develop their AMPs is enumerated in the paragraphs of § 515.7. Second, FHWA proposes to revise language in § 515.7 to reflect that

State DOTs have already have processes for developing the AMP and have already established targets for the condition of NHS pavements and bridges. In particular, this NPRM would remove language in the introductory text of paragraphs (a) through (e) requiring State DOTs to “establish” processes for developing the AMP and language in paragraph (a)(1) relating to establishing targets “once promulgated.” Third, FHWA is reorganizing the contents of paragraphs (a) through (e) and making changes to rule language to improve the clarity of the rule. Except as specified herein, FHWA does not intend for these changes to have substantive impact on the requirements for the processes that State DOTs use to develop their AMPs.

The FHWA is also proposing to amend the requirements for processes to develop the AMP to implement the requirement from BIL that the AMP's life-cycle cost and risk management analyses must include consideration of extreme weather and resilience. Thus, FHWA is proposing the following changes:

- Including “cost impacts related to the presence or absence of resilience” among the factors in paragraph (b) introductory text that a State DOT should include in developing the process for conducting life-cycle planning;
- Revising paragraph (b)(2) so that deterioration models used for each asset class or asset sub-group of NHS pavements and bridges demonstrate consideration of resilience and extreme weather events; and
- In paragraph (c), including resilience as a risk that a State DOT's process for developing a risk management analysis must be able to identify and, in paragraph (c)(3), requiring a State DOT to treat risks to resilience as top priority risks if such risks are identified.

The FHWA is also proposing several changes to improve the operation of § 515.7. In paragraph (a)(3), FHWA is proposing that a State DOT's process for conducting a performance gap analysis must give consideration to strategies for closing or addressing gaps that are identified in the State DOT's performance-based plans, such as the State Freight Plan or Highway Strategic Safety Plan. Performance-based plans can be important sources of information for identifying gaps in current condition of NHS pavements and bridges and the State DOT's targets.

In the introductory text of paragraph (c), which currently requires a State DOT to establish a process for developing a risk management plan,

FHWA proposes to use the word “analysis” instead of “plan” to more closely align with the text of 23 U.S.C. 119(e)(4)(D). In paragraph (c)(1), FHWA proposes to provide additional information in the discussion of example risk categories, but this is not intended to create any additional requirements.

Paragraph (e) requires a State DOT shall establish a process for developing investment strategies for an AMP that meet the requirements in § 515.9(f). Currently, this process must result in a description of how the investment strategies are influenced, at a minimum, by the following: (1) Performance gap analysis required under § 515.7(a); (2) Life-cycle planning for asset classes or asset sub-groups resulting from the process required under § 515.7(b); (3) Risk management analysis resulting from the process required under § 515.7(c) of this section; and (4) Anticipated available funding and estimated cost of expected future work types associated with various candidate strategies based on the financial plan required by § 515.7(d).

The FHWA is proposing to revise the structure and content of § 515.7(e). The FHWA proposes to make changes to paragraph (e) to show how investment strategies selected by State DOTs are influenced by strategies identified as a result of the processes required to develop the performance gap, lifecycle planning, and risk management analyses described in paragraphs (a) through (c)). Therefore, FHWA proposes to revise the existing requirement that the process produce a description of how the investment strategies are influenced by the processes for generating the AMP's performance gap, lifecycle planning, and risk management analyses to require that the process result in a description of how the investment strategies are influenced by the *strategies* that are identified as a result of those analyses (proposed paragraphs (e)(1)–(3)). The FHWA is also proposing to require that the process for developing investment strategies include a description of how the selected investment strategies are influenced by consideration for how the selected investment strategies would sustain and maintain a state of good repair over the life-cycle of the assets, leading to an improvement in the performance of the NHS and improved travel times (proposed paragraph (e)(4)); and consideration for how the selected investment strategies would sustain and maintain a state of good repair over the life-cycle of the assets, resulting in deferred replacement of assets at minimum practicable cost (proposed

paragraph (e)(5). A deferred replacement of assets may result in lower carbon emissions that would otherwise result from more frequent replacement. Finally, FHWA is proposing to require in paragraph (e)(6) that the process for developing the AMP's investment strategies identify anticipated available funding and the estimated cost of expected future work types by asset class identified as a result of the process for developing the AMP's financial plan required under paragraph (d) and associated with selected strategies identified as a result of the processes to develop the AMP's performance gap, lifecycle planning, and risk management analyses required under paragraphs (a)–(c). The FHWA is proposing to use the term “selected strategies” to clarify that analysis conducted for investment strategies would only be necessary for those strategies that are going to be implemented.

Section 515.9 Asset Management Plan Requirements

Section 515.9 sets forth minimum content requirements that apply to a State DOT AMP. In paragraph (a), FHWA is proposing to add a reference to 23 U.S.C. 119 to clarify that the AMP must comply with the statutory requirements of 23 U.S.C. 119(e) as well as the regulations at 23 CFR part 515. The FHWA is also proposing minor technical changes to § 515.9, including in paragraphs (d)(2) and (e) to update references to other regulations in 23 CFR that had not been promulgated at the time of the 2016 final rule.

The FHWA proposes several revisions to the required contents of an AMP set forth in paragraph (d). In paragraph (d)(4), FHWA is proposing to clarify that the AMP must include performance gap analysis results, including strategies to close identified gaps. These strategies would be produced as a result of the process required by proposed § 515.7(a)(3)–(4), although FHWA notes that existing § 515.7(a)(3) requires the performance gap analysis process to produce strategies to close or address gaps identified by this process.

In paragraph (d)(5), FHWA proposes that the requirement for the life-cycle planning element be revised to require life-cycle planning analysis results that demonstrate consideration of extreme weather events and resilience and include strategies for managing each asset class or asset subgroup. The addition of the requirement that the life-cycle planning analysis demonstrate consideration of extreme weather event and resilience implements the change to 23 U.S.C. 119(e)(4)(D) made by BIL. As with the proposed change to paragraph

(d)(4), the proposed requirement to include strategies for managing each asset class or subgroup is intended to emphasize that the strategies required to be developed as a result of the life-cycle planning process set forth in § 515.7(b)(4) are required to be included in the AMP itself.

In paragraph (d)(6), FHWA proposes that the requirement for the risk management analysis element be revised to require risk management analysis results that demonstrate consideration of extreme weather events and resilience and include strategies to eliminate or reduce top priority risks. As with the proposed change to paragraph (d)(5), the proposed changes in paragraph (d)(6) implement new language in 23 U.S.C. 119(e)(4)(D) and emphasize that the strategies required to be developed as a result of the risk management analysis process set forth in § 515.7(c)(4) are required to be included in the AMP itself.

In paragraph (d)(8), FHWA proposes to require that the AMP's investment strategies element include sufficient detail to demonstrate that the State DOT's selected investment strategies align with the various levels of funding to achieve targets for asset condition and system performance effectiveness at a minimum practicable cost while managing risks. This is consistent with the proposed revisions to the process for developing the AMP's investment strategies in § 515.7(e)(2) that would require a State DOT to describe how its selected investment strategies are influenced by the AMP's performance gap, life-cycle planning, and risk management analyses.

In paragraph (f), FHWA proposes to add a new paragraph (f)(5) that would require an AMP to discuss how its investment strategies would collectively make or support progress toward addressing risks from extreme weather events and risks to system resilience described in § 515.7(c)(1). This change would support the BIL's amendment to 23 U.S.C. 119(e)(4)(D) requiring lifecycle cost and risk management analyses to consider extreme weather and resilience, and it supports the policies of E.O. 14008, which directs Federal Agencies to take action addressing the crisis of climate change by, among other activities, increasing resilience to the impacts of climate change, including through the delivery of sustainable infrastructure.

In paragraph (h), FHWA proposes to require a State DOT to integrate its AMP into the transportation planning processes that lead to the long-range statewide transportation plan described in 23 CFR 450.216, along with the

Statewide Transportation Improvement Program (STIP), which is already included in paragraph (h). This aligns with two requirements in 23 CFR 450.206(c): the requirement in § 450.206(c)(4) that the State “shall integrate into the statewide transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in this section, in other State transportation plans and transportation processes” including the AMP; and the requirement in § 450.206(c)(5) that the State shall “consider the performance measures and targets established under this paragraph when developing policies, programs, and investment priorities reflected in the long-range statewide transportation plan” along with the STIP.

In paragraph (l), FHWA proposes to amend the introductory text to clarify that if a State DOT decides to include assets in addition to NHS pavement and bridge assets in its AMP, the State DOT shall address the items in paragraphs (l)(1) through (7) to the extent practicable, consistent with the State DOT's needs and resources. This amendment is intended to clarify the intent of paragraph (l) that a State DOT should have the flexibility to address how optional assets are included in its AMP, consistent with the State DOT's needs and resources regarding those assets.

Section 515.11 Annual Consistency Determination

Section 515.11 currently describes the deadlines and process for phasing in the requirement for each State DOT to develop an AMP. These deadlines have all passed, and all State DOTs now have approved AMPs certified processes in place for developing updated AMPs. Therefore, FHWA is proposing to revise § 515.11 to cover the process for the annual determination by FHWA, required under 23 U.S.C. 119(e)(5), that a State DOT has developed and implemented an AMP consistent with 23 U.S.C. 119 and 23 CFR part 515 (“the annual consistency determination”). The annual consistency determination is currently discussed in § 515.13 alongside the requirements governing the certification and recertification of the State DOT's processes for developing the AMP, as required under 23 U.S.C. 119(e)(6). As discussed in greater detail below, § 515.13 would continue to cover the requirements for certification and recertification of the State DOT's processes for developing the AMP. As part of this reorganization, FHWA proposes to change the title of

§ 515.11 from “Deadlines and phase-in of asset management plan development” to “Annual consistency determination,” and the title of § 515.13 would change from “Process certification and recertification, and annual plan consistency review” to “Process certification and recertification.” Separating the requirements for the annual consistency determination and the requirements for process certification and recertification into separate sections will improve the readability of the rule.

The FHWA is also proposing changes to the process by which a State DOT submits, and FHWA reviews, an AMP for the annual consistency determination. First, FHWA is proposing to update the current schedule for State DOTs to submit required documents for the annual consistency determination review. In § 515.11(a), FHWA proposes that a State DOT shall submit the materials necessary for FHWA to make its annual consistency determination no later than July 1 of each year. Specifically, a State DOT would be required to submit its State-approved AMP that it intends to implement during the current implementation period (proposed paragraph (a)(1)) and documentation that demonstrates implementation, during the prior implementation period, of the State-approved AMP that FHWA previously determined to be consistent with the requirements of 23 U.S.C. 119 and 23 CFR part 515 as part of the annual consistency determination (proposed paragraph (a)(2)). The FHWA notes that although the timing of when a State DOT is required to submit information for the annual consistency determination would change under this proposed rule, the requirements for what a State DOT must submit for FHWA to make its annual consistency determination remain the same.

The FHWA is proposing an implementation period approach for the requirement that FHWA annually determine that a State DOT has developed a plan consistent with the requirements of 23 U.S.C. 119(e). As discussed in the section-by-section analysis for § 515.5, the implementation period means the 12-month period, beginning on June 1 and ending on May 31 of the following year, covered by an AMP for purposes of plan implementation and the annual consistency determination. Using an implementation period that runs from June 1 to May 31 of the following year will allow States to have a full 12 months of data to process when preparing appropriate documentation needed to show full implementation

that would need to be submitted to FHWA by July 1. Under proposed § 515.11(c)(1), FHWA would have until July 31, or 30 days, to make an annual consistency determination. This schedule is designed to provide adequate time for State DOT to take corrective action, if required due to a negative FHWA determination, before the September 30 statutory deadline for FHWA to complete the annual consistency determination. *See* 23 U.S.C. 119(e)(5)(B). The FHWA believes using a submission date later than July 1 would not provide adequate time for a State DOT to cure any deficiencies that FHWA may identify in the State DOT submission. In such case, the State could be found not to have complied with applicable requirements and be subject to penalty in accordance with 23 U.S.C. 119(e)(5)(A).

The FHWA is aware some State DOTs update their AMPs after July 1, obtain a determination from FHWA that the updated AMP is consistent with 23 U.S.C 119 requirements governing plan development and content, and begin to implement that updated AMP in the middle of an implementation period. When that happens, the State DOT is still required to submit documents on the next July 1 for a full consistency determination. Those documents, and FHWA’s determination, will have to account for the two plans the State DOT used during the Federal fiscal year: the AMP determined consistent prior to the beginning of the Federal fiscal year and the updated version. To address this scenario, proposed paragraph (b) provides the State DOT implementation documentation must describe any material changes to the State DOT’s investment strategies adopted in the updated AMP and explain any effects of the updates on the State DOT’s AMP implementation during the current Federal fiscal year.

Proposed paragraphs (c) and (d) describe the process that FHWA will use to conduct the annual consistency determination required by 23 U.S.C. 119(e)(5) and the scope of the annual consistency determination. Except as described below, these provisions are largely unchanged from what is currently required in § 515.13, except that the proposed rule provides that the annual consistency determination will be measured based on the June 1 to May 31 timeline. That is, FHWA must determine whether a State DOT has developed an AMP that is consistent with 23 U.S.C. 119 and part 515 for the current implementation period (*i.e.*, June 1 of the current year to May 31 of the following year) and whether the State DOT has implemented an AMP

consistent with 23 U.S.C. 119 and part 515 for the prior implementation period (*i.e.*, June 1 of the previous year to May 31 of the current year).

In § 515.11(d)(2), FHWA proposes to clarify that State DOTs must show as part of the documentation that demonstrates implementation of the AMP, that State DOTs used investment strategies that are applicable to make progress toward achievement of its targets for asset condition and performance of the NHS to support progress toward the national goals identified in 23 U.S.C. 150(b), to improve or preserve asset conditions, increase system resiliency, and reduce or mitigate high priority risks.

In § 515.11(d)(2)(ii), the FHWA is proposing that a State DOT may also demonstrate plan implementation without addressing funding allocations by work type. In such case, the State DOT would show how, in the 12 months preceding the FHWA implementation determination, that the State DOT used the applicable AMP’s investment strategies for NHS pavement and bridge assets to meet the requirements in § 515.11(d)(2). In addition, FHWA is proposing under § 515.11(d)(2)(ii) that State DOT must describe how the actual total pavement or bridge expenditures were consistent with the investment strategies in the State DOT AMP even though the expenditures are not by work type.

In proposed paragraph (e), FHWA is proposing that a State DOT may update its AMP as often as it considers necessary, but it must review and update its AMP at least every 4 years as measured from the most recent FHWA recertification of the State DOT’s processes for developing the TAMP. The State DOT would have to submit AMP changes to FHWA for a determination that the updated AMP is consistent with the requirements in 23 U.S.C. 119 and part 515 except when the changes are minor technical corrections or revisions with no foreseeable material impact on the accuracy, adequacy, or validity of the analyses or investment strategies in the AMP. For example, a State DOT would not need to submit changes in the format of the AMP or a change to a point of contact for the plan before the annual consistency determination.

Section 515.13 Process Certification and Recertification

The FHWA proposes to rename § 515.13 “Process certification and recertification” because requirements governing the annual consistency determination would be moved to § 515.11, and § 515.13 would be revised to focus on the processes by which the

State DOTs will submit to FHWA their AMP development processes for recertification pursuant to 23 U.S.C. 119(e)(6). In proposed paragraph (a), FHWA is proposing to require a State DOT to submit its AMP development processes to FHWA for recertification not later than 4 years after the date that FHWA initially certified or subsequently recertified the State DOT's processes. This is consistent with the existing requirement that a State DOT update and resubmit its processes at least every 4 years, beginning on the date of FHWA's certification of the State DOT's processes. *See* 23 CFR 515.13(c). A State DOT would also be required to resubmit its processes for recertification whenever it makes changes to a process except when the changes are minor technical corrections or revisions with no foreseeable material impact on the accuracy, adequacy, and validity of the processes. A State DOT would have the option to submit its processes for recertification as a standalone document or as part of an updated TAMP.

In addition, FHWA is proposing in paragraph (b) to reduce the time by which FHWA provides a decision whether to recertify a State DOT's processes from 90 days to 60 days. State DOTs and FHWA regularly discuss updates to State DOT processes as the updates are in progress and while State DOTs work to develop their AMPs. Consequently, FHWA is often aware of these updates prior to receiving a formal request, which tends to reduce the time to review certify amended processes. Therefore a 60-day review time for FHWA would be appropriate. Similarly, in proposed paragraph (d), FHWA is proposing that a State DOT would have 60 days to address any minor deficiencies that FHWA identifies instead of the 90 days as currently provided. Except for minor technical changes and the proposed changes described above, the procedures for FHWA to recertify a State DOT's processes, including the procedure for curing deficiencies, would remain the same.

The FHWA intends for this proposal to provide State DOTs with flexibility on the timing of their requests for certification or recertification of TAMP development processes under 23 CFR 515.13(a). However, FHWA encourages State DOTs to consider possible impacts on the annual consistency review when they choose to submit their AMP processes to FHWA. For example, a State DOT might submit as a package on July 1 updated processes together with an updated AMP developed using the updated processes. In that scenario, the State DOT would ask FHWA for both a

process recertification under 23 CFR 515.13(a) and a consistency determination under 23 CFR 515.11(c). If FHWA finds both the updated processes and the updated AMP comply with applicable requirements, this approach could work well. However, if FHWA finds it is unable to recertify the State DOT's updated processes as submitted, the State DOT would need to correct the cited deficiencies in its processes, revise its AMP to reflect the changes, resubmit the processes and AMP for FHWA review, and receive FHWA's final decisions on process recertification and the consistency determination. If the time required to accomplish these steps extends beyond October 1, then the State DOT's AMP would not meet the requirement in 23 U.S.C. 119(e)(5)(A) that the AMP be developed consistent with requirements in 23 U.S.C. 119(e) and 23 CFR part 515, the State DOT AMP would receive a negative consistency determination, and the State DOT would be subject to the penalty described in 23 U.S.C. 119(e)(5)(A). Although there are cure periods in regulation for addressing deficiencies found during the TAMP process certification reviews, there is a risk that the State will incur a penalty under 23 U.S.C. 119(e)(5)(A). Some States may find the risks of receiving a negative consistency determination or incurring a penalty outweigh the convenience of a consolidated submission of the State DOT's updated processes simultaneously with an AMP developed using those processes.

Section 515.15 Penalties

This section discusses the statutory penalties for State DOTs that do not develop and implement an AMP consistent with the requirements of 23 U.S.C. 119 and 23 CFR part 515. The penalties that the FHWA is proposing in this section are penalties required by law. *See* 23 U.S.C. 119(e)(5)(A). The FHWA is proposing several revisions to this section.

The FHWA proposes to clarify that on October 1 of each Federal fiscal year, instead of each fiscal year, that if a State DOT has not developed and implemented an AMP consistent with 23 U.S.C. 119, the State DOT would be subject to the statutory penalty described at 23 U.S.C. 119(e)(5)(A), specifically, that the maximum Federal share payable on account of any project or activity for which funds are obligated by the State in that fiscal year under the NHPP shall be 65 percent. The current rule language references October 1, 2019, but a reference to a specific year is no longer needed because the requirement to develop and implement

an AMP has been fully phased in. The proposed updates to this section also more clearly reflect the language in the statute. In addition, FHWA is proposing to revise section 515.15 to align this rule with newly written language in sections 515.7 and 515.9. The FHWA proposes to delete paragraph (b) because the deadline in paragraph (b) has passed and FHWA is not aware of any instances in which State DOTs have not established performance targets for pavements and bridges in accordance with 23 U.S.C. 150.

Section 515.17 Minimum Standards for Developing and Operating Bridge and Pavement Management Systems

In the introductory text to § 515.17, FHWA proposes to amend the reference to "States" to read "a State DOT" for consistency with the rest of part 515. No other changes are proposed for § 515.17.

Section 515.19 Organizational Integration of Asset Management

In paragraph (c), FHWA proposes to add the development of the long-range statewide transportation plan alongside the STIP to the items that a State DOT should consider when conducting a periodic self-assessment of its capabilities to conduct asset management and its current efforts to implement an AMP. As discussed above regarding a similar proposed change to § 515.9(h), the development of the long-range statewide transportation plan contains important connections to asset management, so it is reasonable to include this as a consideration when the State DOT conducts a periodic self-assessment of its asset management capabilities. This proposed revision is intended to improve the capacity of State DOTs to integrate asset management into their organizational missions, cultures, and capabilities. As stated in paragraph (a), these activities are not requirements, and the proposed change to paragraph (c) does not create any new requirements for State DOTs.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has considered the impacts of this rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as amended by E.O. 14094, Modernizing Regulatory Review (88 FR 21879, April 11, 2023), and DOT's regulatory policies and procedures. This proposed rule complies with E.O. 12866 and E.O.

13563 to improve regulation. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) has determined that this rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866. Accordingly, OMB has not reviewed it under that E.O.

It is anticipated that the proposed rule would not be economically significant for purposes of E.O. 12866. The proposed rule would not have an annual effect on the economy of \$200 million or more. The proposed rule would not adversely affect in a material way the economy, any sector of the economy, productivity, competition, or jobs. In addition, the proposed changes would not interfere with any action taken or planned by another Agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

The FHWA estimated the incremental costs associated with the new requirements in the proposed rule that represent a change to the current practices of State DOTs in developing their AMPs. The FHWA and FTA derived this estimate by assessing the expected increase in the level of effort and costs associated with implementing the changes to AMP procedures in this proposed rule. Based on this analysis, FHWA estimates that this proposed rule would have an annual cost impact to States ranging from \$3 million to \$7 million. These costs are attributable to the proposed rule's requirement that an AMP's risk management and lifecycle planning analyses consider extreme weather and resilience. The FHWA presents this estimated cost increase as a range because variation among State DOTs is expected in the nature of the resilience analysis given differences in risk profiles, the quantity of bridge and pavement assets, local variation in costs, and general variation in costs from year-to-year to include in their AMPs.

The FHWA estimates that this proposed rule will generate various benefits to State DOTs and the public resulting from improvements to the provision of transportation infrastructure. Because these benefits are difficult to quantify, FHWA discusses the potential benefits of this proposed rule qualitatively. For example, States may realize cost savings from considering extreme weather and resilience in the context of risk management and lifecycle planning analyses if the analyses conducted for the AMP result in greater State investment in resilient infrastructure that is less vulnerable to the impacts of sea level rise, extreme weather events, flooding, wildfires, or other natural

disasters. A supporting statement in the rulemaking docket (FHWA–2024–0048) contains additional details on FHWA's economic analysis of this proposed rule. The FHWA requests data and comments that could inform the economic analysis for this proposed rule, including any estimates of resulting benefits.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this proposed rule on small entities and has determined that the action is not anticipated to have a significant economic impact on a substantial number of small entities. The proposed rule affects State governments, and State governments do not meet the definition of a small entity. Therefore, FHWA certifies that the action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The FHWA has evaluated this proposed rule for unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$183 million, using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. As part of this evaluation, FHWA has determined that this proposed rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of greater than \$183 million or more in any one year (2 U.S.C. 1532).

Further, in compliance with the Unfunded Mandates Reform Act of 1995, FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal governments and the private sector. In addition, the definition of “Federal Mandate” in the Unfunded Mandate Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal

Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in E.O. 13132. The FHWA has determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this proposed rulemaking would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under E.O. 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal law. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under E.O. 13211 is not required.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal Agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. A 60-day notice to approve the collection of information relating to AMPs was published in the **Federal Register** on May 30, 2024 (89 FR 46985). A 30-day notice to approve the collection of information relating to AMPs was published in the **Federal Register** on August 21, 2024 (89 FR 67705).

The FHWA is required to submit the proposed collection of information to OMB for review and approval and, accordingly, seek public comments. Interested parties are invited to comment regarding any aspect of these information collection requirements, including, but not limited to: (1) whether the collection of information is

necessary for the performance of the functions of FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

Executive Order 12630 (Taking of Private Property)

The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The Agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that it would not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20), which applies to the promulgation of regulations, and that no unusual circumstances are present under 23 CFR 771.117(b).

Executive Order 12898 (Environmental Justice)

The E.O. 12898 requires that each Federal Agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this proposed rule does not raise any environmental justice issues.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 500

Bridges, grant programs—transportation, highway traffic safety, highways and roads, mass transportation, reporting and recordkeeping requirements.

23 CFR Part 515

Asset management, highways and roads, reporting and recordkeeping requirements, transportation.

Kristin R. White,

Acting Administrator, Federal Highway Administration.

For the reasons stated in the preamble, and under the authority of 23 U.S.C. 315, FHWA proposes to amend 23 CFR parts 500 and 515 as follows:

PART 500—[REMOVED AND RESERVED]

- 1. Remove and reserve part 500, consisting of §§ 500.101 through 500.204.
- 2. Revise part 515 to read as follows:

PART 515—ASSET MANAGEMENT PLANS

Sec.

- 515.1 Purpose.
- 515.3 Applicability.
- 515.5 Definitions.
- 515.7 Process for developing the asset management plan.
- 515.9 Asset management plan requirements.
- 515.11 Annual consistency determination.
- 515.13 Process certification and recertification.
- 515.15 Penalties.
- 515.17 Minimum standards for developing and operating bridge and pavement management systems.
- 515.19 Organizational integration of asset management.

Authority: Sec. 1106 and 1203 of Pub. L. 112–141, 126 Stat. 405; 23 U.S.C. 109, 119(e), 144, 150(c), and 315; 49 CFR 1.85(a).

§515.1 Purpose.

The purpose of this part is to:

- (a) Establish the processes that a State department of transportation (State DOT) must use to develop its asset management plan, as required under 23 U.S.C. 119(e)(8);
- (b) Establish the minimum requirements that apply to the development of an asset management plan;
- (c) Describe the penalties for a State DOT's failure to develop and implement an asset management plan in accordance with 23 U.S.C. 119 and this part;
- (d) Set forth the minimum standards for a State DOT to use in developing and operating highway bridge and pavement management systems under 23 U.S.C. 150(c)(3)(A)(i).

§515.3 Applicability.

This part applies to all State DOTs.

§515.5 Definitions.

As used in this part:

Asset means all physical highway infrastructure located within the right-of-way corridor of a highway. The term *asset* includes all components necessary for the operation of a highway including pavements, highway bridges, tunnels, signs, ancillary structures, and other physical components of a highway.

Asset class means assets with the same characteristics and function (e.g., bridges, culverts, tunnels, pavements, or guardrail) that are a subset of a group or collection of assets that serve a common function (e.g., roadway system, safety, Intelligent Transportation Systems (ITS), signs, or lighting).

Asset condition means the actual physical condition of an asset.

Asset management means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the life cycle of the assets at minimum practicable cost.

Asset management plan means a document that describes how a State DOT will carry out asset management as defined in this section. This includes how the State DOT will make risk-based decisions from a long-term assessment of the National Highway System (NHS), and other public roads included in the plan at the option of the State DOT, as it relates to managing its physical assets and laying out a set of investment strategies to address the condition and system performance gaps. This document describes how the highway network system will be managed to achieve State DOT targets for asset condition and system performance effectiveness while managing the risks, in a financially responsible manner, at a minimum practicable cost over the life cycle of its assets. The term *asset management plan* under this part is the risk-based asset management plan that is required under 23 U.S.C. 119(e) and is intended to carry out asset management as defined in 23 U.S.C. 101(a)(2).

Asset sub-group means a specialized group of assets within an asset class with the same characteristics and function (e.g., concrete pavements or asphalt pavements.)

Bridge as used in this part, is defined in 23 CFR 650.305, the National Bridge Inspection Standards.

Climate change means any significant change in the measures of climate lasting for an extended period of time. Climate change includes major

variations in temperature, precipitation, or wind patterns, among other environmental conditions, that occur over several decades or longer and poses adverse impacts to the condition of assets. Climate change may manifest as a rise in sea level, as well as increase the frequency and magnitude of extreme weather events now and in the future.

Critical infrastructure means those facilities the incapacity or failure of which would have a debilitating impact on national or regional economic security, national or regional energy security, national or regional public health or safety, or any combination of those matters.

Extreme weather events mean events that can include significant anomalies in temperature, precipitation, and winds and can manifest as heavy precipitation and flooding, heatwaves, drought, wildfires, and windstorms (including tornadoes and tropical storms). Consequences of extreme weather events can include safety concerns, damage, destruction, and/or economic loss. Climate change can also cause or influence extreme weather events.

Financial plan means a long-term plan spanning 10 years or longer, presenting a State DOT's estimates of projected available financial resources and predicted expenditures in major asset categories that can be used to achieve State DOT targets for asset condition during the plan period, and highlighting how resources are expected to be allocated based on asset strategies, needs, shortfalls, and agency policies.

Implementation period means the 12-month period, beginning on June 1 and ending on May 31 of the following year, covered by an asset management plan for purposes of plan implementation and the annual consistency determination.

Investment strategy means a set of strategies that result from evaluating various levels of funding to achieve State DOT targets for asset condition and system performance effectiveness at a minimum practicable cost while managing risks.

Life-cycle cost means the cost of managing an asset class or asset sub-group for its whole life, from initial construction to its replacement.

Life-cycle planning means a process to analyze strategies for managing an asset class, or asset sub-group, and the included assets over their whole life with demonstrated consideration for extreme weather events and resilience, minimizing cost while preserving or improving their condition, and extending the life of the assets. It includes analyzing life-cycle cost, condition, and other life-cycle benefits

of alternative strategies that vary by work type and timing.

Long-range statewide transportation plan has the same meaning as defined in § 450.104 of this title.

Minimum practicable cost means lowest feasible cost to achieve the objective.

NHS pavements and bridges and NHS pavement and bridge assets mean Interstate System pavements (inclusion of ramps that are not part of the roadway normally traveled by through traffic is optional); NHS pavements (excluding the Interstate System) (inclusion of ramps that are not part of the roadway normally traveled by through traffic is optional); and NHS bridges carrying the NHS (including bridges that are part of the ramps connecting to the NHS).

Performance of the NHS refers to the effectiveness of the NHS in providing for the safe and efficient movement of people and goods where that performance can be affected by physical assets. This term does not include the performance measures established for performance of the Interstate System and performance of the NHS (excluding the Interstate System) under 23 U.S.C. 150(c)(3)(ii)(A)(IV)–(V).

Performance gap means the gaps between the current asset condition and State DOT targets for asset condition, and the gaps in system performance effectiveness that are best addressed by improving the physical assets.

Resilience has the same meaning as defined in 23 U.S.C. 101(a)(24), except that, under this part, resilience is evaluated at the system level.

Risk means the positive or negative effects of uncertainty or variability upon agency objectives.

Risk management means the processes and framework for managing potential risks, such as adverse impacts associated with extreme weather events and other risks to system resilience. Risk management includes the identification, analysis, evaluation, and management of risks to assets and system performance.

Statewide Transportation Improvement Program (STIP) has the same meaning as defined in § 450.104 of this title.

Work type means the categories of work utilized by a State DOT to strategically and systematically operate, maintain, and improve physical assets. Work type categories may include initial construction, maintenance, preservation, rehabilitation, and reconstruction.

§ 515.7 Process for developing the asset management plan.

A State DOT shall develop and use, at a minimum, the following processes to prepare its asset management plan:

(a) A process for conducting a performance gap analysis to identify deficiencies hindering progress toward improving or preserving the NHS and achieving and sustaining the desired state of good repair. The State DOT's process must produce, at a minimum, the following information:

(1) The gap(s) between the existing asset conditions of NHS pavements and bridges and:

(i) The state of good repair (as defined by the State DOT); and

(ii) The State DOT's targets for asset condition of NHS pavements and bridges as established by the State DOT.

(2) The gaps, if any, in the performance-of the NHS that affect NHS pavements and bridges regardless of their physical condition; and

(3) Alternative strategies to close or address the identified gaps. The strategies for closing or addressing gaps identified pursuant to paragraph (2) must consider strategies identified in the State DOT's performance-based plans.

(b) A process for conducting life-cycle planning for an asset class or asset sub-group at the system level. As a State DOT develops its life-cycle planning process, the State DOT should include future changes in demand; information on current and future environmental conditions including extreme weather events, climate change, and seismic activity; cost impacts related to the presence or absence of resilience; and other factors that could impact whole-of-life costs of assets. The State DOT may propose excluding one or more asset sub-groups from its life-cycle planning process if the State DOT can demonstrate to FHWA that the exclusion of the asset sub-group would have no material adverse effect on the development of sound investment strategies due to the limited number of assets in the asset sub-group, the low level of cost associated with managing the assets in that asset sub-group, or other justifiable reasons. The State DOT's life-cycle planning process must produce, at a minimum, the following information:

(1) A description of the State DOT targets for asset condition for each asset class or asset sub-group;

(2) The deterioration models used for each asset class or asset sub-group of NHS pavements and bridges, which shall demonstrate consideration of resilience and extreme weather events;

(3) Potential work types across the whole life of each asset class or asset sub-group with their relative unit cost; and

(4) A strategy for managing each asset class or asset sub-group by minimizing its life-cycle costs, while achieving the State DOT targets for asset condition for NHS pavements and bridges under 23 U.S.C. 150(d).

(c) A process for developing a risk management analysis. The State DOT's process must produce, at a minimum, the following information:

(1) Identification of risks that can affect the condition of NHS pavements and bridges and the performance of the NHS, including resilience. Risks to resilience include risks associated with current and future environmental conditions, such as extreme weather events, climate change, seismic activity, and risks related to recurring damage and costs as identified through the evaluation of facilities repeatedly damaged by emergency events carried out under part 667 of this title. Examples of other risk categories include financial risks such as budget uncertainty; operational risks such as asset failure; and strategic risks to achievement of State DOT objectives and goals, such as compliance with environmental requirements or meeting organizational needs.

(2) An assessment of the identified risks in terms of the likelihood of their occurrence and their impact and consequence if they do occur;

(3) An evaluation and prioritization of the identified risks. A State DOT must treat risks to system resilience as top priority risks if the State DOT identifies such risk(s) under paragraph (c)(1);

(4) A mitigation plan for addressing the top priority risks;

(5) An approach for monitoring the top priority risks; and

(6) A summary of the evaluations of facilities repeatedly damaged by emergency events carried out under part 667 of this title that discusses, at a minimum, the results relating to the State's NHS pavements and bridges.

(d) A process for developing a financial plan that identifies annual costs over a minimum period of 10 years. The State DOT's process must produce, at a minimum, the following information:

(1) The estimated cost of expected future work to implement investment strategies contained in the asset management plan, by State fiscal year and work type;

(2) The estimated funding levels that are expected to be reasonably available, by fiscal year, to address the costs of future work types. A State DOT may

estimate the amount of available future funding using historical values where the future funding amount is uncertain;

(3) Anticipated funding sources; and

(4) An estimate of the value of the State DOT's NHS pavement and bridge assets and the needed investment on an annual basis to maintain the value of these assets.

(e) A process for developing investment strategies meeting the requirements in § 515.9(f). The State DOT's process must produce a description of how the selected investment strategies are influenced, at a minimum, by the following:

(1) Strategies identified through the performance gap analysis resulting from the process required under paragraph (a) of this section;

(2) Strategies identified through the life-cycle planning analysis resulting from the process required under paragraph (b) of this section;

(3) Strategies identified through the risk management analysis resulting from the process required under paragraph (c) of this section;

(4) Consideration for how the selected investment strategies would sustain and maintain a state of good repair over the life-cycle of the assets, leading to an improvement in the performance of the NHS and improved travel times;

(5) Consideration for how the selected investment strategies would sustain and maintain a state of good repair over the life-cycle of the assets, resulting in deferred replacement of assets at minimum practicable cost; and

(6) Anticipated available funding and estimated cost of expected future work types identified as a result of the process required under paragraph (d) of this section and associated with selected strategies identified as a result of the processes for performance gap, life-cycle planning, and risk management analyses described in paragraphs (a)-(c) of this section.

(f) The State DOT's processes shall include a provision for the State DOT to obtain necessary data from other NHS owners in a collaborative and coordinated effort.

(g) A State DOT shall use the best available data to develop their asset management plans. Pursuant to 23 U.S.C. 150(c)(3)(A)(i), each State DOT shall use bridge and pavement management systems meeting the requirements of § 515.17 to analyze the condition of NHS pavements and bridges for the purpose of developing and implementing the asset management plan required under this part. The use of these or other management systems for other assets that the State DOT elects to include in

the asset management plan is optional (e.g., Sign Management Systems, etc.).

§ 515.9 Asset management plan requirements.

(a) A State DOT shall develop and implement an asset management plan to improve or preserve the condition of the assets and improve the performance of the NHS in accordance with the requirements of 23 U.S.C. 119 and this part. Asset management plans must describe how the State DOT will carry out asset management as defined in § 515.5.

(b) An asset management plan shall include, at a minimum, a summary listing of NHS pavement and bridge assets, regardless of ownership.

(c) In addition to the assets specified in paragraph (b) of this section, State DOTs are encouraged, but not required, to include all other NHS infrastructure assets within the right-of-way corridor and assets on other public roads. Examples of other NHS infrastructure assets include tunnels, ancillary structures, and signs. Examples of other public roads include non-NHS Federal-aid highways. If a State DOT decides to include other NHS assets in its asset management plan, or to include assets on other public roads, the State DOT, at a minimum, shall evaluate and manage those assets consistent with paragraph (l) of this section.

(d) The minimum content for an asset management plan under this part includes a discussion of each element in this paragraph (d).

(1) Asset management objectives. The objectives should align with the State DOT's mission. The objectives must be consistent with the purpose of asset management, which is to achieve and sustain the desired state of good repair over the life cycle of the assets at a minimum practicable cost.

(2) Asset management measures and State DOT targets for asset condition, including those established pursuant to 23 U.S.C. 150, for NHS pavements and bridges. The plan must include measures and associated targets the State DOT can use in assessing the condition of the assets and performance of the highway system as it relates to those assets. The measures and targets must be consistent with the State DOT's asset management objectives. The State DOT must include the measures established under 23 U.S.C.

150(c)(3)(A)(ii)(I)–(III), as promulgated in part 490 of this title, for the condition of NHS pavements and bridges. The State DOT also must include the targets the State DOT has established for the measures required by 23 U.S.C. 150(c)(3)(A)(ii)(I)–(III) and report on

such targets in accordance with part 490 of this title. The State DOT may include measures and targets for NHS pavements and bridges that the State DOT established through pre-existing management efforts or develops through new efforts if the State DOT wishes to use such additional measures and targets to supplement information derived from the pavement and bridge measures and targets required under 23 U.S.C. 150.

(3) A summary description of the condition of NHS pavements and bridges, regardless of ownership. The summary must include a description of the condition of those assets based on the performance measures established under 23 U.S.C. 150(c)(3)(A)(ii) for condition. The description of condition should be informed by evaluations required under part 667 of this title of facilities repeatedly damaged by emergency events.

(4) Performance gap analysis results, including strategies to close identified gaps.

(5) Life-cycle planning analysis results that demonstrate consideration of extreme weather events and resilience and include strategies for managing each asset class or asset subgroup.

(6) Risk management analysis results that demonstrate consideration extreme weather events and resilience, and that include strategies to eliminate or reduce top priority risks.

(7) Financial plan.

(8) Investment strategies that demonstrate alignment with the various levels of funding evaluated by the State DOT to achieve targets for asset condition and system performance effectiveness at a minimum practicable cost while managing risks.

(e) An asset management plan shall cover, at a minimum, a 10-year period.

(f) An asset management plan shall discuss how the plan's investment strategies collectively would make or support progress toward:

(1) Achieving and sustaining a desired state of good repair over the life cycle of the assets;

(2) Improving or preserving the condition of the assets and the performance of the NHS relating to physical assets;

(3) Achieving the State DOT targets for asset condition and performance of the NHS in accordance with 23 U.S.C. 150(d);

(4) Achieving the national goals identified in 23 U.S.C. 150(b); and

(5) Addressing risks from extreme weather events and risks to system resilience described in § 515.7(c)(1).

(g) A State DOT must include in its plan a description of how the analyses required using processes developed in accordance with § 515.7 (such as analyses pertaining to life-cycle planning, risk management, and performance gaps) support the State DOT's asset management plan investment strategies.

(h) A State DOT shall integrate its asset management plan into its transportation planning processes that lead to the long-range Statewide transportation plan and the STIP, to support its efforts to achieve the goals in paragraphs (f)(1) through (5) of this section.

(i) A State DOT is required to make its asset management plan available to the public, and is encouraged to do so in a format that is easily accessible.

(j) Inclusion of performance measures and State DOT targets for NHS pavements and bridges established pursuant to 23 U.S.C. 150 in the asset management plan does not relieve the State DOT of any performance management requirements, including 23 U.S.C. 150(e) reporting, established in other parts of this title.

(k) The head of the State DOT shall approve the asset management plan.

(l) If the State DOT elects to include other NHS infrastructure assets or other public roads assets in its asset management plan, the State DOT shall address to the extent practicable the following with respect to such assets, using a level of effort consistent with the State DOT's needs and resources:

(1) Summary listing of assets, including a description of asset condition;

(2) Asset management measures and State DOT targets for asset condition;

(3) Performance gap analysis;

(4) Life-cycle planning;

(5) Risk analysis, including summaries of evaluations carried out under part 667 of this title for the assets, if available, and consideration of those evaluations;

(6) Financial plan; and

(7) Investment strategies.

(m) An asset management plan may include consideration of critical infrastructure from among those facilities in the State that are eligible under 23 U.S.C. 119(c).

§ 515.11 Annual consistency determination.

(a) *State DOT submission deadline.* Not later than July 1 of each year, a State DOT shall submit to FHWA:

(1) The State-DOT approved asset management plan that State DOT intends to implement during the current implementation period and that

includes all information required under § 515.9 and that is developed using processes described in § 515.7 that have been certified by FHWA; and

(2) Documentation that demonstrates implementation, during the prior implementation period, of the State-DOT approved asset management plan that FHWA previously determined to be consistent with the requirements of 23 U.S.C. 119 and this part as part of the annual consistency determination as provided in this section.

(b) *Updates during current implementation period.* If, during the current implementation period, a State begins implementation of an updated asset management plan adopted in compliance with paragraph (e) of this section, the State DOT documentation under paragraph (a) must describe any material changes in investment strategies in its updated plan and explain any effects of the updated plan on its implementation during the current implementation period.

(c) *Annual determination of plan consistency and implementation under 23 U.S.C. 119(e)(5).*

(1) Based on the State DOT submissions pursuant to paragraph (a), and not later than July 31 of each year, FHWA will notify the State DOT whether:

(i) The asset management plan submitted under paragraph (a)(1) covering an implementation period beginning on June 1 and ending on May 31 of the following year is consistent with the requirements in 23 U.S.C. 119 and this part; and

(ii) The documentation submitted under paragraph (a)(2) demonstrates that the State DOT has implemented an asset management plan consistent with 23 U.S.C. 119 and this part during the prior implementation period.

(2) The notice will be in writing and, in the case of a negative determination, will specify the deficiencies the State DOT needs to address. In the event FHWA notifies a State DOT of a negative determination under paragraphs (a)(1) or (a)(2), the State DOT will have 30 days to address the deficiencies. The State DOT may submit additional information showing the FHWA negative determination was in error or demonstrating the State DOT has taken corrective action that resolves the deficiencies specified in FHWA's negative determination.

(d) *Scope of annual plan consistency and implementation determinations.*

(1) *Plan consistency.* The FHWA will review the State DOT's asset management plan submitted pursuant to paragraph (a)(1) to ensure that it was developed with FHWA-certified

processes, includes the required content, and is consistent with other applicable requirements in 23 U.S.C. 119 and this part.

(2) *Plan implementation.* The State DOT must demonstrate implementation of an asset management plan during the prior implementation period that FHWA previously determined to be consistent with the requirements of 23 U.S.C. 119 and this part. The State DOT's submission under paragraph (a)(2) must show that the State DOT used the investment strategies in the applicable asset management plan to make progress toward achievement of its targets for asset condition and performance of the NHS, to support progress toward the national goals identified in 23 U.S.C. 150(b), to improve or preserve asset conditions, increase system resiliency, and reduce or mitigate high priority risks. A State DOT may determine the most suitable approach for demonstrating implementation of its asset management plan, so long as the information submitted pursuant to paragraph (a)(2) is documented, verifiable, and covers the prior implementation period.

(i) FHWA considers the best evidence of plan implementation to be that, for the prior 12-month implementation period, the State DOT funding allocations were reasonably consistent with the investment strategies in the applicable State DOT asset management plan. This demonstration takes into account the alignment between the actual and planned levels of investments for various work types (*i.e.* initial construction, maintenance, preservation, rehabilitation, and reconstruction).

(ii) A State DOT may also demonstrate plan implementation without addressing funding allocations by work type. In such case, the State DOT would show how, during the prior 12-month implementation period, the State DOT used the applicable asset management plan's investment strategies for NHS pavement and bridge assets to meet the requirements in paragraph (d)(2).

(iii) FHWA may find a State DOT has implemented its asset management plan even if the State has deviated from the investment strategies included in its asset management plan, if the State DOT shows the deviation was necessary due to extenuating circumstances beyond the State DOT's reasonable control.

(3) *The FHWA determination.* The FHWA determination under this section is made only with respect to the consistency of the State DOT asset management plan with applicable requirements and State DOT implementation of its asset management

plan. The FHWA determinations are not an approval or disapproval by FHWA of strategies or other decisions contained in the asset management plan.

(4) *Additional assets.* With respect to any assets the State DOT may elect to include in its asset management plan in addition to NHS pavement and bridge assets, the FHWA consistency determination will consider only whether the State DOT has complied with § 515.9(l) with respect to such discretionary assets.

(e) *Plan update.* The State DOT may update its asset management plan as often as it considers necessary, however, the State DOT must review and update its asset management plan at least every four years as measured from the most recent FHWA recertification of the processes used by the State DOT to develop the State asset management plan. The State DOT must submit asset management plan changes to FHWA for a determination that the updated asset management plan is consistent with the requirements in 23 U.S.C. 119 and this part except when the changes are minor technical corrections or revisions with no foreseeable material impact on the accuracy, adequacy, or validity of the analyses or investment strategies in the asset management plan.

§ 515.13 Process certification and recertification.

(a) Not later than 4 years after the initial FHWA certification or subsequent recertification that a State DOT's processes meet the requirements of 23 U.S.C. 119 and this part, the State DOT must submit its asset management plan development processes for recertification. A State DOT also must submit its processes for recertification whenever it makes changes to the process(es) except when the changes are minor technical corrections or revisions with no foreseeable material impact on the accuracy, adequacy, and validity of the processes. A State DOT may submit its processes as a stand-alone document or as part of an updated State-approved asset management plan.

(b) Not later than 60 days after the date on which the FHWA Division Office receives a State DOT's processes and request for recertification, FHWA shall determine whether the State DOT's processes for developing its asset management plan meet the requirements of 23 U.S.C. 119 and this part. If FHWA determines that the processes do not meet the requirements established under 23 U.S.C. 119 and this part, FHWA will send the State DOT a written notice of the denial of recertification that includes a listing of the specific deficiencies.

(c) Upon receiving a notice of denial of recertification, the State DOT shall have 90 days from receipt of the notice to address the deficiencies identified in the notice and resubmit the State DOT's processes to FHWA for review and recertification. The FHWA may extend the State DOT's 90-day period to cure deficiencies upon request. During the cure period established, all penalties and other legal impacts of a denial of recertification shall be stayed as provided in 23 U.S.C. 119(e)(6)(C)(i).

(d) If FHWA finds that a State DOT's asset management processes substantially meet the requirements of 23 U.S.C. 119 and this part except for minor deficiencies, FHWA may recertify the State DOT's processes as being in compliance, but the State DOT must take actions to correct the minor deficiencies within 60 days of receipt of the notification of recertification. The State DOT shall notify FHWA in writing when corrective actions are completed.

§ 515.15 Penalties.

Beginning on October 1 of each Federal fiscal year, if a State DOT has not developed an asset management plan consistent with the requirements of 23 U.S.C. 119 and this part and has not implemented an asset management plan determined to be consistent with the requirements of 23 U.S.C. 119 and this part, the maximum Federal share for National Highway Performance Program projects or activities for which funds are obligated by the State in that fiscal year shall be reduced to 65 percent.

§ 515.17 Minimum standards for developing and operating bridge and pavement management systems.

Pursuant to 23 U.S.C. 150(c)(3)(A)(i), this section establishes the minimum standards a State DOT must use for developing and operating bridge and pavement management systems. State DOT bridge and pavement management systems are not subject to FHWA certification under § 515.13. Bridge and pavement management systems shall include, at a minimum, documented procedures for:

(a) Collecting, processing, storing, and updating inventory and condition data for all NHS pavement and bridge assets.

(b) Forecasting deterioration for all NHS pavement and bridge assets;

(c) Determining the benefit-cost over the life cycle of assets to evaluate alternative actions (including no action decisions), for managing the condition of NHS pavement and bridge assets;

(d) Identifying short- and long-term budget needs for managing the condition of all NHS pavement and bridge assets;

(e) Determining the strategies for identifying potential NHS pavement and bridge projects that maximize overall program benefits within the financial constraints; and

(f) Recommending programs and implementation schedules to manage the condition of NHS pavement and bridge assets within policy and budget constraints.

§ 515.19 Organizational integration of asset management.

(a) The purpose of this section is to describe how a State DOT may integrate asset management into its organizational mission, culture and capabilities at all levels. The activities described in paragraphs (b) through (d) of this section are not requirements.

(b) A State DOT should establish organizational strategic goals and include the goals in its organizational strategic implementation plans with an explanation as to how asset management will help it to achieve those goals.

(c) A State DOT should conduct a periodic self-assessment of the agency's capabilities to conduct asset management, as well as its current efforts in implementing an asset management plan. The self-assessment should consider, at a minimum, the adequacy of the State DOT's strategic goals and policies with respect to asset management, whether asset management is considered in the agency's planning and programming of resources, including development of the long-range statewide transportation plan and the STIP; whether the agency is implementing appropriate program delivery processes, such as consideration of alternative project delivery mechanisms, effective program management, and cost tracking and estimating; and whether the agency is implementing adequate data collection and analysis policies to support an effective asset management program.

(d) Based on the results of the self-assessment, the State DOT should conduct a gap analysis to determine which areas of its asset management process require improvement. In conducting a gap analysis, the State DOT should:

(1) Determine the level of organizational performance effort needed to achieve the objectives of asset management;

(2) Determine the performance gaps between the existing level of performance effort and the needed level of performance effort; and

(3) Develop strategies to close the identified organizational performance

gaps and define the period of time over which the gap is to be closed.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17 and 84

RIN 2900–AS20

Telehealth Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulation to implement a new authority to establish a telehealth grant program. This new authority requires VA to enter into agreements, and expand existing agreements, for the expansion of VA telehealth capabilities and provision of telehealth services by establishing telehealth access stations in rural, highly rural, or medically underserved areas, to the extent practicable. We also propose to amend the copayment regulation by exempting all telehealth services from the copayment requirement.

DATES: Comments must be received on or before January 13, 2025.

ADDRESSES: Comments may be submitted through www.regulations.gov. Except as provided below, comments received before the close of the comment period will be available at www.regulations.gov for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov>. VA will not post on [Regulations.gov](https://www.regulations.gov) public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this

proposed rule is available at [Regulations.gov](https://www.regulations.gov), under RIN 2900–AS20.

FOR FURTHER INFORMATION CONTACT:

Leonie Heyworth, MD, MPH, Deputy Director for Clinical Services, Telehealth Services, Office of Connected Care, 810 Vermont Ave. NW, Washington, DC 20420, 202–461–6525. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

On October 17, 2020, the Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019 (the Act), Public Law 116–171, was enacted into law. Section 701 of the Act, codified as a note to section 1701 of title 38, United States Code (U.S.C.), mandated that VA enter into agreements, and expand existing agreements, with organizations that represent or serve veterans, nonprofit organizations, private businesses, and other interested parties for the expansion of telehealth capabilities and the provision of telehealth services to veterans through the award of grants.

VA understands that veterans who live in rural and highly rural areas may not have reliable internet access. Also, veterans who live in medically underserved areas may not have accessible health care facilities within their communities. Thus, VA has developed a telehealth program as a modern, veteran-, beneficiary- and family-centered health care delivery model that leverages information and telecommunication technologies to connect patients with health care providers, irrespective of the State or location within a State where the health care professional or the patient is physically located at the time the health care is provided. The telehealth access points use a secure video application to bridge the digital divide by providing veterans health care service via telehealth in a fixed, secure environment with a reliable internet connection. These telehealth access points allow veterans to receive telehealth services closer to their residence without the inconvenience of having long travel times to their nearest VA medical facility to receive health care, particularly when veterans may lack appropriate internet access in their home. The convenience of the telehealth access point also allows veterans to be more engaged in their health care, which results in a more positive health outcome.

Section 701(b)(1) of the Act requires VA to award grants to entities in carrying out agreements entered into or expanded under this section with eligible entities. Section 701(b)(2) of the

Act provides that, to the extent practicable, the Secretary shall ensure that grants are awarded to entities that serve veterans in rural and highly rural areas (as determined through the use of the Rural-Urban Commuting Areas coding system of the Department of Agriculture) or areas determined to be medically underserved. Section 701(b)(3) of the Act states that grants awarded to an entity pursuant to section 701(b) may be used for one or more of the following: purchasing, replacing, or upgrading hardware or software necessary for the provision of secure and private telehealth services; upgrading security protocols for consistency with VA security requirement; training of site attendants, including payment of those attendants for completing that training, with respect to military and veteran cultural competence (if the entity is not an organization that represents veterans), equipment required to provide telehealth services, privacy (including the Health Insurance Portability and Accountability Act of 1996, HIPAA, privacy rule as it relates to health care for veterans), scheduling for telehealth services for veterans, or any other unique training needs for the provision of telehealth services to veterans; upgrading existing infrastructure owned or leased by the entity to make rooms more conducive to telehealth (including soundproofing of an existing room, new electrical, telephone, or internet outlets in an existing room, aesthetic enhancements to make a more suitable therapeutic environment, and additions or modifications to windows or walls in an existing room, or other alterations needed to create a new, private room, including permits or inspections associated with space modifications); upgrading existing infrastructure to comply with the Americans with Disabilities Act (the ADA, 42 U.S.C. 12101 *et seq.*); upgrading internet infrastructure and sustainment of internet services, and the sustainment of telephone services.

The grants awarded under section 701 of the Act are to support the establishment or expansion of telehealth access points that would allow veterans to receive telehealth services from VA professionals. VA serves beneficiaries beyond veterans under title 38, U.S.C. and other laws. The Act, however, only uses the term veteran, so for purposes of this rulemaking, VA is only proposing that grant funds may be used to support the provision of telehealth services to veterans. We understand, however, that investment in technology and facilities

at these access points could also be used to support other VA beneficiaries.

While grant funds could not be used to establish or expand telehealth access points for non-veteran beneficiaries, such beneficiaries could access telehealth services through telehealth access points established using grant funds in either of two ways.

First, they may be able to use these telehealth access points to serve non-veterans incidentally. If a grantee used grant funds to purchase technology and renovate space to conform with security and privacy requirements for the purpose of delivering telehealth services to veterans, those costs have been incurred, and the use of those facilities for others does not result in any additional expense or cost. VA awards grants and financial support through other programs whose primary purpose is to support veterans, but which can also benefit non-veterans as well. For example, 38 U.S.C. 2011 authorizes VA to award grants for new construction of facilities, expansion, remodeling, or alteration of existing facilities, or acquisition of facilities, for use as service centers, transitional housing, or other facilities to serve homeless veterans. Section 2011(e)(4) specifically notes that applicants must provide reasonable assurances that the facilities will be used principally to provide veterans the services for which the project was designed, and that not more than 25 percent of the services provided under the project will be provided to individuals who are not veterans. Although section 701 of the Act does not include similar language, we do not believe it was the intent of Congress to prohibit the use of telehealth access points by non-veterans. This is particularly true given that these spaces may have been developed to provide access to telehealth services for the general public; placing restrictions on their use to only veterans would serve as a disincentive for potential applicants, who might lose a large portion of their beneficiary population. Particularly given that section 701(b)(3)(B) prohibits the use of grant funds to purchase new property or for major construction projects, applicants would have to have pre-existing space, and they may have been using this space to serve non-veteran patients. We do not believe Congress would have intended to create such barriers to potential applicants; section 701(d) of the Act, for example, requires VA to complete an assessment of barriers faced by veterans in accessing telehealth services and how VA plans to address those barriers. Under this proposed rule, so long as the provision of telehealth

services to non-veteran beneficiaries at telehealth access points supported using grant funds does not interfere with the provision of telehealth services to veterans, VA sees no issue with using these points to support other VA beneficiaries.

Second, grantees may form separate agreements with the Department under a different authority to furnish telehealth services specifically to non-veteran beneficiaries at telehealth access points that were established or expanded using grant funds. No provision of law, section 701 of the Act included, restricts VA's ability to form agreements with other eligible parties to create new access points, including telehealth access points, for non-veteran beneficiaries. While Congress did not use the term "beneficiary" in section 701 of the Act, we do not interpret this as evidence of an intent to exclude non-veteran beneficiaries from accessing telehealth services under any of the scenarios outlined above, again so long as that the provision of services to such individuals does not interfere with the provision of telehealth services to veterans and that the provision of such services to veterans was the primary objective of the grant award. VA would only award grant funds for services allowed under section 701.

Some telehealth access points may also furnish in-person services to veterans and other beneficiaries. We do not interpret anything in section 701 to preclude the use of such access points to provide in-person services to veterans. Modifications or enhancements to the telehealth access point made through the use of grant funds, such as training site attendants on military and veteran cultural competency, purchasing or upgrading hardware or software necessary for telehealth, upgrading existing infrastructure owned or leased by the entity, upgrading existing infrastructure to comply with the ADA, upgrading internet infrastructure and sustainment of internet services, and sustainment of telephone services, could also enhance the delivery of in-person care. Such investments, once made, do not result in additional incremental costs if they support the delivery of in-person care to veterans (or other beneficiaries). As noted above, so long as the principal purpose of the grant is to expand telehealth capabilities and support the provision of telehealth services, the improved delivery of in-person care is incidental and not prohibited. We welcome public comment on these interpretations.

We propose to add part 84 to 38 CFR to establish the telehealth grant program

as mandated by the Act. We also propose to amend 38 CFR 17.108(e), as described further below.

Part 17 of 38 CFR

Section 1710(g)(1) of 38 U.S.C. states that VA may not furnish medical services (except if such care constitutes hospice care) under section 1710(a) (including home health services under section 1717 of the title) to a veteran who is eligible for hospital care under the chapter by reason of section 1710(a)(3) unless the veteran agrees to pay to the United States in the case of each outpatient visit the applicable amount or amounts established by the Secretary by regulation. There are exceptions to this requirement; paragraph (3) of section 1710(g) establishes two situations in which copayments are not required, and sections 1722B and 1730A of 38 U.S.C. do as well. Specifically, section 1722B allows VA to waive the imposition or collection of copayments for telehealth and telemedicine visits of veterans under laws administered by VA. VA has implemented through regulation the copayments required by section 1710(g) at 38 CFR 17.108, which sets forth requirements regarding copayments for inpatient hospital care and outpatient medical care provided to veterans by VA. On March 6, 2012, prior to enactment of section 1722B, in a document published in the **Federal Register** at 77 FR 13195, VA determined that in-home video telehealth care should be exempt from copayments because it is not used to provide complex care and its use significantly reduces impact on VA resources compared to an in-person, outpatient visit. It also reduces any potential negative impact on the veteran's health that might be incurred if the veteran were required to travel to a VA hospital or medical center to obtain the care provided via in-home video telehealth. Paragraph (e) of 38 CFR 17.108 provides for the services not subject to copayment requirements for inpatient hospital care, outpatient medical care, or urgent care. Paragraph (e)(16), as added by the 2012 rulemaking, exempts in-home video telehealth care from the copayment requirement.

Given advances in technology, VA understands that veterans may use telehealth services in other locations than the veteran's home. These other locations may be more convenient for veterans and do not represent any additional burden on VA, so VA also proposes to exempt these encounters from copayments under the authority of section 1722B. Similarly, VA has not imposed copayments on telephone

visits or discussions with VA providers (as these are not considered "encounters" for VA's purposes), but VA's regulations have not reflected this reality. Through this rulemaking, VA is exercising its authority under section 1722B by proposing to exempt all telehealth services from copayment requirements. These services would include telehealth services provided in VA medical facilities, in-home telehealth visits, telephone visits, telehealth services provided in telehealth access points, and telehealth services received at any non-VA location, including homeless shelters and public libraries. Similarly, telehealth provided to eligible veterans by non-VA providers under the Veterans Community Care Program would be exempt from copayments, regardless of where the veteran is during the telehealth encounter. Exempting copayments for telehealth services would provide an incentive for veterans to utilize these services and be more engaged in their health care. It also would treat all telehealth services the same for purposes of applying copayments. Consequently, we propose to amend paragraph (e)(16) by exempting telehealth visits from a copayment requirement.

Part 84 of 38 CFR

Establishment of part 84 ensures organization and clarity for implementation of this new grant program. This proposed rule would establish regulations authorizing VA to award telehealth grants to eligible entities who would establish telehealth access points for veterans.

Consistent with section 701 of the Act, part 84 would be titled "Telehealth Grant Program."

Section 84.0 Purpose

Proposed § 84.0 would state the purpose of part 84. We would state that §§ 84.0 through 84.110 would establish the telehealth grant program. We would add that VA will enter into agreements, and expand existing agreements, with eligible entities (which would be defined below in § 84.5) for the expansion of telehealth capabilities and the provision of telehealth services to veterans through the award of grants. This language is very similar to section 701(a) of the Act. In addition, we would state that, through the award of these grants, grantees will offer veterans a convenient space to connect with a VA health care professional through video telehealth in comfortable, private locations in communities where veterans may otherwise have long travel times to VA medical facilities, may have

poor internet connectivity in their homes, or may face other barriers to accessing health care. This statement reflects several of the defined uses of grants under 701(b)(3)(A), specifically: creating a comfortable space (see clauses (iv) and (v), regarding upgrading infrastructure to make rooms more conducive to telehealth and to comply with the ADA) and creating private locations (see clauses (i), (ii), (iii)(III), and (iv)(I), regarding purchasing, replacing, or upgrading hardware or software, upgrading security protocols, training with respect to privacy, and modifications to create a new, private room). We would clarify that the telehealth access point is not intended to be used for veterans who are in need of emergency health care services.

Section 701(c) of the Act provides that an eligible entity that seeks to establish a telehealth access point for veterans, but does not require grant funding under this section, may enter into an agreement, under certain conditions, with VA for the establishment of such an access point. We do not need to establish regulations concerning section 701(c) of the Act because the substance of the agreements will make clear to the affected parties their responsibilities. We would, therefore, add that part 84 would only apply to telehealth grant agreements; however, VA may enter into an agreement for the establishment of a telehealth access point for veterans with an entity that seeks to establish such an access point but does not require grant funding under part 84. We would also make such statement in the Notice of Funding Opportunity.

Section 84.5 Definitions

Proposed § 84.5 would contain the definitions for key terms that would be applicable to part 84 and to any Notice of Funding Opportunity (NOFO) for the telehealth grant. We would list these definitions in alphabetical order.

We propose to define the term applicant to mean an eligible entity that submits an application for a telehealth grant announced in a Notice of Funding Opportunity under part 84. VA would define the term applicant in this manner because only an eligible entity that submits an application for a telehealth grant under part 84 would be subject to any requirements of applicants. We would define this term similarly to other VA grant programs, such as the Supportive Services for Veteran Families (SSVF) program and the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program (SPGP). See 38 CFR 62.2 and 78.5.

We would define the term date of completion to mean the earliest of either

the date specified in the telehealth grant agreement, or any supplement or amendment thereto, or the effective date of a telehealth grant termination under § 84.110. This definition would be similar to the use of this term in other VA grant programs. See 38 CFR 62.2.

We propose to define the term eligible entity to mean an entity that meets the requirements of § 84.10. We would define this term similarly to other VA grant programs, such as the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness grant program. See 38 CFR 79.5.

We propose to define the term grantee to mean an eligible entity that is awarded a telehealth grant under part 84. This definition is similar to other VA grant programs. See 38 CFR 62.2.

We propose to define the term medically underserved to mean an area as designated under 42 U.S.C. 254b(b)(3). This term would be used to implement section 701(b)(2) of the Act, which states in part that, to the extent practicable, the Secretary shall ensure that grants are awarded to entities that serve veterans in areas determined to be medically underserved. While section 254b(b)(3)(A) defines the term medically underserved population, section 254b(b)(3) generally establishes a process for identifying medically underserved areas that are designated by the Health Resources and Services Administration (HRSA), the U.S. Department of Health and Human Services sub-agency responsible for issuing data and maps on medically underserved populations and areas in a combined manner. See HRSA's maps on medically underserved areas and populations at <https://data.hrsa.gov/tools/shortage-area/mua-find>. Because 42 U.S.C. 254b(b)(3) may be amended in the future, VA is not incorporating the actual definition in proposed § 84.05. Rather, VA is proposing to define medically underserved to mean an area that is designated under 42 U.S.C. 254b(b)(3). This term is defined consistently with its use in section 246(d)(2)(A) of Division J of Public Law 115–141 (38 U.S.C. 7601, note), and is widely known, commonplace, and established. It also allows VA to defer to the expertise of another agency that specializes in analyzing and identifying medically underserved areas and populations.

We would define Notice of Funding Opportunity (NOFO) to have the same meaning as given to this term in 2 CFR 200.1. Section 200.1 defines NOFO to mean a formal announcement of the availability of Federal funding through a financial assistance program from a Federal awarding agency. The NOFO

provides information on the award, who is eligible to apply, the evaluation criteria for selection of an awardee, required components of an application, and how to submit the application. The NOFO is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a program announcement, notice of funding availability, broad agency announcement, research announcement, solicitation, or some other term. The telehealth grant program would be subject to the requirements of 2 CFR part 200, which establishes the uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities. Citing to this definition ensures consistency and accuracy.

Section 200.1 of 2 CFR defines nonprofit organization to mean any corporation, trust, association, cooperative, or other organization, not including Institutes of Higher Education, that: (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses net proceeds to maintain, improve, or expand the operations of the organization. Although VA defines nonprofit organization differently in other grant programs (see § 62.2), we propose to use this general definition of nonprofit organization in § 84.05 to be in alignment with all other Federal grant programs. We would not repeat the definition, but rather add a cross reference in the event that this definition would change in the future. We would therefore define nonprofit organization as having the meaning given to that term in 2 CFR 200.1.

We propose to define the term subcontractor to mean any entity or organization that has a contract agreement to furnish services at the telehealth access point. Subcontractors do not include individuals who build the access point (e.g., entities who are hired to paint or construct walls or partitions) or provide technical services (e.g., commercial internet providers or electric services). This definition would clarify who VA would recognize as a subcontractor, which would be relevant for various requirements in the proposed rule.

We propose to define the term rural and highly rural areas to mean an area or community that is designated as such by the Rural-Urban Commuting Areas coding system of the U.S. Department of Agriculture. We would define this term to implement section 701(b)(2) of the Act, which states in part that, to the

extent practicable, the Secretary shall ensure that grants are awarded to entities that serve veterans in rural and highly rural areas (as determined through the use of the Rural-Urban Commuting Areas coding system of the Department of Agriculture). The rural-urban commuting area (RUCA) codes are a Census tract-based classification that uses standard Census measures of population density, levels of urbanization, and journey-to-work commuting to characterize all U.S. Census tracts with respect to their rural/urban status and commuting relationships to other tracts. RUCA codes define county-level metropolitan and micropolitan areas. The RUCA codes are published on the Department of Agriculture's website. See <https://www.ers.usda.gov/data-products/rural-urban-commuting-area-codes.aspx>.

We propose to define the term telehealth access point to mean a non-VA site supported by a telehealth grant where a veteran can participate in a telehealth visit with a VA health care professional. As previously stated in this rulemaking, the telehealth grant would be used to establish or expand telehealth access points in locations that are not owned by VA. This definition would make clear that telehealth access points are distinct from VA health care facilities that provide telehealth services. We note that this definition would not prohibit VA from offering other VA services (e.g., hearings with the Board of Veterans Appeals or Veterans Benefits Administration consultations) through video conferencing at the telehealth access point. We clarify, though, that the provision of any such ancillary services beyond telehealth would be agreed to under separate authorities for VA to enter into agreements and establish such locations in the first place. Grant funds under section 701 could only be used for the purpose of furnishing telehealth services, but as noted previously, certain investments for the expansion or provision of telehealth services could also facilitate the delivery of other services at no additional incremental cost. Separate agreements could include the transfer of funds to grantees under separate authority if additional resources were needed to support these functions.

We propose to define the term telehealth grant to mean a grant awarded under part 84. This definition would be similar to how this term is defined in other VA grant programs. See, e.g., 38 CFR 78.5 and 79.5.

Section 84.10 Eligible Entities

In proposed § 84.10, we would list the types of entities that could be an eligible entity for this grant program. To be eligible to receive a telehealth grant, the entity must be: (1) an organization that represents or serves veterans; (2) a nonprofit organization; (3) a private business; (4) State or local government; or (5) another interested party. This would be consistent with sections 701(a) and (b)(1) of the Act, which state VA shall award grants in carrying out agreements with organizations that represent or serve veterans, nonprofit organizations, private businesses, and other interested parties for the expansion of telehealth capabilities and the provision of telehealth services to veterans. We note that VA considers a private company as one that is not owned or operated by a State, local, or Federal Government. We anticipate that veterans service organizations and community establishments (such as a community center or faith-based organization) may apply for these grants and would be considered either organizations that represent or serve veterans or at least nonprofit organizations. Private businesses could apply as well, and VA would specify any requirements applicable to such businesses in the NOFO. Other interested parties are included in the text of section 701(a) but is not further defined. VA does not propose a more specific definition here in the interest of ensuring that a wide variety of possible organizations can apply and, if approved, receive a grant under this program. Examples of other interested parties might include Federally Qualified Health Centers, or associations, partnerships, or other collaborations of different organizations. VA solicits comment on whether further specificity should be included and whether certain organizations or other parties should be excluded under this definition.

Section 84.15 Application

Proposed § 84.15 would establish the application procedures for the telehealth grant. Section 701 of the Act does not provide extensive requirements associated with the requirements for applicants, as is found in other statutes. We infer from this gap that Congress delegated authority to VA to implement the necessary requirements to ensure that it could award grants consistent with Federal requirements regarding grant making and with the principles of sound fiscal policy.

We would state in proposed paragraph (a) that an applicant must

submit to VA a complete grant application package, as described in the NOFO. The NOFO would alert potential applicants of the availability of funds for the telehealth grant. The NOFO may include different application requirements based on a range of funding thresholds. For example, grant applications for technology and equipment, infrastructure upgrades, and sustainment may follow different application requirements. This variability would be included based on the potentially different uses of grant funds the applicant proposes. Some applicants may only need one-time, minimal support, such as new hardware or software or staff training. Other applicants may require long-term but still relatively minimal support (such as funds to sustain internet or telephone services that recur on a monthly basis). Other applicants may require long-term and significantly more assistance if they are undertaking infrastructure renovations that require permits or other substantial investments in time and resources. We note for general awareness that infrastructure projects using Federal funds are subject to additional requirements, such as the Build America, Buy America Act (Pub. L. 117–58). Grantees will be required to comply with the provisions of these separate authorities to the extent applicable. VA's interest in ensuring appropriate financial accountability varies based on the amount of support it is providing, and in the interest of ensuring that applicants seeking only a small amount of grant funds are not dissuaded from applying based on the compliance costs that may accompany a larger grant amount, VA proposes allowing the NOFO to further specify different requirements based on the amount of funds sought by the applicant. The requirements stated in this section reflect the most extensive requirements that applicants would need to meet, but depending upon the terms of the NOFO and ranges of support applicants seek, certain elements of these requirements could be less stringent. This paragraph would be similar to other grant programs, such as the SSVF program and the SPGP. See, e.g., §§ 62.20(a) and 78.15.

Proposed paragraph (b)(1) through (6) would state what is required for a telehealth grant application to be complete. Proposed paragraph (b)(1) would provide that the applicant must provide a plan to establish, if needed, the telehealth access point and a description of how the size, scope, and grant management plan are feasible. We recognize that some applicants may

have already established a telehealth access point, so for such applicants, a plan to establish a point is not necessary. Such applicants must, though, provide evidence that a telehealth access point has already been established. Such evidence could include site address, implementation date, VA medical facility letter of support, etc.

Proposed paragraph (b)(2) would provide that the applicant must submit supporting documentation consisting of: the type of entity that is applying for the telehealth grant pursuant to § 84.10; a proposed operating budget; supportive resources committed to the project; the applicant's ability to control the telehealth access point and meet appropriate zoning, preservation, accessibility, safety, and environmental laws (including any laws or requirements that apply based upon the receipt of grant funds under part 84); and a description of the geographic area that the telehealth access point will serve (including the name(s) of the municipalities, counties (or parishes), or Tribal lands). In addition, the applicant would have to attest that the facilities will be used principally to provide to veterans the services for which the project was designed. Documentation regarding the type of entity could consist of a letter on State or local government letterhead verifying the entity is a State or local government, or in the case of a non-profit, documentation establishing the entity's status. Private businesses could provide their business license or incorporation documents. Other interested parties should provide appropriate documentation clarifying what type of entity they are. The types of supportive resources committed to the project would include, but are not limited to, space, staffing, equipment, internet services, phone services, and furniture.

Proposed paragraph (b)(3) would provide that the application must include documentation evidencing the experience of the applicant and any identified subcontractors, as defined in § 84.5, relevant to creating an environment to provide telehealth services or organizational experience working with veterans.

Proposed paragraph (b)(4) would provide that the applicant must include a statement containing several affirmations of fact. Section 701(b)(3) of the Act establishes certain authorized uses of grant funds; these were described in detail earlier in this rulemaking. We infer that Congress authorized the use of Federal funds for certain activities or improvements with the expectation that the telehealth

access points would meet these requirements. In addition to granting funds, the Act provides in section 701(c)(2) that entities that do not require grant funding but that enter into an agreement to serve as a telehealth access point must ensure the access points are private, secure, clean, and accessible.

In this context, proposed paragraph (b)(4) would require applicants to assert that all of the following are true: the project will furnish veterans a telehealth access point that is secure, private, clean, accessible, and meets the requirements of this grant. This is consistent with the authorized uses described in section 701(b)(3)(A)(ii), (iv)(I), and (v) of the Act. We note that if Congress wanted to ensure, pursuant to section 701(c)(2), that entities that do not require Federal funds provide access points that are private, secure, clean, and accessible, it surely intended that eligible entities receiving Federal funds provide access points meeting the same requirements. Proposed paragraph (b)(4) also requires the applicant to certify that it will continue to maintain and operate the telehealth access point supported by this grant until the expiration of the period during which VA could seek full recovery under § 84.100. This is supported by section 701(a) of the Act, which requires eligible entities to enter into agreements for the expansion of telehealth capabilities and the provision of telehealth services to veterans. If grantees could accept Federal funds but cease providing telehealth services, this would be contrary to the purpose articulated by Congress. Applicants also must attest that the title or lease to the telehealth access point will lie with the applicant and the applicant will, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the applicant. Similar to the explanation provided earlier regarding the requirement to certify the applicant will continue to maintain and operate the telehealth access point, an attestation that the applicant will continue to retain possession of the property, even subject to a lease, will ensure that the purposes of this program defined by law are capable of being met. The insurance requirement also preserves the Government's interest in the items or improvements made using grant funds. However, the proposed rule would state that telehealth access points that are located on federally owned property (e.g., Department of Defense, Indian Health Service) need not be insured unless required by the terms and conditions of the Federal property

award. Other federally owned property is already subject to a sufficient surety, and any loss or damage to such property would already be incurred by the Government. The statement would also need to include an attestation that adequate financial support will be available for the duration of the grant agreement; this would have to be supported by a demonstration of financial stability and a detailed project budget, which includes, but is not limited to, all existing and anticipated sources of funds for the project. This is also necessary to ensure the continued operation of the telehealth access point and to ensure that Federal funds are not wasted. Finally, the applicant would have to attest that it will keep records and submit reports as VA may reasonably require, within the timeframes required, and, upon demand, allow VA access to the records upon which such information is based. As explained later in this discussion, proposed §§ 84.85 and 84.90 further describe the reporting and recordkeeping requirements for this grant program. These requirements are necessary to ensure that grant funds are being used for authorized purposes and the proper accounting of Federal funds.

Proposed § 84.15(b)(5) would be similar to other VA grant programs (see §§ 61.11 and 62.20) and would require that the application also include documentation of the managerial capacity of the applicant to: maintain and operate a telehealth access point where veterans who use the telehealth access point can receive high quality telehealth care from VA health care professionals; continuously assess the needs of the telehealth access point and the feedback from veterans who use the telehealth access point for quality improvement in areas such as accessibility, satisfaction, and experience; customize the telehealth access point to meet the needs of veterans who use the telehealth access point; and comply with and implement the requirements of the telehealth grant. These requirements would ensure that the access point is meeting and maintaining all requirements of the telehealth grant and is being operated consistent with the purposes set forth in section 701(a) of the Act.

Proposed paragraph (b)(6) would be similar to § 62.20(c) and would state that VA may request any additional information in writing relevant to the telehealth grant application. This is necessary to ensure that VA can verify or clarify information that is relevant to determining whether or not to award Federal funds to the applicant under section 701(a)–(b) of the Act.

These application requirements in general are similar to other VA grant programs, such as the Grant and Per Diem program and SSVF program. See §§ 61.11 and 62.20, respectively.

Proposed paragraph (c) would state that subject to funding availability, grantees may apply for one renewal grant per fiscal year, after receiving an initial grant. The grantee must submit to VA a complete renewal grant application as described in the NOFO. This requirement is similar to other VA grant programs, such as the SSVF program. See § 62.20. Additionally, under section 701(b)(3)(A)(vi) and (vii), sustainment of internet and telephone services are permissible uses of grants. Other grants, such as those involving renovations or other modifications to the physical infrastructure of a telehealth access point, may require additional funding to complete the project. While these are clear examples of grants that may make sense to be renewed from one fiscal year to another, other grants may not require further support, such as when a grant is needed only to purchase, replace, or upgrade hardware or software. The NOFO will describe any authorized uses of a renewal grant.

Section 84.20 Threshold Requirements Prior To Scoring Telehealth Grant Applicants

Proposed § 84.20 would set forth threshold requirements that applicants must meet before their applications can be scored pursuant to § 84.25 and would be similar to other VA grant programs such as SSVF. See § 62.21. In authorizing VA to award grants under section 701(a) and (b) of the Act, Congress implicitly delegated to VA the authority to determine the terms and conditions for receipt of an award. Proposed § 84.20 would provide for the threshold requirements and be similar to other existing VA grant programs, such as the SSVF program (see § 62.21). These requirements would be minimum requirements that would have to be met before VA could score applications, and eligible entities could use these to know whether they meet these threshold requirements in advance of submitting an application. The threshold requirements are intended to be an administrative checklist with which eligible entities would confirm compliance prior to submitting a telehealth grant application. VA anticipates this would reduce the amount of time and resources that VA will dedicate to evaluating and scoring applicants while also providing clear notice to eligible entities about their obligations and necessary qualifications

This would facilitate the award of grants under section 701(a) and (b)(1) by ensuring applicants provide necessary information to allow VA to consider and score their application.

We would state that VA would only score applicants that meet the following threshold requirements listed in paragraphs (a) through (h). Applicants would have to: (1) file the application within the time period established in the NOFO, and any additional information or documentation requested by VA under § 84.15(b)(6) would have to be provided within the time frame established by VA; (2) complete the application in all parts; (3) meet the eligibility criteria in § 84.10; (4) request a telehealth grant only for uses authorized under § 84.45; (5) ensure the veterans the applicant proposes to serve are eligible to receive telehealth services under title 38 of the United States Code; (6) agree to comply with the requirements of the telehealth grant; (7) not have an outstanding obligation to the Federal Government that is in arrears and not have an overdue or unsatisfactory response to an audit; and (8) not be in default by being in non-compliance with the terms and conditions of the agreement of any previous Federal assistance. These requirements, again, would ensure that grants awarded under part 84 would be a responsible use of Federal funds and would be for the purposes outlined in section 701(a) and (b) of the Act.

Section 84.25 Scoring Criteria for the Telehealth Grant Applicants

In proposed § 84.25, VA would establish the criteria to be used to score applicants who are applying for a telehealth grant. VA would need to establish these criteria because the amount of funds available for grants each year will be limited and VA may receive a higher number of applicants than there are available grant funds. Scoring criteria would allow VA to award grants to those applicants who are most qualified and would ensure that VA administers grants in a manner consistent with section 701 of the Act. Section 701 of the Act did not provide criteria for scoring applicants for the telehealth grant. As such, we propose to utilize the scoring criteria of similar VA grant programs and tailor such criteria to the telehealth grant. See, e.g., the SSVF program's scoring criteria at 38 CFR 62.22. In requiring VA to award grants, Congress understood that VA would need to establish standards to determine which applicants should receive grant awards. Congress also specifically recognized that VA would need to prioritize applicants when it

required in section 701(b)(2) of the Act that VA, to the extent practicable, ensure grants are awarded to entities that serve veterans in rural and highly rural areas or areas determined to be medically underserved.

While this section does not include specific point values for each criterion, the regulation provides that such point values will be set forth in the NOFO. This will allow VA to retain flexibility in determining those point values each year of the grant program in the event that such point values need to change. This is similar to other VA grant programs. See, e.g., the SPGP regulations at 38 CFR 78.25.

Proposed § 84.25(a) would state that VA will award points based on the background, qualifications, experience, and past performance of the applicant and any subcontractors identified by the applicant, if relevant, as demonstrated by the criteria listed in paragraphs (a)(1) through (3). These criteria would demonstrate the applicant's knowledge and experience in working with veterans and their ability to implement the telehealth grant. These attributes would be demonstrative of the applicant's ability to manage the telehealth access point consistent with authorized purposes.

Proposed § 84.25(a)(1) would address the applicant's background and organizational history by requiring that the applicant include (1) the applicant's and any identified subcontractors' background and organizational history that would help them maintain and operate a telehealth access point for veterans; (2) evidence that the applicant, and any identified subcontractors, maintain organizational structures with clear lines of reporting and defined responsibilities; and (3) the applicant's, and any identified subcontractors', history of complying with agreements and not defaulting on financial obligations. These criteria are needed to ensure funds are being applied appropriately toward the telehealth grant and are similar to other grant programs. See § 78.25.

Proposed § 84.25(a)(2) would set forth what VA would consider in scoring the applicant's staff qualifications. This would include that evidence the applicant's staff, and any identified subcontractors' staff, have experience working with veterans or individuals receiving health care, as well as organizational experience in establishing an environment suitable for providing health care services.

Proposed § 84.25(a)(3) would set forth what VA would consider in scoring the organizational qualifications and past performance of the applicant. This

would include that the applicant, and any identified subcontractors, have organizational experience partnering with health care organizations to create an environment to provide telehealth services; the applicant, and any identified subcontractors, have organizational experience coordinating or administering telehealth services; and the applicant, and any identified subcontractors, have organizational experience working with veterans. These criteria would demonstrate the applicant's knowledge and experience in working with veterans and their ability to implement the telehealth grant. These criteria would be similar to § 62.22(a)(3).

Proposed § 84.25(b) would explain that VA would award points based on the applicant's plan to establish, maintain and operate the telehealth access point, as demonstrated by the criteria listed in paragraphs (b)(1) through (7).

Proposed § 84.25(b)(1) would explain how VA would score the need for the program. Applicants could demonstrate this by showing the need for a telehealth access point in a rural, highly rural, or medically underserved area. If the applicant is not proposing to provide telehealth services in a rural or highly rural area, or an area determined to be medically underserved, the applicant instead could demonstrate an understanding of the area and provide evidence that a telehealth access point is needed to meet the unique needs of veterans and the community to be served. As previously stated in this rulemaking, the purpose of the telehealth grant is to establish, maintain and operate a telehealth access point in locations that are rural, highly rural, or medically underserved, to the extent practicable. The applicant must demonstrate that telehealth access points would be in locations that are in accordance with the purpose of the telehealth grant and meet the needs of the community they serve. Applicants that can show they would provide telehealth services in rural, highly rural, or medically underserved areas would be prioritized, to the extent practicable and consistent with the terms of the NOFO.

Proposed § 84.25(b)(2) would explain that VA would score the applicant's outreach plan based on whether the applicant has a feasible communications plan to inform veterans about the telehealth access point and the services provided. This outreach is necessary to ensure that the telehealth access point can provide telehealth services to veterans, consistent with section 701(a) of the Act.

Proposed § 84.25(b)(3) would state that VA would score the applicant's plan to establish, maintain, and operate the telehealth access point based on whether the size, scope, and grant management plan are feasible and whether the applicant's plan is designed and scoped to meet the needs of veterans in their community through the provision of telehealth services. We would consider whether telehealth access point provides flexible hours of operation to maximize the telehealth access point's utilization. We would require this information because VA would want veterans to make the most use of the telehealth access point, which would require the applicant to be knowledgeable of the needs of veterans that would be using the telehealth access point. For example, some veterans may request use of the telehealth access point in the morning while others would prefer late afternoons. Applicants who could demonstrate they have a plan to accommodate scheduling flexibility would be scored more favorably than those who could not.

Proposed § 84.25(b)(4) would explain what VA would consider in scoring the applicant's plan to establish, maintain and operate a telehealth access point and use grant funding within the timeline specified in their application. We also would consider whether the applicant has a hiring plan in place to meet the applicant's implementation timeline or has existing staff to meet such timeline, if necessary.

Proposed § 84.25(b)(5) would state that the applicant must submit a letter of support from a local VA medical facility or facilities confirming the need for the telehealth access point and the intent of such VA facilities to work with the grantee. This letter, prepared either by a single facility or in combination by several facilities, would acknowledge the need for the telehealth access point and the intent of such facility or facilities to work with the applicant if the applicant is awarded a grant. This is essential because telehealth services necessarily involve the delivery of health care from one location to another. This letter ensures that VA facilities that would be furnishing telehealth services to the access point agree that there is a need for an access point in that area and that these facilities will work with the applicant, if awarded a grant, to provide telehealth services to the veteran in cooperation with the entity.

Proposed § 84.25(b)(6) would state that VA will score applicants based on their capacity to safely maintain and operate a telehealth access point. This would include staff resources. Similar to

§ 78.25(b)(6), this would ensure that funds are awarded to entities that can provide telehealth services to veterans through a grant.

Lastly, proposed § 84.25(b)(7) would state that VA will score applicants based on their feasibility to sustain telehealth access point operations. Similar to § 78.25(b)(7), this would ensure that funds are awarded to entities that can provide telehealth services to veterans through a grant.

Proposed § 84.25(c) would state that VA will award points based on the applicant's quality assurance and evaluation plan, as demonstrated by the criteria in paragraphs (c)(1) through (4). We would require that these measures be in place to continuously assess and improve, as necessary, services provided to veterans and to make certain that the applicants address any issues that may arise at the telehealth access point.

Proposed § 84.25(c)(1) would explain that VA would score the applicant's ability to evaluate the services provided at the telehealth access point. This would be based on whether the applicant provided clear, realistic, and measurable goals that reflect the grant's aim of providing a telehealth access point to veterans against which the applicant's program performance can be evaluated, as well as the applicant's plans to continually assess the telehealth access point to identify opportunities for quality improvement in areas such as accessibility, satisfaction, and experience.

Proposed § 84.25(c)(2) would explain how VA would score the applicant's ability to monitor key elements of the grant award and the telehealth access point. Proposed § 84.25(c)(2)(i) would state that VA would score whether the applicant has adequate controls in place to regularly monitor all aspects of the execution of the grant (including any subcontractors) for compliance with all applicable laws, regulations, and guidelines. This will help ensure that grant funds are used appropriately and responsibly.

Proposed § 84.25(c)(2)(ii) would state that VA would score the applicant's plan to provide an environment that is private, secure, clean and complies with the ADA where veterans can participate in their telehealth appointments. As noted previously, VA interprets section 701 of the Act to require these conditions for all participating telehealth access points.

Proposed § 84.25(c)(2)(iii) would provide that the applicant must also have financial and operational controls in place to ensure the proper use of telehealth grant funding. This

information would be required to ensure that the grantee is meeting the terms of the agreement and maintaining operations of the telehealth access point.

Lastly, proposed § 84.25(c)(2)(iv) would provide that the applicant must have a plan for ensuring that their staff and any subcontractors are appropriately trained on, and the telehealth access point maintains compliance with, all fire and safety requirements as specified by State and local laws and regulations. We would not state the specific fire and safety requirements because telehealth access points may be placed in a variety of locations, which may not require the same standards. This is similar to other grant programs. See § 61.15.

We would state in § 84.25(c)(3) that VA would score the application based on whether the applicant has a plan to establish a system to remediate aspects of the grant program that are non-compliant with the terms of the telehealth grant agreement when they are identified. Once an issue has been spotted, the applicant must have a plan in place to fix it to continue to be compliant with the terms of the agreement. This is necessary to ensure that grant funds are used appropriately and responsibly.

Lastly, § 84.25(c)(4) would state that the applicant's program management team must have the capability and a system in place to provide to VA timely and accurate reports at the frequency set by VA. This is necessary to ensure that grant funds are used appropriately and responsibly.

Proposed § 84.25(d) would state that VA will award points based on the applicant's financial capability and plan, as demonstrated by the criteria listed in paragraphs (d)(1) and (2). Proposed § 84.25(d)(1) would require that the applicant, and any identified subcontractors, are financially stable. This criterion would ensure that the funds for the telehealth grant are properly administered.

We would state in proposed § 84.25(d)(2) that the applicant must have a realistic budget for utilizing grant funding and would require applicants to submit their implementation timeframe to operate the telehealth access point. In addition, the applicant's program would have to be cost-effective and could be effectively and fully implemented on-budget. VA would award a telehealth grant based in part on the projected budget of the applicant. Failure to maintain the proposed budget could result in breach of the grant agreement. This is necessary to ensure that grant

funds are used appropriately and responsibly.

Proposed § 84.25(e) would state that VA will award points based on the applicant's area or community associations and relations, as demonstrated by the criteria in paragraphs (e)(1) through (4). Proposed § 84.25(e)(1) would require that the applicant have a plan for developing associations or have existing experience with Federal (including VA), State, local, and Tribal government agencies, as well as private entities, for the purposes of providing a telehealth access point to veterans, as applicable. This information would demonstrate associations or plans to develop relationships with the community that the applicant plans to serve, including any type of outreach activities to engage veterans in their community.

Proposed § 84.25(e)(2) would require that the applicant (or applicant's staff), and any identified subcontractors (or subcontractors' staff), as relevant, have fostered successful working relationships and experience with public and private organizations providing services to veterans. This experience would ensure the applicant has a network of resources to help it establish, maintain and operate a telehealth access point for veterans now and in the future.

Proposed § 84.25(e)(3) would require that the applicant have a presence in the area or community they intend to serve, and that the applicant understands the dynamics of the area or community they intend to serve. These criteria would ensure that the applicant understands the veterans whom they propose to serve and would facilitate engagement with these veterans to deliver telehealth services to them.

Lastly, proposed § 84.25(e)(4) would require applicants to demonstrate that their experience in the area or community they intend to serve will enhance the effectiveness of the applicant's program. This, again, is necessary to ensure that grant funds are awarded to entities that can furnish telehealth services to veterans.

Section 84.30 Selection of Applicants To Receive a Telehealth Grant

Proposed § 84.30 would state the selection process VA would use to identify applicants who would be offered a telehealth grant under part 84. Section 701 of the Act does not establish specific provisions for the selection of applicants, but Congress clearly intended VA to evaluate and select candidates, so we infer that section 701(a) and (b) implicitly delegated this authority to VA. VA is proposing to

follow a selection process that is similar to the selection process used in the SSVF program (described in § 62.25) and other grant programs, as that process has proven to be an effective and equitable means for choosing applicants. We are, therefore, basing the proposed § 84.30 on current § 62.25, but we have adapted the language for the telehealth grant. In proposed § 84.30, we would state that VA will use the process in this section to select applicants to receive telehealth grants. The process would then be set forth in proposed paragraphs (a) through (e).

Proposed paragraph (a) would explain that VA will score all applicants that meet the threshold requirements set forth in § 84.20 using the scoring criteria set forth in § 84.25. This is similar to other grant programs. See § 78.30(a). This ensures that applicants will only be scored if they meet the basic requirements already discussed.

Proposed paragraph (b) would state that VA will group applicants within the applicable funding priorities if funding priorities are set forth in the NOFO. This is similar to other grant programs. See § 78.30(b). This ensures that applications are evaluated relative to other, similar applications.

Pursuant to proposed paragraph (c), VA would rank those applicants who receive at least the minimum amount of total points and points per category set forth in the NOFO, within their respective funding priority group, if any. The applicants would be ranked in order from highest to lowest scores, within their respective funding priority group, if any. This is similar to other grant programs. See § 78.30(c). This ensures that applicants who are selected meet certain minimum requirements.

Pursuant to proposed paragraph (d), VA would use the applicant's ranking as the primary basis for selection for funding. However, VA will prioritize entities that serve veterans in rural and highly rural areas or areas determined to be medically underserved, as practicable. This clarification is in alignment with section 701(b)(2) of the Act, which provides that, to the extent practicable, the Secretary shall ensure that grants are awarded to entities that serve veterans in rural and highly rural areas (as determined through the use of the Rural-Urban Commuting Areas coding system of the Department of Agriculture) or areas determined to be medically underserved.

Lastly, we would state in paragraph (e) that, subject to paragraph (d), VA would fund the highest-ranked applicants for which funding is available, within the highest funding priority group, if any. If multiple

applications are received from the same geographic area, the applicant's rankings would be the primary basis for selection. If funding priorities have been established, to the extent funding is available, and still subject to paragraph (d), VA would select applicants in the next highest funding priority group based on their rank within that group. This would ensure that, consistent with the requirement in section 701(b)(2) of the Act and paragraph (d), VA selects those applicants that have provided the strongest applications, within funding priorities, which should help ensure that Federal funds are put to the best use.

In proposed paragraph (f), we would explain that if an applicant would have been selected but for a procedural error committed by VA, VA could select that applicant for funding in the next applicable funding round or when sufficient funds otherwise become available (provided the applicant still wants to participate in the program). If there is no material change in the information, a new application would not be required. This would ease any administrative burden on applicants when VA committed a procedural error and could be used in situations where there is no material change in the information that would have resulted in the applicant's selection for a grant under part 84.

Section 84.35 Scoring Criteria for Grantees Applying for Renewal of Telehealth Grants

Proposed § 84.35 would state the scoring criteria for grantees applying for renewal of telehealth grants. VA would award renewal grants in situations where there is a continued need of a grant to maintain and operate a telehealth access point based on the veteran population that accesses these points. Such situations could include continued renovations or sustainment of internet or telephone services. VA would evaluate the grantee's prior year's use of the grant to maintain and operate a telehealth access point to determine the need for a renewal grant. Renewal grants may be awarded even if the number of veterans accessing the telehealth access point is small but the continued use of the telehealth access point has been beneficial to veterans' health care needs. Section 701 of the Act did not have provisions for the scoring of telehealth grants renewals, and we would, therefore, use the provisions of similar VA grant programs such as the SSVF program because these provisions are essential to the effective and efficient administration of a grant program and because we infer that

Congress implicitly delegated this authority, as discussed above. See § 62.24.

While this section would not include specific point values for the criteria, such point values will be set forth in the NOFO. This would allow VA to retain flexibility in determining those point values each year of this grant program and would be consistent with the process for an initial award under part 84.

Proposed § 84.35(a) would state that VA will assess the success of the grantee's program, as measured by veteran satisfaction with the services provided by the grantee and how the grantee met the telehealth grant goals and requirements for VA to deliver telehealth services to veterans at that telehealth access point in accordance with the agreement. These measures should provide a clear basis to determine the success of the program based on veteran feedback and VA's experience with the grantee in terms of delivering telehealth care through the access point.

Proposed paragraph (b) would state that VA will assess the cost-effectiveness of the grantee's telehealth access point, as demonstrated by how the hours for the point attendant (the grantee staff assisting veterans in using the telehealth access point) correlate with the veterans' telehealth appointments and how the telehealth access point was implemented effectively using the available funding in the designated timeframe.

Proposed paragraph (c) would state that VA will assess the extent to which the grantee complies with all applicable laws, regulations, and guidelines for the administration of the telehealth access point. This is necessary to ensure that grant funds are supporting efforts consistent with all legal requirements.

Section 84.40 Selecting Grantees for Renewal of Telehealth Grants

Proposed § 84.40 would establish the selection criteria for renewal of telehealth grants. Section 701 of the Act did not have provisions for the selection of telehealth grants renewals, but we infer this was an implicit delegation of authority by Congress because this would be needed for the administration of the grant program required by section 701(a) of the Act. We would, therefore, base the requirements in this proposed section on the provisions of similar VA grant programs, such as the SSVF program (see § 62.25). These provisions are essential to the effective and efficient administration of a grant program.

Proposed paragraph (a) would state that, provided the grantee continues to meet the threshold requirements (in proposed § 84.20), VA would use the scoring criteria (in proposed § 84.35) to evaluate the renewal grant application. This is similar to other grant programs, such as the SSVF program. See § 62.25(a).

Proposed paragraph (b) would explain that VA will rank those grantees who receive at least the minimum amounts of total points and points per category set forth in the NOFO. The grantees will be ranked in order from highest to lowest scores within their respective funding priority group, if applicable. This is similar to other grant programs, such as the SSVF program. See § 62.25(b). This would also be similar to how new applicants would be evaluated under part 84.

Proposed paragraph (c) would state that VA will use the grantee's ranking as the primary basis for the selection for funding. Similar to new applicants, though, VA would prioritize entities that serve veterans in rural and highly rural areas or areas determined to be medically underserved, to the extent practicable. VA would fund the highest-ranked grantees for which funding is available within their respective funding priority group, if applicable. This also would be similar to other grant programs and how new applicants would be evaluated under part 84.

Pursuant to proposed paragraph (d), VA would retain the discretion to award any deobligated funds to an applicant or existing grantee. This is similar to other grant programs, such as the SSVF program. See § 62.25(d). We would further explain in proposed paragraph (d)(1) that if VA chose to award deobligated funds to an applicant or existing grantee, VA could first award the deobligated funds to the applicant or grantee with the highest grant score under the relevant NOFO that applies for, or is awarded a renewal grant in, the same community as, or a proximate community to, the affected community. Such applicant or grantee would need to have the capacity and agree to provide prompt services to the affected community. Under this section, the relevant NOFO would be the most recently published NOFO which covers the geographic area that includes the affected community. In proposed paragraph (d)(2), we would explain that if the first such applicant or grantee offered the deobligated funds refuses the funds, VA would offer to award the funds to the next highest-ranked such applicant or grantee, per the criteria in paragraph (d)(1), and continue on in rank order until the deobligated funds

are awarded. Under proposed paragraph (d)(3), VA could offer to award funds under other conditions, or could choose to not award the deobligated funds at all, when VA determines appropriate based on other relevant factors. For example, if a grantee had been maintaining and operating a telehealth access point in a community and VA opened a new clinic in that community, the continued need for a telehealth access point there may be limited. It may be more appropriate for another location to receive those funds to provide telehealth services to other veterans with limited access to care. We believe this is the most likely reason to shift funds from one community to another, but it is not necessarily the only reason, so we leave open the possibility that we may need to reallocate deobligated funds to other communities. There may also be situations where it would not make sense to award deobligated funds, such as near the end of a fiscal year when only limited funds would remain. VA would consider other relevant factors in making these decisions and act accordingly.

Paragraph (e) would authorize VA to select an existing grantee for available funding, in the next applicable funding round or when sufficient funds otherwise become available, based on the grantee's previously submitted renewal application, if that grantee is not initially selected for renewal because of a procedural error by VA (and provided the applicant is still interested in participating in the program). If there is no material change in the information, a new application would not be required. This would ease any administrative burden on grantees and could be used in situations where there is no material change in the renewal grant application that would have resulted in the grantee's selection for renewal of a grant under part 84. This is similar to other grant programs, such as the SSVF program. See § 62.61. It is also similar to the provisions regarding new applicants described above.

Section 84.45 Awards for the Telehealth Grant

Proposed § 84.45 would establish how awards for telehealth grants could be used, related exclusions, and VA's ability to enter into agreements with organizations for the establishment of telehealth access points.

Proposed paragraph (a) would list the permissible uses of grant funds awarded under part 84. This would be consistent with section 701(b)(3) of the Act, which provides for the general use of grant

funds. Paragraphs (a)(1) through (7) are consistent with clauses (i) through (vii) in section 701(b)(3)(A) of the Act.

Proposed paragraph (a)(1) would reflect the criterion from section 701(b)(3)(A)(i), which states that telehealth grant funds may be used for purchasing, replacing, or upgrading hardware or software necessary for the provision of secure and private telehealth services. Proposed paragraph (a)(1) would clarify that the equipment and software must be compatible with telehealth requirements as described in the NOFO and be purchased under warranty. We would not place these requirements in regulation as technological advances would require VA to constantly update its regulations to reflect the new hardware and software requirements. Grantees may contact VA with any questions they may have regarding the correct hardware or software needed in the telehealth access point prior to their purchase. In addition, purchasing the equipment and software under warranty safeguards the grantee against any manufacturer's defect that might render the equipment or software faulty. We also encourage grantees to purchase an extended warranty for the hardware and software to safeguard against any costs beyond the manufacturer's warranty. VA is aware that some grantees may not have the technological expertise to set up the hardware and software in the telehealth access points and as such, we would also clarify that the telehealth grant funds may be used to purchase services to configure and set up grantee-purchased equipment. This would be needed to ensure installation and functionality of the equipment. In addition, VA would provide direct technical support for the initial connection to a VA-secure application, and continued VA technical support for issues that may arise with the connection to the VA-secure application during the term of the grant. We emphasize, though, that this technical support would only extend to issues regarding VA's platform or its network and would not extend to any technical issues the grantee is experiencing on its side of the connection.

We understand that some organizations expressed interest in VA providing equipment and software directly to applicants, but we have not proposed to do so here. VA's other grant programs involve the distribution of financial resources to grantees so they can obtain goods and services as needed to perform the functions of the grant program. Adhering to this model for this grant program is appropriate for several reasons. First, disbursing funds is a

more well-established and well-known process that would avoid potential delays or issues with implementation. Second, VA would have no way of knowing in advance the quantity of hardware and software reasonably expected to be required by the grantees that would request VA-purchased hardware and software. If not all of the VA-purchased hardware and software were awarded to grantees, VA would be left with excess equipment that would be rendered outdated after a few years due to changes in technology. Not only would this mean a loss of revenue for VA, but, more importantly, it would decrease the amount of grant funds available for grantees. This would leave communities that are in need of a telehealth access point without the ability to provide health care services to veterans. Third, and as noted previously, VA encourages grantees to use awards to purchase warranties and service plans to ensure that technological support and services are available when needed. This preserves a cleaner distinction between VA involvement and the grantee's operations. As such, we will not be awarding VA-purchased hardware or software as part of the grant agreement with the grantee. If grantees identify significant issues with this approach, VA can consider whether another approach would be legally permissible and more appropriate.

Proposed paragraph (a)(2) would be consistent with section 701(b)(3)(A)(ii), which states that the telehealth grant may be used for upgrading security protocols for consistency with the security requirements of the Department of Veterans Affairs. We would state that telehealth grants may be used for upgrading security protocols for consistency with VA security requirements and digital applications. We would further state that these security requirements would be described in the NOFO. Telehealth access point services would be delivered through the VA Video Connect secure application or other programs. We would not use the term VA Video Connect in this rule in the event the platform name changes in the future to avoid amending the regulation. Security protocols may include antivirus or information security programs, encryption, or other programs or requirements.

Proposed paragraph (a)(3) would be consistent with section 701(b)(3)(A)(iii) of the Act, which states that telehealth grants may be used for the training of site attendants, including payment of those attendants for completing that training. We would state that telehealth

grant funds may be used for the payment for the training of telehealth access point attendants, including payment of those attendants for completing that training, with respect to: (1) military and veteran cultural competence, if the entity is not an organization that represents veterans; (2) equipment required to provide telehealth services; (3) privacy, including the Health Insurance Portability and Accountability Act (HIPAA) of 1996 privacy rule under 45 CFR part 160 and part 164, subparts A and E, as it relates to health care for veterans; (4) scheduling for telehealth services for veterans; or (5) any other unique training needs for the provision of services to veterans in a telehealth access point.

We note that section 701(b)(3)(A)(iii) only authorizes the use of grants to pay for wages or salaries of site attendants when they are engaged in training described in that clause. We interpret this to mean that grant funds may not be used otherwise to pay for salary or wages for site attendants when they are not engaged in training. We understand this limitation could prove an obstacle for some potential applicants for grants under part 84, so we are taking this opportunity to clarify that while grant funds cannot be used to pay salaries or wages for site attendants, VA could enter into separate agreements under separate authorities for these services. VA has general authority to appoint staff to provide support to veterans receiving health care through telehealth. VA similarly can contract for others to provide telehealth services, or to support the delivery of telehealth services, to veterans. While grant funds under part 84 are not authorized to pay salaries and wages, VA could enter into separate agreements, such as contracts, with grantees to cover these costs. These separate agreements would not be grant agreements under part 84 and would not be governed by the terms and conditions of part 84 or the grant agreement themselves. These separate agreements would be authorized by provisions of law other than section 701 of the Act and would be governed by those laws, any applicable regulations, and the terms of these separate agreements. As such, we are not including the payment of salaries or wages for site attendants in this rulemaking, but we do provide this clarification so that eligible entities who are interested in applying for a telehealth grant but who also need financial assistance to pay staff to administer the telehealth access points understand the limits of the grant program and the alternative

arrangements VA is considering to try to address this potential issue.

Proposed paragraph (a)(4) would be consistent with section 701(b)(3)(A)(iv) of the Act, which provides that the telehealth grant may be used for upgrading existing infrastructure owned or leased by the entity to make rooms more conducive to telehealth care, including: (1) additions or modifications to windows or walls in an existing room, or other alterations as needed to create a new, private room, including permits or inspections required in association with space modifications; (2) soundproofing of an existing room; (3) new electrical, telephone, or internet outlets in an existing room; or (4) aesthetic enhancements to establish a more suitable therapeutic environment. We would state that telehealth grant funds may be used for these purposes generally, and regarding aesthetic enhancements, we would specifically include, but not limit to, enhancements such as seating for both the veteran and caregiver, bariatric seating, and adequate lighting. These are examples of enhancements that would make the environment more suitable for therapeutic purposes by supporting the needs of the veteran (and by extension, a caregiver of a veteran). We note that a caregiver, as used in this context, is not limited to a caregiver recognized by or participating in a program of caregiver assistance administered by VA.

Proposed paragraphs (a)(5) through (7) would be consistent with section 701(b)(3)(A)(v) through (vii) of the Act, which state that telehealth grants may be used for upgrading existing infrastructure to comply with the ADA; upgrading internet infrastructure and sustainment of internet services; and sustainment of telephone services.

Proposed paragraph (b) would address other exclusions to the use of grant funds. Section 701(b)(3)(B) of the Act states that telehealth grant funds may not be used for the purchase of new property or for major construction projects, as determined by the Secretary. We would mirror this exclusion in proposed paragraph (b) by stating that telehealth grant funds may not be used for the purchase of new property or for major construction projects, or for the acquisition of new space through other arrangements (such as a lease agreement), as determined by VA. Funds could not be used to acquire new space through other arrangements, such as a lease agreement. We would add that major construction would consist of new construction, or activities that would increase the square footage of an existing facility (*e.g.*, relocation of

existing exterior walls, roofs, or floors). We would not further define major construction in the regulation, but we could provide clarification in the NOFO. We would retain flexibility to provide further clarity through the NOFO to allow for adjustment to changing conditions or situations, both generally and specifically based on the needs of veterans, applicants, and grantees.

Section 84.50 General Operation Requirements

Proposed §§ 84.50 through 84.110 provide general parameters for this grant program that are similar to requirements established in other VA grant programs. These are administrative provisions regarding grant administration. As noted previously, there is little in section 701 of the Act that addresses the issues that would be covered by these provisions directly, but we interpret that as an implicit delegation by Congress to VA, as these requirements are necessary for the consistent and appropriate administration of this grant program. Sound administration is necessary to ensure VA and grantees are financially responsible in the use of Federal funds.

Proposed § 84.50 would establish general operation requirements for telehealth access points and grantees. These requirements would make certain that all grantees adhere to the same standards for maintaining the telehealth access points and administering the grants. This section would be similar to other VA grant programs such as the SSVF program. See § 62.36.

We would state in proposed paragraph (a) that grantees must maintain the confidentiality of veterans utilizing the telehealth access point. Maintaining the confidentiality of veterans is paramount in keeping with VA's standards of provision of services to veterans. We would add that the grantees could not keep any records on the veterans who use the telehealth access point. These records are maintained exclusively by VA. As previously stated in this rule, VA will provide services at the telehealth access points through a secure internet application. The grantees will not have access to the veteran's information. We would state, however, that this prohibition only applies to veteran records, however, grantees must maintain a record of the hours the point attendant provides services to veterans. These records would be used by VA to make certain that the grantee is utilizing telehealth grant funds appropriately and the point attendant is only performing duties related to the telehealth access point.

Proposed paragraph (b) would establish the grantees' responsibility to operate and maintain the telehealth access point. This requirement would be needed to make certain that the grantee is providing the required services in the telehealth access point.

We would state in proposed paragraph (c)(1) that the grantee must notify each veteran that the telehealth services are being provided by VA. We would require grantees to notify veterans that telehealth services are being provided by VA because under section 701(a) of the Act, grantees are required to support VA's provision of telehealth services to veterans.

We would also state in proposed paragraph (c)(2) that the grantee must notify the veteran of any conditions or restrictions on the receipt of telehealth services by the veteran. We would allow grantees to create such rules and standards as are necessary for the safe and effective operation of the telehealth access point. We would add that the grantee has the right to prohibit services to veterans who have demonstrated disruptive behavior within their facility. This would ensure the safety of the telehealth access point attendants, other veterans utilizing the point, and caregivers of such veterans.

We would state in proposed paragraph (d) that the grantee must participate in telehealth program evaluation interviews and surveys. This participation will help to improve services and enhance veterans' experience.

We would state in proposed paragraph (e) that grantees must regularly assess that the grant funds are utilized according to the agreement. This is necessary to ensure proper accounting for and use of Federal funds. Failure to utilize grant funds according to the agreement would be a breach of the agreement.

We would state in proposed paragraph (f) that grantees must ensure that telehealth grants are administered in accordance with the requirements of part 84, the telehealth grant agreement, and other applicable laws and regulations. Further, grantees would be responsible for ensuring that any subcontractors, carry out activities in compliance with this telehealth grant program agreement, laws, and regulations.

Proposed paragraph (g) would state that the grantees must follow, implement, and adhere to all requirements in the grant agreement and in 2 CFR part 200 on the use and disposition of property improved and/or equipment acquired under the telehealth grant program. Regulations at

2 CFR part 200 generally provide for the use and disposition of property once the grantee is no longer participating in the telehealth grant program. If potential applicants are interested in which regulations may be potentially relevant, VA would direct such individuals to review 2 CFR 200.311(c), 200.312, 200.313, and 200.439. VA's draft grant agreements will include specific terms setting forth disposition requirements for grantees and will be consistent with these regulations.

The disposition of property includes any additions or modifications to windows or walls in an existing room, or other alterations as needed to create a new, private room for the telehealth access point. Disposition would also include any federally owned telehealth equipment or equipment acquired with telehealth grant funds. The recoupment of funds used for property improvements made or equipment acquired under the telehealth grant would also be stated in the NOFO. VA would provide for the specifics regarding the improvement, maintenance, and disposition of upgraded infrastructure or purchased equipment in the telehealth grant agreement.

Section 84.55 Fee Prohibition

Proposed § 84.55 would state that grantees must not charge a fee to veterans for providing VA services in telehealth access points that are funded with amounts from the telehealth grant. Under section 701(a) of the Act, grantees are required to support VA's provision of telehealth services to veterans. As proposed elsewhere in this rule, VA would eliminate copayment liability on the part of veterans who use telehealth services for VA care; prohibiting grantees from charging veterans for these services would ensure parity and support the ultimate goal of this program; to increase veterans' access to care. We also believe this would be consistent with current practice. We do not believe Congress intended to allow grantees to charge veterans for the use of telehealth access points; this type of decision would be a significant departure from other VA care and would deter utilization of these locations, which would be contrary to the goal of increased access. Further, section 701 of the Act does not authorize the collection of fees by grantees, and we do not believe Congress would have been silent on such a major issue if it had intended for grantees to receive such payments. This is consistent with the intent of the Act and similar to other VA grant programs,

such as the SSVF program. See 38 CFR 62.37.

Section 84.60 Notice of Funding Opportunity (NOFO)

As previously stated in this rulemaking, a NOFO would alert eligible entities that there are funds available for the telehealth grant. Proposed § 84.60 would explain what would be included in a NOFO. This would align with other VA grant programs, such as the SSVF program (see § 62.40). This would also be consistent with the requirements and recommendations within 2 CFR part 200 regarding notices of funding opportunity (see 2 CFR 200.204).

In proposed § 84.60, we would state that when funds are available for the telehealth grant, VA will publish a NOFO. We would also state that VA has the authority to modify the duration, amount, or both of an existing telehealth grant agreement, subject to availability of funding and grantee performance, as set forth in § 84.65. We would make this statement to allow VA to modify an existing telehealth grant depending on the performance of the grantee to provide services at the telehealth access point. The NOFO would identify: (1) the location for obtaining the applications for the telehealth grant; (2) the date, time, and place for submitting completed telehealth grant applications; (3) the estimated amount and type of grant funding available; (4) any priorities for or exclusions from funding to meet the requirements of the telehealth grant and VA goals for providing telehealth services to veterans; (5) the length of term for the telehealth grant award; (6) specific point values to be awarded for each criterion listed in §§ 84.25 and 84.35; (7) the minimum number of total points and points per category that an applicant or grantee, as applicable, must receive for a telehealth grant to be funded; (8) any maximum award amounts for the telehealth grant; (9) the timeframes and manner for payments under the telehealth grant; and (10) other information necessary for the telehealth grant application process as determined by VA. These provisions would ensure that eligible entities have all necessary information to submit a complete and timely application for a telehealth grant under part 84.

Section 84.65 Telehealth Grant Agreements

As previously explained in this rulemaking, section 701(a) of the Act provides that VA shall enter into agreements, and expand existing agreements, with organizations that

represent or serve veterans, nonprofit organizations, private businesses, and other interested parties for the expansion of telehealth capabilities and the provision of telehealth services to veterans through the award of grants for telehealth. Proposed § 84.65 would provide what the telehealth grant agreement entails and would align with 2 CFR 200.201 and other VA grant programs, such as the SSVF program. See § 62.50.

Proposed paragraph (a) would apply to grant agreements for the initial telehealth grant. We would state that after an applicant is selected for a telehealth grant in accordance with § 84.30, VA will draft a telehealth grant agreement to be executed by VA and the applicant. Upon execution of the telehealth grant agreement, VA would obligate grant funds to cover the amount of the approved grant, subject to the availability of funding. We would also state that the telehealth grant agreement would provide that the grantee agrees, and will ensure that each subcontractor, as relevant, agrees, to: (1) operate the telehealth access point in accordance with the provisions of part 84 and the applicant's telehealth grant application; (2) comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish for purposes of providing services in a telehealth access point in an effective and efficient manner; and (3) provide such additional information as deemed appropriate by VA. These requirements would ensure compliance with legal requirements associated with the grant and with proper and effective administration of a telehealth access point.

Proposed paragraph (b) would apply to instances where the grantee has already received an initial grant for telehealth and is applying for renewal of a telehealth grant. We would state that after a grantee is selected for renewal of a telehealth grant in accordance with § 84.40, VA would draft a telehealth grant agreement to be executed by VA and the grantee. Upon execution of the telehealth grant agreement, VA would obligate grant funds to cover the amount of the approved telehealth grant, subject to the availability of funding. To avoid redundancy in regulations, we would state that the agreement for the renewal of the telehealth grant will contain the same provisions described in paragraph (a). As with paragraph (a), these requirements would ensure compliance with legal requirements associated with the grant and with proper and effective administration of a telehealth access point.

We would provide in paragraph (c) that grantees may not use funds provided under part 84 to replace Federal, State, Tribal, or local funds previously used, or designated for use, to establish a telehealth access point. Grantees must only use funds for the purposes stated in part 84. This is necessary to ensure that grant funds are not used as a substitute for other available resources.

Lastly, we would provide in proposed paragraph (d) that subject to §§ 84.60 and 84.100, the availability of funding, and grantee performance, VA may modify an existing telehealth grant agreement by one or both of the following: (1) extending or reducing the period for which the telehealth grant was established; and (2) increasing or decreasing the amount of funds awarded. These modifications would be contingent upon the grantee's provision of services at the telehealth access point. Also, any extension of funds would be provided based on the availability of funds. VA would provide in the NOFO the terms under which extensions would be granted. Any reduction in funds or period of the telehealth grant agreement would be subject to the provisions in § 84.100.

Section 84.70 Program or Budget Change and Corrective Action Plans

Proposed § 84.70 sets forth the requirements for changes to the telehealth grant agreement that propose significant changes that would alter the terms of the agreement. These requirements would be similar to how VA manages program and budget changes and corrective action plans in other VA grant programs, such as the SSVF program. See § 62.60. The requirements would also allow VA to ensure that grant funds are used appropriately and maintain control over the quality of the services provided by the grantee. This section is also consistent with 2 CFR 200.308, which establishes policy and processes for revision of budget and program plans for Federal awards. VA does not intend to waive any modifications that would require prior written VA approval as authorized by 2 CFR 200.308(e).

Proposed paragraph (a) would cover instances in which a grantee requests a modification to their telehealth grant agreement. We would state that a grantee must submit to VA a written request to modify a telehealth grant agreement for any proposed significant change that will alter the agreement. We would also state that if VA approves such change, VA will issue a written amendment to the telehealth grant agreement. In addition, grantees would

have to receive VA's approval prior to implementing a significant change. This would ensure that the grant agreement is current and accurate.

We would state in proposed paragraph (a)(1) what would constitute a significant change to the telehealth grant agreement. A significant change would include, but not be limited to, a change in the grantee or any subcontractors, identified in the telehealth grant agreement; a change in the area or community served by the grantee; or addition or removal of equipment, connectivity, or other services provided by the grantee; and a change in budget line items that are more than 10 percent of the total telehealth grant award. These are common examples of possible changes, but they are not an exhaustive list; VA proposes to retain flexibility to address novel circumstances as they arise. If applicants or grantees have questions about whether a change would constitute a significant change, they may contact VA for assistance.

Proposed paragraph (a)(2) would state that VA's approval of changes would be contingent upon the grantee's amended application retaining a high enough rank to have been competitively selected for funding in the year that the application was granted. This would ensure that grant funds are used for purposes that would have received an award if the modified terms had been the initially proposed terms.

We would state in proposed paragraph (a)(3) that each telehealth grant modification request must contain a description of the revised proposed use of telehealth grant funds. This, again, would ensure that the grant agreement accurately reflects the intended use of funds and operation of the telehealth access point.

Proposed paragraph (b) would provide for corrective action plans that a grantee must submit to VA if the grantee's expenditures vary from the expenditures listed in the agreement. We would state that VA may require that the grantee initiate, develop, and submit to VA for approval a Corrective Action Plan (CAP) if actual telehealth grant expenditures vary from the amount disbursed to a grantee or actual telehealth grant activities vary from the telehealth grant agreement. Reporting frequency may be on a bi-monthly, monthly, or quarterly basis. We would add in proposed paragraph (b)(1) that the CAP must identify the expenditure or activity source that has caused the deviation, describe the reason(s) for the variance, provide specific proposed corrective action(s), and provide a timetable for accomplishment of the

corrective action(s). We would also state in proposed paragraph (b)(2) that, after receipt of the CAP, VA would send a letter to the grantee indicating that the CAP is approved or disapproved. If disapproved, VA would make beneficial suggestions to improve the proposed CAP and request resubmission or take other actions in accordance with this program. This would ensure that grant funds are used for appropriate and authorized purposes, and that such funds are used responsibly.

Proposed paragraph (c) would provide that grantees must inform VA in writing of any key personnel changes, local or national, (e.g., new executive director, telehealth grant program director, or chief financial officer) and grantee address changes within 30 days of the change. This would ensure that critical changes that might affect the maintenance and operation of the telehealth access point are communicated to VA in a timely manner.

Section 84.75 Faith-Based Organizations

Proposed § 84.75 would state that organizations that are faith-based are eligible, on the same basis as any other organization, to participate in the telehealth grant under part 84 in accordance with 38 CFR part 50. Part 50 explains that faith-based organizations are eligible to participate in VA's grant-making programs on the same basis as any other organizations, that VA will not discriminate against faith-based organizations in the selection of service providers, and that faith-based and other organizations may request accommodations from program requirements and may be afforded such accommodations in accordance with Federal law.

VA would apply the provisions of 38 CFR part 50 to the telehealth grant. However, we would not restate the provisions of part 50 in proposed part 84 but would merely cite to it. VA recently amended part 50 on March 4, 2024 (89 FR 15671), and in the event that part 50 is further amended in the future, VA would not need to amend part 84.

Section 84.80 Financial Management

Proposed § 84.80 would provide for the grantee's financial management of the telehealth grant and would be similar to other VA grant programs, such as the SSVF program. See § 62.70. These provisions are necessary to ensure that grantees comply with applicable Federal law, regulations, and policy and that grant funds are used appropriately.

Proposed paragraph (a) would state that grantees must comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200. As noted previously, 2 CFR part 200 establishes the uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities.

Proposed paragraph (b) would state that grantees must use a financial management system that provides adequate fiscal control and accounting records and meets the requirements set forth in 2 CFR part 200.

Proposed paragraph (c) would state payment up to the amount specified in the telehealth grant must be made only for allowable, allocable, and reasonable costs in establishing, maintaining, and operating the telehealth access point. We would add that the determination of allowable costs must be made in accordance with the applicable Federal Cost Principles set forth in 2 CFR part 200.

Proposed paragraph (d) would state that, in accordance with 2 CFR 200.414, applicants that do not have a negotiated indirect cost rate (NICRA) may (1) request a de minimis rate, which is in accordance with the amounts set forth in 2 CFR 200.414(f). In the alternative, applicants may (2) apply the NICRA established with their cognizant agency for indirect costs (as defined in 2 CFR 200.1) or may (3) request to negotiate an indirect cost rate with VA.

Section 84.85 Telehealth Grant Reports

Proposed paragraph § 84.85 would establish the reporting requirements for the telehealth grant. Such reporting requirements would ensure that grant funds are being used consistent with the Act and with part 84. In addition, the reports would allow VA to be transparent and show that it is being a good fiscal steward of the taxpayer dollar. Additionally, this is similar to how VA administers other grant programs such as the SSVF program. See § 62.71. Reporting requirements tasked to grantees will be in accordance with their risk level associated with their risk assessment and set forth in the NOFO. Examples may include bi-monthly, monthly, or quarterly reports of grant funding awarded.

Proposed paragraph (a) would state that VA may require grantees to provide, in any form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out the telehealth grant.

Proposed paragraph (b) would state, grantees must report on the deviations to grant expenditures to VA on a basis determined by VA (e.g., bi-monthly, monthly, or quarterly) in accordance with the results of their risk assessment; this would be set forth in the NOFO. We would add a note to proposed paragraph (b) to direct the reader to information on corrective action plans, which may be required in this circumstance, and to see § 84.70.

Proposed paragraph (c) would require grantees, at least once per year, to submit to VA a report that describes grant agreement compliance, legal and regulatory compliance, the activities for which the telehealth grant funds were used, including but not limited to, the equipment costs, renovation expenses, attendant expenses, any other types of ongoing expenses for services provided during the year covered by the report, and any other information that VA may request.

To be fully informed on how the grantee utilizes the telehealth grant funds, we would state in proposed paragraph (d) that VA may request additional reports to allow VA to fully assess the provision or coordination of the provision of services under part 84.

Proposed paragraph (e) would state that all pages of the reports must cite the assigned telehealth grant number and be submitted in a timely manner as set forth in the grant agreement.

Proposed paragraph (f) would state that grantees agree to allow VA to post information from reports on the internet or use such information in other ways deemed appropriate by VA (including, but not limited to, activities regarding litigation). Grantees should clearly mark confidential information to assist VA in redacting such information when appropriate. We would expressly call out litigation activities as one use for which grantees would have to consent to VA's use of information, but we emphasize this is not the only potentially permissible use. We would add that grantees must clearly mark information that is confidential to individual veterans so VA could exclude such information from any public use. We do not anticipate that any such information would be included given the prohibition on the retention of records on the veterans who use the telehealth access point under proposed § 84.50(a), but we propose including this language out of an abundance of caution.

Section 84.90 Recordkeeping

Proposed § 84.90 would provide recordkeeping requirements for the telehealth grant. This provision would

be similar to other VA grant programs such as the SSVF program (see § 62.72) and 2 CFR 200.334, requiring Federal award recipients to keep financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award for a three-year retention period. We would state that grantees must ensure that records are maintained for at least a three-year period (unless a longer period is otherwise required) to document compliance with the telehealth grant. We would add that grantees must produce such records at VA's request.

Section 84.95 Technical and Technological Assistance

VA understands that eligible entities may need technical assistance in complying with requirements of part 84. VA currently provides technical assistance to other grantees through other programs. See, e.g., § 62.73.

Proposed paragraph (a) would state that VA will provide technical assistance, as necessary, to eligible entities to meet the requirements of part 84. This assistance is available to eligible entities, not just grantees, and can include assistance with applying for a grant under part 84 or administering a grant awarded under part 84.

In addition, we recognize that grantees may sometimes experience technological issues or challenges when connecting to VA's secure application and may need technological assistance throughout the length of the telehealth grant agreement. We would state proposed paragraph (b), that VA will provide technological assistance, as necessary, to grantees to ensure that the grantee's equipment is able to connect to the VA system and network as necessary to support the delivery of telehealth services. As noted above, proposed § 84.45(a)(1) would require that all equipment must be compatible with telehealth requirements as described in the NOFO and be purchased under warranty. The provision of technological assistance to grantees is implicitly authorized by section 701 of the Act, as it would frustrate the purpose of this program if grantees were experiencing technological issues unique to accessing VA's system and VA was unable to assist in resolving these issues. This assistance is also no different than what VA provides for other members of the public attempting to use VA platforms or networks; if there are service outages or disruptions, these issues are reported to VA, and VA works to address them to restore operability. We emphasize, though, as noted above, that this

assistance would be limited to VA's secure platform and its network; any issues regarding the grantee's equipment or network would not be addressed through VA's technological assistance described here. VA encourages grantees to purchase warranties and service plans, as appropriate, to resolve technological issues with their networks or equipment.

Proposed paragraph (c) would state that the technical and technological assistance will be provided either directly by VA or through grants or contracts with appropriate public or nonprofit private entities. Like paragraph (b), this assistance would be limited to issues with VA's platform or network. This proposed section would align with other VA grant programs, at least in relation to the provision of technical assistance, while also addressing unique issues raised by this program. It would also be consistent with how VA provides similar support to the public with other platforms to ensure operability.

Section 84.100 Withholding, Suspension, Deobligation, Termination, and Recovery of Funds by VA

If a grantee fails to comply with the terms of the telehealth agreement, VA could withhold, suspend, deobligate, terminate, or recover grant funds. Section 84.100(a) would explain that VA would enforce part 84 through such actions as may be appropriate. Appropriate actions would include withholding, suspension, deobligation, termination, recovery of funds by VA, and actions in accordance with 2 CFR part 200.

Part 200 of 2 CFR describes such actions. See 2 CFR 200.208, 200.305, 200.339 through 200.343, and 200.346. As telehealth grants are subject to the requirements of 2 CFR part 200, VA explicitly references 2 CFR part 200 in proposed § 84.100 to ensure that grantees understand and know where to locate these requirements related to withholding, suspension, deobligation, termination, and recovery of funds. VA refers to 2 CFR part 200 rather than include those requirements in this section as those requirements in 2 CFR part 200 may change. Referencing 2 CFR part 200 provides VA the ability to implement those changes without having to conduct further rulemaking.

VA acknowledges that when certain actions (such as suspension and termination) are taken against grantees pursuant to this section and 2 CFR part 200, a disruption in services to veterans may occur. We would state in proposed § 84.100(b)(1) that upon taking a remedy for noncompliance under paragraph (a),

grantees have 30 days to object and provide information and documentation challenging the action, subject to three conditions: (1) objections must be provided to VA in writing; (2) VA's decision stands while an objection is under consideration; and (3) other VA decisions (such as competing award decisions, continuation award decisions, decisions made with the consent of the recipient) are not subject to this opportunity to object. Specifically regarding this third condition, VA could begin making other decisions, such as reallocating funds under an existing or future NOFO.

We would add in proposed § 84.100(b)(2) that the grant agreement will provide additional requirements and responsibilities for grantees in the event of noncompliance under paragraph (a). This will ensure that the disruption and impact upon veterans is minimized as much as possible.

Section 84.105 Oversight

To verify that the telehealth grant is utilized in accordance with the agreement, VA may inspect the telehealth access points and records of any entity that has received a telehealth grant when VA deems necessary to determine compliance with §§ 84.0 through 84.110. We would state such requirement in this section, which would align with other VA grant programs, such as the SSVF program (see § 62.63). We would add that the authority to inspect does not authorize VA to manage or control the organization. We would also state that monitoring and oversight requirements for each grantee would be determined by a pre-award risk assessment under 2 CFR 200.206. This would reduce the burden for complying with oversight requests for those grantees whose awards are below certain thresholds established in the NOFO.

Section 84.110 Telehealth Grant Closeout Procedures

Proposed § 84.110 would describe the telehealth grant closeout procedures. Section 84.110 explains that telehealth grants would be closed out in accordance with 2 CFR part 200. Procedures for closing out Federal awards are currently located at 2 CFR 200.344 and 200.345. As telehealth grants are subject to the requirements of 2 CFR part 200, VA explicitly references 2 CFR part 200 in § 84.110 to ensure that grantees understand and know where to locate these requirements. VA refers to 2 CFR part 200 rather than include the current citations to those requirements or outline the actual closeout requirements in this section because 2

CFR part 200 may change. Referencing 2 CFR part 200 provides VA the ability to implement those changes without having to conduct further rulemaking.

Executive Orders 12866, 13563 and 14094

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

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on participating eligible entities who are awarded grants by VA or small businesses. To the extent there is any such impact, it will result in financial assistance and revenue for them as they purchase, upgrade, or install new technologies or infrastructure. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any

one year. This proposed rule would have no such effect on State, local, and Tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule includes provisions constituting a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA 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. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing the collection of information or take such other action as is directed by OMB.

Comments on the new collection of information contained in this rulemaking should be submitted through www.regulations.gov. Comments should indicate that they are submitted in response to “RIN 2900–AS20; Telehealth Grant Program” and should be sent within 60 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: www.reginfo.gov/public/do/PRAMain.

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register** (FR). Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on new collections of information in:

- Evaluating whether the new collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department’s estimate of the burden of the new collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing 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.

The collections of information associated with this rulemaking contained in 38 CFR 84.15, 84.50, 84.75, and 84.85 are described immediately following this paragraph, under its respective title.

Title: Telehealth Grant Program Grant Application.

OMB Control No.: 2900–TBD (New).

CFR Provision: 38 CFR 84.15.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.15 requires that applications be submitted to be evaluated and considered for a grant under new part 84. Applications require specific information so that VA can properly evaluate such applications for telehealth grants. We note that the average burden per response is the highest threshold requirement, but this estimate would be a lower time burden for lower threshold applicants.

- *Description of need for information and proposed use of information:* This collection of information is necessary to award telehealth grants to eligible entities.

- *Description of likely respondents:* Organizations that represent or serve veterans, nonprofit organizations, private businesses, and other interested parties for the expansion of telehealth capabilities and the provision of telehealth services to veterans through the award of telehealth grants.

- *Estimated number of respondents:* 65.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 1500 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 1625 hours.

- ** Estimated annual cost to respondents:* \$51,155.00.

Title: Telehealth Grant Program Grant Renewal Application.

OMB Control No.: 2900–TBD (New).

CFR Provision: 38 CFR 84.15.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.15 requires that renewal applications be submitted to be evaluated and considered for a renewal of a grant under new part 84. Applications require specific information so that VA can properly evaluate such applications for renewal

of telehealth grants. We note that the average burden per response is the highest threshold requirement, but this estimate would be a lower time burden for lower threshold applicants.

- *Description of need for information and proposed use of information:* This collection of information is necessary to award renewal telehealth grants to grantees.

- *Description of likely respondents:* Grantees that seek renewal of their telehealth grant.

- *Estimated number of respondents:* 50.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 600 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 500 hours.

- ** Estimated annual cost to respondents:* \$15,740.00.

Title: Telehealth Grant Program Veterans Satisfaction Survey.

OMB Control No.: 2900–TBD (New).

CFR Provision: 38 CFR 84.50.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.50 requires grantees to conduct satisfaction surveys from veterans.

- *Description of need for information and proposed use of information:* The collection of information by VA is necessary to evaluate whether veterans are satisfied with the services provided by the grantee and the effectiveness of such services.

- *Description of likely respondents:* Veterans who receive telehealth services at telehealth access points.

- *Estimated number of respondents:* 500.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 5 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 42 hours.

- ** Estimated annual cost to respondents:* \$1,322.16.

Title: Telehealth Grant Program Grantee Satisfaction Survey.

OMB Control No.: 2900–XXXX (New/ TBD).

CFR Provision: 38 CFR 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 has been developed to capture telehealth grantee reports. As stated, VA may require grantees to provide, in any form as may be prescribed, reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out the telehealth grant program and agreement.

- *Description of need for information and proposed use of information:* This collection of information is necessary to provide more effective customer service and identify areas of improvement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 50.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 20 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 17 hours.

- ** Estimated annual cost to respondents:* \$535.16.

Title: Telehealth Grant Program Annual Performance Report.

OMB Control No.: 2900–XXXX (New/ TBD).

CFR Provision: 38 CFR 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 requires grantees to provide reports, as VA requests, to assess the provision of services under this grant program.

- *Description of need for information and proposed use of information:* The collection of information is necessary to determine compliance with the requirements for the telehealth grant program and agreement and to assess the provision of services under this grant program and the grant agreement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 50.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 45 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 38 hours.

- ** Estimated annual cost to respondents:* \$1,196.24.

Title: Telehealth Grant Program Other Performance Report.

OMB Control No.: 2900–XXXX (New/ TBD).

CFR Provision: 38 CFR 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 requires grantees to provide reports, as VA requests, to assess the provision of services under this grant program.

- *Description of need for information and proposed use of information:* The collection of information is necessary to determine compliance with the requirements for the telehealth grant and to assess the provision of services under this grant program and the grant agreement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 50.

- *Estimated frequency of responses:* 2 times annually.

- *Estimated average burden per response:* 30 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 50 hours.

- ** Estimated annual cost to respondents:* \$1,574.00.

Title: Telehealth Grant Program Annual Financial Expenditure Report.
OMB Control No.: 2900–XXXX (New/ TBD).

CFR Provision: 38 CFR 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 requires grantees to provide reports, as VA requests, to assess the provision of services under this grant program. At least once per year, each grantee must submit to VA a report that describes grant agreement compliance, legal and regulatory compliance, the activities for which the telehealth grant funds were used including, but not limited to, the equipment costs, renovation expenses, attendant expenses, any other types of ongoing expenses for services provided during the year covered by the report, and any other information that VA may request.

- *Description of need for information and proposed use of information:* The collection of information is necessary to determine compliance with the requirements for the telehealth grant and to assess the ongoing expenditures under this grant program and the grant agreement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 50.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 45 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 38 hours.

- ** Estimated annual cost to respondents:* \$1,196.24.

Title: Telehealth Grant Program Other Financial Expenditure Report.

OMB Control No.: 2900–XXXX (New/ TBD).

CFR Provision: 38 CFR 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 requires grantees to provide reports, as VA requests, to assess the provision of services under this grant program. If actual telehealth grant expenditures vary from the amount disbursed to a grantee or actual telehealth grant activities vary from the grantee's program description provided in the

telehealth grant agreement, grantees must report the deviation to VA.

Reporting frequency may be on a bi-monthly, monthly, or quarterly basis. For the frequency of responses, we estimate that this reporting would be on a quarterly basis. We note that the average burden per response is the highest threshold requirement, but this estimate would be a lower time burden for lower threshold applicants.

- *Description of need for information and proposed use of information:* The collection of information is necessary to determine compliance with the requirements for the telehealth grant and to assess the provision of services and the ongoing expenditures under this grant program and the grant agreement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 50.

- *Estimated frequency of responses:* Quarterly = 4 times annually.

- *Estimated average burden per response:* 30 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 100 hours.

- ** Estimated annual cost to respondents:* \$3148.00.

Title: Compliance—Program & Budget Changes.

OMB Control No.: 2900–XXXX (New/ TBD).

CFR Provision: 38 CFR 84.70 and 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 requires grantees to provide reports, as VA requests, to assess the provision of services under this grant program. These compliance reports also include program changes and corrective action plans under 38 CFR 84.70.

- *Description of need for information and proposed use of information:* The collection of information is necessary to determine compliance with the requirements for the telehealth grant and to assess the provision of services under this grant program and the grant agreement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 10.

- *Estimated frequency of responses:* 2 times annually.

- *Estimated average burden per response:* 15 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 5 hours.

- ** Estimated annual cost to respondents:* \$157.40.

Title: Compliance—Corrective Action Plan.

OMB Control No.: 2900–XXXX (New/ TBD).

CFR Provision: 38 CFR 84.70 and 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 requires grantees to provide reports, as VA requests, to assess the provision of services under this grant program. These compliance reports also include program changes and corrective action plans under 38 CFR 84.70.

- *Description of need for information and proposed use of information:* The collection of information is necessary to determine compliance with the requirements for the telehealth grant and to assess the provision of services under this grant program and the grant agreement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 5.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 30 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 3 hours.

- ** Estimated annual cost to respondents:* \$94.44.

- ** The total respondent information collection burden cost associated with this regulation is estimated to be \$76,118.64 (2,418 burden hours × \$31.48 per hour). To estimate the total information collection burden cost, VA used the 2023 Bureau of Labor Statistics (BLS) mean hourly wage for hourly wage for “all occupations” of \$31.48 per hour. This information is available at https://www.bls.gov/oes/current/oes_nat.htm.*

Assistance Listing

The Assistance Listing number and title for the program affected by this document is 64.009, Veterans Medical Care Benefits.

List of Subjects

38 CFR Part 17

Administrative practice and procedure, Health care, Health facilities, Mental health programs, Veterans.

38 CFR Part 84

Administrative practice and procedure, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed

this document on October 31, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

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

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR chapter I as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read, in part, as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

■ 2. Amend § 17.108 by revising paragraph (e)(16) to read as follows:

§ 17.108 Copayments for inpatient hospital care and outpatient medical care.

* * * * *

(e) * * *

(16) Telehealth visits;

* * * * *

■ 3. Add part 84 to read as follows:

PART 84—TELEHEALTH GRANT PROGRAM

Sec.

84.0 Purpose.

84.5 Definitions.

84.10 Eligible entity.

84.15 Application.

84.20 Threshold requirements prior to scoring telehealth grant applicants.

84.25 Scoring criteria for the telehealth grant applicants.

84.30 Selection of applicants to receive a telehealth grant.

84.35 Scoring criteria for grantees applying for renewal of telehealth grants.

84.40 Selecting grantees for renewal of telehealth grants.

84.45 Awards for telehealth grants.

84.50 General operation requirements.

84.55 Fee prohibition.

84.60 Notice of Funding Opportunity.

84.65 Telehealth grant agreements.

84.70 Program or budget changes and Corrective Action Plans.

84.75 Faith-based organizations.

84.80 Financial management.

84.85 Telehealth grant reports.

84.90 Recordkeeping.

84.95 Technical and technological assistance.

84.100 Withholding, suspension, deobligation, termination, recovery of funds by VA, and disposition of property or equipment.

84.105 Oversight.

84.110 Telehealth grant closeout procedures.

Authority: 38 U.S.C. 501 and sec. 701, Pub. L. 116–171, 134 Stat. 778 (38 U.S.C. 1701 (note)).

§ 84.0 Purpose.

The purpose of this part is to establish the telehealth grant program. The Department of Veterans Affairs (VA) will enter into agreements, and expand existing agreements, with eligible entities for the expansion of telehealth capabilities and the provision of telehealth services to veterans through the award of grants. Through the award of these grants, grantees will offer veterans a convenient space to connect with a VA health care professional through video telehealth in comfortable private locations in communities where veterans may otherwise have long travel times to VA medical facilities, may have poor internet connectivity in their homes, or may face other barriers to accessing health care. The telehealth access point is not intended to be used by veterans who are in need of emergency health care services. This part only applies to telehealth grant agreements; however, VA may enter into an agreement for the establishment of a telehealth access point for veterans with an eligible entity that seeks to establish such an access point but does not require grant funding under this part.

§ 84.5 Definitions.

The following definitions apply to this part and any Notice of Funding Opportunity (NOFO) issued under this part:

Applicant means an eligible entity that submits an application for a grant announced in a NOFO under this part.

Date of completion means the earliest of the following dates:

(1) The date specified in the telehealth grant agreement, or any supplement or amendment thereto; or

(2) The effective date of a telehealth grant termination under § 84.110.

Eligible entity means an entity that meets the requirements under § 84.10.

Grantee means an eligible entity that is awarded a telehealth grant under this part.

Medically underserved means an area that is designated under 42 U.S.C. 254b(b)(3).

Nonprofit organization has the meaning as given to this term in 2 CFR 200.1.

Notice of Funding Opportunity (NOFO) has the meaning as given to this term in 2 CFR 200.1.

Rural and highly rural area means an area or community that is designated as such by the Rural-Urban Commuting Areas coding system of the U.S. Department of Agriculture.

Subcontractor means any entity or organization that has a contract agreement to furnish services at the telehealth access point. Subcontractors do not include individuals who build the access point (e.g., entities who are hired to paint or put up walls or partitions) or provide technical services (e.g., commercial internet providers or electric services).

Telehealth access point means a non-VA site supported by a telehealth grant where a veteran can participate in a telehealth visit with a VA health care professional.

Telehealth grant means a grant awarded under this part.

§ 84.10 Eligible entity.

To be eligible to receive a telehealth grant, an entity must be:

- (a) An organization that represents or serves veterans;
- (b) A nonprofit organization;
- (c) A private business;
- (d) A State or local government; or
- (e) Other interested party.

§ 84.15 Application.

(a) *General.* An applicant must submit to VA a complete grant application package, as described in the NOFO. The NOFO may include different application requirements based on a range of funding thresholds. For example, grant applications for technology and equipment, infrastructure upgrades, and sustainment may follow different application requirements. The requirements in this section represent the most extensive requirements that applicants would need to meet.

(b) *Content of application.* The telehealth grant application package will require the following:

(1) A plan to establish, if needed, the telehealth access point (or evidence that a telehealth access point has already been established) and a description of how the size, scope, and grant management plan are feasible;

(2) Supporting documentation consisting of the following:

(i) The type of entity that is applying for the telehealth grant pursuant to § 84.10;

(ii) A proposed operating budget;

(iii) Supportive resources committed to the project, which includes, but is not limited to, space, staffing, equipment, internet services, phone services, and furniture;

(iv) The applicant's ability to control the telehealth access point and meet appropriate zoning, preservation, accessibility, safety, and environmental laws;

(v) A description of the geographic area that the telehealth access point will

serve (include the name(s) of the municipalities, counties (or parishes), or Tribal lands); and

(vi) An attestation that the facilities will be used principally to provide to veterans the services for which the project was designed;

(3) Documentation evidencing the experience of the applicant and any identified subcontractors relevant to creating an environment to provide telehealth services or organizational experience working with veterans;

(4) A statement from the applicant asserting that all of the following are true:

(i) The project will furnish veterans a telehealth access point that is private, secure, clean, accessible, and meets the requirements of this grant;

(ii) The applicant will continue to maintain and operate the telehealth access point supported by this grant until the expiration of the period during which VA could seek full recovery under § 84.100;

(iii) The title or lease to the point will lie with the applicant and the applicant will, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the applicant. Telehealth access points that are located in federally owned property (e.g., Federally Qualified Health Centers, Department of Defense, and Indian Health Services) need not be insured unless required by the terms and conditions of the Federal property award;

(iv) Adequate financial support will be available for the duration of the grant agreement that must be supported by a demonstration of financial stability and a detailed project budget, which includes, but is not limited to, all existing and anticipated sources of funds for the project; and

(v) The applicant will keep records and submit reports as VA may reasonably require, within the timeframes required, and, upon demand, allow VA access to the records upon which such information is based;

(5) Documentation of the managerial capacity of the applicant to:

(i) Maintain and operate a telehealth access point where veterans who use the telehealth access point can receive high quality telehealth care from VA health care professionals;

(ii) Continuously assess the needs of the telehealth access point and the veterans who use the telehealth access point for quality improvement in areas such as accessibility, satisfaction, and experience;

(iii) Customize the telehealth access point to meet the needs of veterans who use the telehealth access point; and

(iv) Comply with and implement the requirements of the telehealth grant;

(6) Any additional information in writing relevant to the telehealth grant application as requested by VA.

(c) *Renewal application.* Subject to funding availability, grantees may apply for one renewal grant per fiscal year, after receiving an initial grant. The grantee must submit to VA a complete renewal application as described in the NOFO.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

§ 84.20 Threshold requirements prior to scoring for the telehealth grant applicants.

VA will only score applicants that meet the following threshold requirements:

(a) The application is filed within the time period established in the NOFO, and any additional information or documentation requested by VA under § 84.15(b)(6) is provided within the time frame established by VA;

(b) The application is completed in all parts;

(c) The applicant meets the eligibility criteria in § 84.10;

(d) The activities for which the telehealth grant is requested are eligible for funding under this grant under § 84.45;

(e) The veterans the applicant proposes to serve are eligible to receive telehealth services under title 38 of the United States Code;

(f) The applicant agrees to comply with the requirements of the telehealth grant;

(g) The applicant does not have an outstanding obligation to the Federal Government that is in arrears and does not have an overdue or unsatisfactory response to an audit; and

(h) The applicant is not in default by being in non-compliance with the terms and conditions of the agreement of any previous Federal assistance.

§ 84.25 Scoring criteria for the telehealth grant applicants.

VA will score applicants who are applying for a telehealth grant. VA will set forth specific point values to be awarded for each criterion in the NOFO. VA will use the following criteria to score applicants who are applying for a telehealth grant:

(a) VA will award points based on the background, qualifications, experience, and past performance of the applicant and any subcontractors identified by the

applicant, if relevant, as demonstrated by the following:

(1) *Background and organizational history.* (i) Applicant's and any identified subcontractors' background and organizational history that would help them maintain and operate a telehealth access point for veterans.

(ii) Evidence that the applicant, and any identified subcontractors, maintain organizational structures with clear lines of reporting and defined responsibilities.

(iii) Applicant's, and any identified subcontractors', history of complying with agreements and not defaulting on financial obligations.

(2) *Staff qualifications.* (i) Applicant's staff, and any identified subcontractors' staff, have experience working with veterans or health care recipients.

(ii) Applicant's staff, and any identified subcontractors' staff, have organizational experience in establishing an environment suitable for providing health care services.

(3) *Organizational qualifications and past performance.* (i) Applicant, and any identified subcontractors, have experience partnering with health care organizations to create an environment to provide telehealth services.

(ii) Applicant, and any identified subcontractors, have organizational experience coordinating or administering telehealth services.

(iii) Applicant, and any identified subcontractors, have organizational experience working with veterans.

(b) VA will award points based on the applicant's plan to establish, maintain, and operate the telehealth access point, as demonstrated by the following:

(1) *Need for program.* (i) Applicant demonstrates a need for the telehealth access point in a rural, highly rural, or medically underserved area, to the extent practicable, where the telehealth access point will be located.

(ii) Applicant demonstrates an understanding of the area and provides evidence that a telehealth access point is needed to meet the unique needs of veterans and the community to be served.

(2) *Outreach plan.* Applicant has a feasible communications plan to inform veterans about the telehealth access point and the services provided.

(3) *Plan to establish the telehealth access point.* (i) Applicant's plan to establish, maintain, and operate the telehealth access point and a description of how the size, scope, and grant management plan are feasible.

(ii) Applicant's program is designed and scoped to meet the needs of veterans in their community through the provision of telehealth services. We

would consider whether the telehealth access point availability provides flexible hours of operation to maximize the telehealth access point's utilization.

(4) *Implementation timeline.* (i) Applicant's plan to establish, maintain, and operate a telehealth access point and use grant funding within the timeline specified in their application.

(ii) Applicant has a hiring plan in place to meet the applicant's implementation timeline or has existing staff to meet such timeline, if necessary.

(5) *Collaboration and communication with VA.* The applicant must submit a letter of support from a local VA medical facility or facilities confirming the need for the telehealth access point and the intent of such facility or facilities to work with the applicant if the applicant is awarded a grant.

(6) *Capacity to maintain and operate a telehealth access point.* Applicant has sufficient capacity, including staff resources, to safely maintain and operate a telehealth access point.

(7) *Sustainment plan.* The applicant has a feasible plan to sustain telehealth access point operations.

(c) VA will award points based on the applicant's quality assurance and evaluation plan, as demonstrated by the following:

(1) *Program evaluation.* (i) Applicant has created clear, realistic, and measurable goals that reflect the grant's aim of providing a telehealth access point to veterans against which the applicant's program performance can be evaluated.

(ii) Applicant plans to continually assess the telehealth access point to identify opportunities for quality improvement in areas such as accessibility, satisfaction, and experience.

(2) *Monitoring.* (i) Applicant has adequate controls in place to regularly monitor all aspects of the execution of the grant, including any subcontractors, for compliance with all applicable laws, regulations, and guidelines.

(ii) Applicant has a plan to provide an environment that is private, secure, clean, and complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) where veterans can participate in their telehealth appointments.

(iii) Applicant has adequate financial and operational controls in place to ensure the proper use of telehealth grant funding.

(iv) Applicant has a plan for ensuring that their staff and any subcontractors are appropriately trained on, and the telehealth access point maintains compliance with, all fire and safety

requirements as specified by State and local laws and regulations.

(3) *Remediation.* Applicant has a plan to establish a system to remediate aspects of the grant program that are non-compliant with the terms of telehealth grant agreement when they are identified.

(4) *Management and reporting.* Applicant's program management team has the capability and a system in place to provide to VA timely and accurate reports at the frequency set by VA.

(d) VA will award points based on the applicant's financial capability and plan, as demonstrated by the following:

(1) *Organizational finances.*

Applicant, and any identified subcontractors, are financially stable.

(2) *Financial feasibility of utilizing telehealth grant funds.* (i) Applicant has a realistic budget for utilizing grant funding and will submit their implementation timeframe to operate the telehealth access point.

(ii) Applicant's program is cost-effective and can be effectively and fully implemented on-budget.

(e) VA will award points based on the applicant's area or community associations and relations, as demonstrated by the following:

(1) *Area or community associations.*

Applicant has a plan for developing associations or has existing experience with Federal (including VA), State, local, and Tribal government agencies, and private entities for the purposes of providing a telehealth access point to veterans, as applicable.

(2) *Past working relationships.*

Applicant (or applicant's staff), and any identified subcontractors (or subcontractors' staff), as relevant, have fostered successful working relationships and experience with public and private organizations providing services to veterans.

(3) *Local presence and knowledge.* (i)

Applicant has a presence in the area or community they intend to serve; and

(ii) Applicant understands the dynamics of the area or community they intend to serve.

(4) *Integration of experience and plan to establish the telehealth access point.*

Applicant's experience in the area or community they intend to serve will enhance the effectiveness of the applicant's program.

§ 84.30 Selection of applicants to receive a telehealth grant.

VA will use the following process to select applicants to receive telehealth grants:

(a) VA will score all applicants that meet the threshold requirements set forth in § 84.20 using the scoring criteria set forth in § 84.25.

(b) VA will group applicants within the applicable funding priorities if funding priorities are set forth in the NOFO.

(c) VA will rank those applicants who receive at least the minimum amount of total points and points per category set forth in the NOFO, within their respective funding priority group, if any. The applicants will be ranked in order from highest to lowest scores, within their respective funding priority group, if any.

(d) VA will use the applicant's ranking as the primary basis for selection for funding. However, VA will prioritize entities that serve veterans in rural and highly rural areas or areas determined to be medically underserved, to the extent practicable.

(e) Subject to paragraph (d) of this section, VA will fund the highest-ranked applicants for which funding is available, within the highest funding priority group, if any. If multiple applications are received from the same geographic area, the applicants' rankings will be the primary basis for selection. If funding priorities have been established, to the extent funding is available, and still subject to paragraph (d), VA will select applicants in the next highest funding priority group based on their rank within that group.

(f) If an applicant would have been selected but for a procedural error committed by VA, VA may select that applicant for funding in the next applicable funding round or when sufficient funds otherwise become available (provided the applicant still wants to participate in the program). If there is no material change in the information, a new application would not be required.

§ 84.35 Scoring criteria for grantees applying for renewal of telehealth grants.

VA will score applicants who are applying for a renewal of a telehealth grant. VA will set forth specific point values to be awarded for each criterion in the NOFO. VA will use the following criteria to score grantees applying for renewal of a telehealth grant:

(a) VA will award points based on the success of the grantee's program, as determined by VA. Success would be measured by:

(1) Veteran satisfaction with the services provided by the grantee; and

(2) How the grantee met the telehealth grant goals and requirements for VA to deliver telehealth services to veterans at that telehealth access point in accordance with the agreement.

(b) VA will award points based on the cost-effectiveness of the grantee's program, as demonstrated by how:

(1) The hours for the point attendant correlate with the veterans' telehealth appointments; and

(2) The telehealth access point was implemented effectively using the available funding in the designated timeframe.

(c) VA will award points based on the extent to which the grantee complies with applicable laws, regulations, and guidelines for the administration of the telehealth access point.

§ 84.40 Selecting grantees for renewal of telehealth grants.

VA will use the following process to select grantees applying for renewal of telehealth grants:

(a) Provided the grantee continues to meet the threshold requirements set forth in § 84.20, VA will score the grantee using the scoring criteria set forth in § 84.35.

(b) VA will rank those grantees who receive at least the minimum amounts of total points and points per category set forth in the NOFO. The grantees will be ranked in order from highest to lowest scores within their respective funding priority group, if applicable.

(c) VA will use the grantee's ranking as the primary basis for selection for funding. However, VA will prioritize entities that serve veterans in rural and highly rural areas or areas determined to be medically underserved, to the extent practicable. VA will fund the highest-ranked grantees for which funding is available within their respective funding priority group, if applicable.

(d) At its discretion, VA may award any deobligated funds to an applicant or existing grantee. If VA chooses to award deobligated funds to an applicant or existing grantee, funds will be awarded as follows:

(1) VA may offer to award the deobligated funds to the applicant or grantee with the highest grant score under the relevant NOFO that applies for, or is awarded a renewal grant in, the same community as, or a proximate community to, the affected community. Such applicant or grantee must have the capacity and agree to provide prompt services to the affected community. Under this section, the relevant NOFO is the most recently published NOFO which covers the geographic area that includes the affected community.

(2) If the first such applicant or grantee offered the deobligated funds refuses the funds, VA may offer to award the funds to the next highest-ranked such applicant or grantee, per the criteria in paragraph (d)(1) of this section, and continue on in rank order until the deobligated funds are awarded.

(3) VA, at its discretion, may choose to award the deobligated funds under other conditions, or may choose to not award the deobligated funds at all, when VA determines appropriate based on consideration of other relevant factors.

(e) If a grantee would have been selected but for a procedural error committed by VA, VA may select that grantee for funding in the next applicable funding round or when sufficient funds otherwise become available (provided the applicant still wants to participate in the program). If there is no material change in the information, a new application would not be required.

§ 84.45 Awards for telehealth grants.

(a) *Use of funds.* Telehealth grants may be used for one or more of the following:

(1) Purchasing, replacing, or upgrading hardware or software solely dedicated to the telehealth grant program necessary for the provision of secure and private telehealth services. Equipment and software must be compatible with telehealth requirements as described in the NOFO and must be purchased under warranty. Funds may be used to purchase services to configure and set up grantee-purchased equipment. VA will provide direct technical support for initial connection to a VA-secure application, and continued VA technical support for issues that may arise with the connection to the VA-secure application during the term of the grant.

(2) Upgrading security protocols for consistency with VA security requirements and digital applications, as described in the NOFO.

(3) Payment for the training of telehealth access point attendants, including payment of those attendants for completing that training, with respect to:

(i) Military and veteran cultural competence, if the entity is not an organization that represents veterans;

(ii) Equipment required to provide telehealth services;

(iii) Privacy, including the Health Insurance Portability and Accountability Act of 1996 privacy rule under 45 CFR part 160 and part 164, subparts A and E, as it relates to health care for veterans;

(iv) Scheduling for telehealth services for veterans; or

(v) Any other unique training needs for the provision of services to veterans in a telehealth access point.

(4) Upgrading existing infrastructure owned or leased by the entity to make rooms more conducive to telehealth care, including:

- (i) Additions or modifications to windows or walls in an existing room, or other alterations as needed to create a new, private room, including permits or inspections required in association with space modifications;
- (ii) Soundproofing of an existing room;
- (iii) New electrical, telephone, or internet outlets in an existing room; or
- (iv) Aesthetic enhancements to establish a more suitable therapeutic environment, including, but not limited to, seating for both the veteran and caregiver, bariatric seating, and adequate lighting.

(5) Upgrading existing infrastructure to comply with the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

(6) Upgrading internet infrastructure and sustainment of internet services.

(7) Sustainment of telephone services.

(b) *Exclusions.* Telehealth grants may not be used for the purchase of new property or for major construction projects, or for the acquisition of new space through other arrangements (such as a lease agreement), as determined by VA. Major construction may consist of new construction, or activities that would increase the square footage of an existing facility (e.g., relocation of existing exterior walls, roofs, or floors). VA may further define major construction in the NOFO.

§ 84.50 General operation requirements.

(a) *Confidentiality.* Grantees must maintain the confidentiality of veterans utilizing the telehealth access point. The grantees will not keep any records on the veterans who use the telehealth access point. This prohibition only applies to veteran records, however, grantees must maintain a record of the hours the point attendant provides services to veterans.

(b) *Grantee's responsibilities.* Grantee is responsible for the operation and maintenance of the telehealth access point.

(c) *Notification to veterans.* The grantee must notify each veteran of the following:

(1) The telehealth services are being provided by VA and the grantee may not charge the veteran for use of their space.

(2) Any conditions or restrictions on the receipt of telehealth services by the veteran. The grantee has the right to prohibit services to veterans who have demonstrated disruptive behavior within their facility.

(d) *Evaluation interviews and surveys.* The grantee must participate in

telehealth program evaluation interviews and surveys.

(e) *Assessment of funds.* Grantees must regularly assess that the grant funds are utilized according to the agreement.

(f) *Administration of telehealth grants.* Grantees must ensure that telehealth grants are administered in accordance with the requirements of this part, the telehealth grant agreement, and other applicable laws and regulations. Grantees are responsible for ensuring that any subcontractors carry out activities in compliance with this program.

(g) *Use and disposition of property and/or equipment.* The grantees must follow, implement, and adhere to all requirements in the grant agreement and in 2 CFR part 200 on the use and disposition of property improved and/or equipment acquired under the telehealth grant program.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

§ 84.55 Fee prohibition.

Grantees must not charge a fee to veterans for providing VA services in telehealth access points that are funded with amounts from the telehealth grant.

§ 84.60 Notice of Funding Opportunity.

When funds are available for the telehealth grant, VA will publish a NOFO. VA has the authority to modify the duration, amount, or both of an existing telehealth grant agreement, subject to availability of funding and grantee performance, as set forth in § 84.65. The NOFO will identify:

(a) The location for obtaining the applications for the telehealth grant;

(b) The date, time, and place for submitting completed telehealth grant applications;

(c) The estimated amount and type of grant funding available;

(d) Any priorities for or exclusions from funding to meet the requirements of the telehealth grant and VA goals for providing telehealth services to veterans;

(e) The length of term for the telehealth grant award;

(f) Specific point values to be awarded for each criterion listed in §§ 84.25 and 84.35;

(g) The minimum number of total points and points per category that an applicant or grantee, as applicable, must receive for a telehealth grant to be funded;

(h) Any maximum award amounts for the telehealth grant;

(i) The timeframes and manner for payments under the telehealth grant; and

(j) Other information necessary for the telehealth grant application process as determined by VA.

§ 84.65 Telehealth grant agreements.

(a) After an applicant is selected for a telehealth grant in accordance with § 84.30, VA will draft a telehealth grant agreement to be executed by VA and the applicant. Upon execution of the telehealth grant agreement, VA will obligate grant funds to cover the amount of the approved grant, subject to the availability of funding. The telehealth grant agreement will provide that the grantee agrees, and will ensure that each subcontractor, as relevant, agrees, to:

(1) Operate the telehealth access point in accordance with the provisions of this part and the applicant's telehealth grant application;

(2) Comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish for purposes of providing services in a telehealth access point in an effective and efficient manner; and

(3) Provide such additional information as deemed appropriate by VA.

(b) After a grantee is selected for renewal of a telehealth grant in accordance with § 84.40 VA will draft a telehealth grant agreement to be executed by VA and the grantee. Upon execution of the telehealth grant agreement, VA will obligate grant funds to cover the amount of the approved telehealth grant, subject to the availability of funding. The agreement for the renewal of the telehealth grant will contain the same provisions described in paragraph (a) of this section.

(c) No funds provided under this part may be used to replace Federal, State, Tribal, or local funds previously used, or designated for use, to establish a telehealth access point.

(d) Subject to §§ 84.60 and 84.100, the availability of funding, and grantee performance, VA may modify an existing telehealth grant agreement by one or both of the following:

(1) Extending or reducing the period for which the telehealth grant was established; and

(2) Increasing or decreasing the amount of funds awarded.

§ 84.70 Program or budget changes and Corrective Action Plans.

(a) *Change in telehealth grant agreement.* A grantee must submit to VA a written request to modify a telehealth

grant agreement for any proposed significant change that will alter the agreement. If VA approves such change, VA will issue a written amendment to the telehealth grant agreement. A grantee must receive VA's approval prior to implementing a significant change.

(1) Significant changes include, but are not limited to:

(i) A change in the grantee or any subcontractors, identified in the telehealth grant agreement;

(ii) A change in the area or community served by the grantee; or

(iii) Additions or removal of equipment, connectivity, or other services provided by the grantee; and

(iv) A change in budget line items that are more than 10 percent of the total telehealth grant award.

(2) VA's approval of changes is contingent upon the grantee's amended application retaining a high enough rank to have been competitively selected for funding in the year that the application was granted.

(3) Each telehealth grant modification request must contain a description of the revised proposed use of telehealth grant funds.

(b) *Corrective Action Plan.* VA may require that the grantee initiate, develop, and submit to VA for approval a Corrective Action Plan (CAP) if actual telehealth grant expenditures vary from the amount disbursed to a grantee or actual telehealth grant activities vary from the telehealth grant agreement. Reporting frequency may be on a bi-monthly, monthly, or quarterly basis.

(1) The CAP must identify the expenditure or activity source that has caused the deviation, describe the reason(s) for the variance, provide specific proposed corrective action(s), and provide a timetable for accomplishment of the corrective action(s).

(2) After receipt of the CAP, VA will send a letter to the grantee indicating that the CAP is approved or disapproved. If disapproved, VA will make beneficial suggestions to improve the proposed CAP and request resubmission or take other actions in accordance with this program.

(c) *Key personnel change.* Grantees must inform VA in writing of any key personnel changes, local or national, (e.g., new executive director, telehealth grant program director, or chief financial officer) and grantee address changes within 30 days of the change.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

§ 84.75 Faith-based organizations.

Organizations that are faith-based are eligible, on the same basis as any other organization, to participate in the telehealth grant under this part in accordance with 38 CFR part 50.

§ 84.80 Financial management.

(a) Grantees must comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.

(b) Grantees must use a financial management system that provides adequate fiscal control and accounting records and meets the requirements set forth in 2 CFR part 200.

(c) Payment up to the amount specified in the telehealth grant must be made only for allowable, allocable, and reasonable costs in establishing, maintaining, and operating the telehealth access point. The determination of allowable costs must be made in accordance with the applicable Federal Cost Principles set forth in 2 CFR part 200.

(d) In accordance with 2 CFR 200.414, applicants that do not have a negotiated indirect cost rate (NICRA) may:

(1) Request a de minimis rate, which is in accordance with the amounts set forth in 2 CFR 200.414(f);

(2) Apply the NICRA established with their cognizant agency; or

(3) Request to negotiate an indirect cost rate with VA.

§ 84.85 Telehealth grant reports.

(a) VA may require grantees to provide, in any form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out the telehealth grant.

(b) If actual telehealth grant expenditures vary from the amount disbursed to a grantee or actual telehealth grant activities vary from the grantee's program description provided in the telehealth grant agreement, grantees must report the deviation to VA. Reporting frequency may be on a bi-monthly, monthly, or quarterly basis.

Note 1 to paragraph (b): For information on Corrective Action Plans, which may be required by this paragraph (b), see § 84.70.

(c) At least once per year, each grantee must submit to VA a report that describes grant agreement compliance, legal and regulatory compliance, the activities for which the telehealth grant funds were used including but not limited to, the equipment costs, renovation expenses, attendant expenses, any other types of ongoing

expenses for services provided during the year covered by the report, and any other information that VA may request.

(d) VA may request additional reports to allow VA to fully assess the provision or coordination of the provision of services under this part.

(e) All pages of the reports must cite the assigned telehealth grant number and be submitted in a timely manner as set forth in the grant agreement.

(f) Grantees agree to allow VA to post information from reports on the internet or use such information in other ways deemed appropriate by VA (including, but not limited to, activities regarding litigation). Grantees must clearly mark information that is confidential to individual veterans so that VA could exclude such information from any public use.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–TBD.)

§ 84.90 Recordkeeping.

Grantees must ensure that records are maintained for at least a 3-year period (unless a longer period is otherwise required) to document compliance with the telehealth grant. Grantees must produce such records at VA's request.

§ 84.95 Technical and technological assistance.

(a) VA will provide technical assistance, as necessary, to eligible entities to meet the requirements of this part.

(b) VA will provide technological assistance, as necessary, to ensure that the grantee's equipment is able to connect to the VA system and network as necessary to support the delivery of telehealth services.

(c) Such technical and technological assistance will be provided either directly by VA or through grants or contracts with appropriate public or nonprofit private entities.

§ 84.100 Withholding, suspension, deobligation, termination, recovery of funds by VA, and disposition of property or equipment.

(a) *General.* VA will enforce this part through such actions as may be appropriate. Appropriate actions include withholding, suspension, deobligation, termination, recovery of funds by VA, and actions in accordance with 2 CFR part 200.

(b) *Opportunities to object.* (1) Upon VA taking a remedy for noncompliance under paragraph (a) of this section, grantees have 30 days to object and provide information and documentation challenging the action, subject to the following conditions:

(i) Objections must be provided to VA in writing.

(ii) VA's decision stands while an objection is under consideration.

(iii) Other VA decisions (such as competing award decisions, continuation award decisions, decisions made with the consent of the grantee) are not subject to this opportunity to object.

(2) The grant agreement will provide additional requirements and responsibilities for grantees in the event of noncompliance under paragraph (a) of this section.

\$ 84.105 Oversight.

VA may inspect the telehealth access points and records of any entity that has received a telehealth grant when VA deems necessary to determine compliance with this part. The authority to inspect does not authorize VA to manage or control the organization. Monitoring and oversight requirements for each grantee will be determined by a pre-award risk assessment in alignment with 2 CFR 200.206.

\$ 84.110 Telehealth grant closeout procedures.

Telehealth grants will be closed out in accordance with 2 CFR part 200.

[FR Doc. 2024-25892 Filed 11-12-24; 8:45 am]

BILLING CODE 8320-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 23-203; Report No. 3220; FR ID 260366]

Petition for Reconsideration of Action in Rulemaking Proceeding; Correction

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration; correction.

SUMMARY: The Federal Communications Commission corrects Dates for the filing of replies to oppositions to the Petition for Reconsideration, published in the **Federal Register** of November 1, 2024, announcing the dates for filing oppositions and replies to the Petition for Reconsideration of Action. The document contained an error in the **DATES** section.

DATES: November 13, 2024.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Joseph Price, Policy Division, Media Bureau, at 202-418-1423 or Joseph.Price@fcc.gov.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of November 1, 2024, in FR Doc. 2024-25497, on page 87322, in the third column, correct the **DATES** caption to read:**DATES:** Oppositions to the Petition must be filed on or before November 18, 2024. Replies to oppositions to the Petition must be filed on or before November 29, 2024.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024-26213 Filed 11-12-24; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 241104-0288]

RIN 0648-BN12

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Lower Columbia River Dredged Material Management Plan, Oregon and Washington

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS has received a request from the U.S. Army Corps of Engineers, for Incidental Take Regulations (ITR) and Letter of Authorization (LOA) pursuant to the Marine Mammal Protection Act. The requested regulations would govern the authorization of take of small numbers of marine mammals over 5 years (2027-2032) incidental to the Lower Columbia River Dredged Material Management Plan in Oregon and Washington. NMFS requests public comments and will consider them prior to making any final decision on the requested ITR and issuance of the LOA; agency responses to comments will be summarized in the final rule, if issued.

DATES: Comments and information must be received no later than December 13, 2024.

ADDRESSES: A plain language summary of this proposed rule is available at: <https://www.regulations.gov/docket/NOAA-NMFS-2024-0123>.

• **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to

<https://www.regulations.gov> and enter NOAA-NMFS-2024-0123 in the Search box (*note:* copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the National Marine Fisheries Service (NMFS). All comments received are a part of the public record and will generally be posted for public viewing at: <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT:

Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION: A copy of the U.S. Army Corps of Engineers' (USACE) application any supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-army-corps-engineers-lower-columbia-river-dredged-material>. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This proposed rule, if adopted, would establish a framework under the authority of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) to authorize, for a 5-year period (2027-2032), take of marine mammals incidental to the USACE's construction activities associated with the Lower Columbia River (LCR) Dredged Materials Management Plan (DMMP). NMFS received an application (the Application) from the USACE requesting 5-year regulations and an LOA to take 3 species of marine mammals. Take would occur by harassment only, incidental to impact and vibratory pile driving. 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). No mortality or serious injury is anticipated or proposed for authorization.

Legal Authority for the Proposed Action

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are promulgated, and public notice and an opportunity for public comment are provided.

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 as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included below.

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I, provide the legal basis for proposing and, if appropriate, issuing 5-year regulations and an associated LOA. This proposed rule also establishes required mitigation, monitoring, and reporting requirements for the USACE’s activities.

Summary of Major Provisions Within the Proposed Rule

The following is a summary of the major provisions of this proposed rule regarding USACE construction activities. These provisions include measures requiring:

- Monitoring of the construction areas to detect the presence of marine

mammals before beginning construction activities;

- Shutdown of construction activities under certain circumstances to avoid injury of marine mammals;
- Soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power; and
- Use of bubble curtains to attenuate sound levels when impact driving.

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 evaluate the proposed action (*i.e.*, promulgation of regulations and subsequent issuance of a 5-year LOA) and alternatives 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 preliminarily determined that issuance of the proposed rule qualifies to be categorically excluded from further NEPA review.

Information in the USACE Application and this document collectively provide the environmental information related to proposed issuance of these regulations and subsequent incidental take authorization for public review and comment. We will review all comments submitted in response to this notice of proposed rulemaking prior to concluding our NEPA process and prior to making a final decision on the request for incidental take authorization.

Summary of USACE Request

On October 18, 2023, NMFS received an Application from the USACE requesting authorization for take of marine mammals incidental to construction activities associated with the LCR DMMP in Oregon and Washington. After the applicant responded to our questions and redrafted the Application, we determined the Application was adequate and complete on April 25, 2024. On May 14, 2024, we published a notice of receipt of the USACE Application in the **Federal Register**, requesting comments and information

related to the request for 30 days (89 FR 41941). We received no public comments.

The USACE requests authorization to take harbor seal (*Phoca vitulina*), Steller sea lion (*Eumetopias jubatus*), and California sea lion (*Zalophus californianus*) by Level B harassment and, for harbor seal only, by Level A harassment. The proposed regulations would be valid for 5 years (2027–2032).

Description of Proposed Activity

Overview

The USACE has developed a draft DMMP to support continued operation and maintenance of the LCR Federal Navigation Channel (FNC) for the next 20 years. The full DMMP includes proposed dredging and placement operations between river miles (mi) (RM) 3 and 105.5. However, the scope of this request for an LOA is limited to potential pile driving that would be associated with any new steel and timber piles installed between RM 23 and 36. Work on additional reaches of the LCR will likely occur in subsequent years. The USACE is anticipating up to 141 days of in-water work between November 2027 and February 2032 and is proposing to install 1,039 steel piles and 1,029 timber piles by vibratory and impact driving over the 5-year LOA period for a total of 2,068 piles. No concurrent driving of piles is proposed.

Dates and Duration

The proposed regulations would be valid for a period of 5 years from November 1, 2027, through February 29, 2032. Pile driving is expected to occur during the in-water work window of the LCR of November 1 through February 28. An estimated 141 in-water workdays would occur during this period, with a minimum of 1 day occurring in LOA year 2 (November 2028–February 2029) and a maximum of 51 days in LOA year 5 (November 2031–February 2032). The USACE estimated the number of in-water workdays based on the assumption that an average of 15 piles would be installed in a given day. However, contractors could install up to 20 piles in a day under favorable conditions, and thus the final total number of workdays may be less than anticipated.

Specific Geographic Region

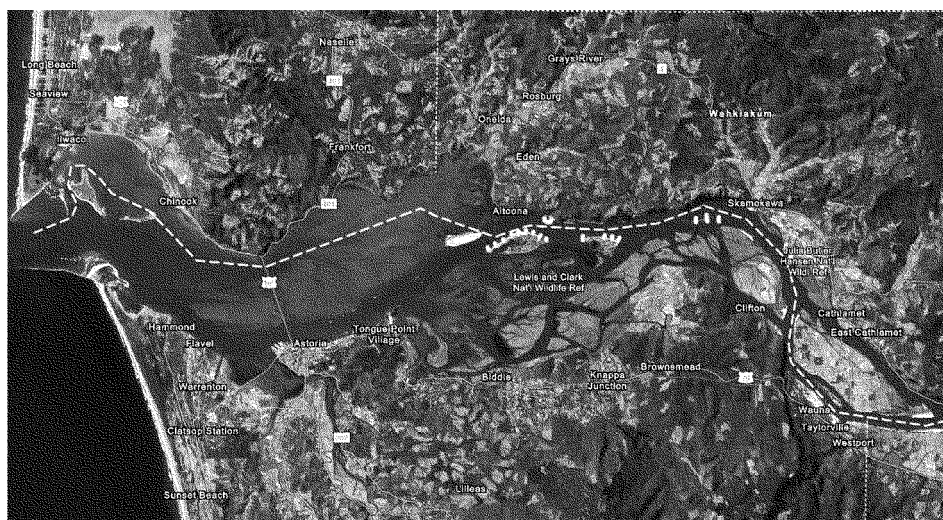
The LCR flows 146 miles from Bonneville Dam to the Pacific Ocean. This reach of the river features fish and wildlife in the transition from fresh water to salt water, passing through major cities and towns, flowing through wildlife refuges, supporting ports and a

shipping channel, and providing valued recreation opportunities. The LCR features a meandering geometry composed of gradual bends with flows splitting around in-river islands. Several of these in-river islands were expanded or created entirely from dredged material that was placed to help maintain the dimensions of the FNC. Work will take place from RM 23 to RM 36 as shown in figure 1. The project area encompasses this section of the river,

which features widely dispersed housing structures separated by stretches of undeveloped land to the north on the right bank and uninhabited islands and sand flats south of the navigation channel (hereinafter, the Project Area). Traveling from west to east these are Rice Island, Miller Sands, Snag Island, Pillar Rock Island, Jim Crowe Sands, Woody Island, Grassy Island, Fitzpatrick Island, and Welch Island, which are all part of the Lewis

and Clark National Wildlife Refuge. Tenasillaha Island, which is part of the Julia Hanson Butler National Wildlife Refuge, is the easternmost island in the Project Area. The main navigation channel from RM 3 to RM 105.5 must be maintained at 48 feet (ft) deep and, generally, 600 ft wide.

Figure 1—Locations of Proposed Installation Sites on the Lower Columbia River



Detailed Description of the Specified Activity

There are a number of channel maintenance practices utilized by the USACE as part of the LCR DMMP. Channel deepening and widening requires regular maintenance dredging to remove shoals that form in the navigation channel. The standard of maintenance dredging has been to dredge material from areas in which navigation is affected, and to dispose of the dredged material in upland or shoreline placement sites or areas of the navigation channel where the channel is deeper, referred to as “flow lane placement.” Dredged materials have historically been placed between or adjacent to pile dike structures to supplement natural accretion of sediment. Hopper dredging, clamshell dredging, and pipeline dredging are all employed for channel deepening and widening and are employed as part of the DMMP. These operations are described in greater detail in the USACE Application. NMFS, however, has determined that dredging is not likely to result in harassment under the MMPA.

The USACE employs a number of river control structures to help maintain the dimensions of the FNC. For example, placing dredged material along

the shallow water banks of an existing island serves to redirect flow back into the main navigation channel and narrow the width of the river, which mimics a natural scouring process of the riverbed. Dredged material has been used to build or expand channel training landforms such as in-river islands that reduce the river’s cross-section and control channel alignment to aid in maintaining the navigation channel’s dimensions. The purpose of reducing the river’s cross-section is to increase and redirect flow velocities in localized areas back into the navigation channel to create natural scouring action. Piles are the most common channel training structure in the LCR and may or may not be associated with in-river islands. Such piles can be used along a shoreline, or as part of an island and are often installed perpendicular to the direction of river flow. The pile dike slows the velocity of the river along the shoreline which reduces erosion and redirects the flow such that the velocity of the river accelerates towards the navigation channel, allowing the river to naturally scour the bed and provide stable areas for placement of dredged material. Existing pile dikes are semi-permeable groins consisting of two rows (riverine) or three rows (estuary) of untreated

timber pilings driven on 2.5 foot centers. These timber piles are alternately placed on each side of horizontal spreader piles, which are bolted in place. Pile dikes in the FNC average about 400 ft with hundreds of pilings. Pile dike systems consist of a series of timber pile dikes, spaced about 1,200 to 1,500 ft apart for optimum functional efficiency. The outer dolphin, known as a king pile, is a taller bundle of piles marking the end of the pile dike for better visibility for users of the channel. The USACE has not built any new pile dikes since the construction of the 40-ft channel (approximately 1969), though some existing dikes have been repaired or rebuilt. Many pile dikes are presently in varying degrees of deterioration.

Each pile structure will be composed of one or more piles. Proposed structures are slightly different from those typically found throughout the LCR. One main difference is that pile spacing within structures at confined aquatic placement sites needs to be smaller to slow river currents and prevent newly placed material from washing away. Because any pile structures would be buried to some degree by placed material, they include

only one row of piles that are not connected by a horizontal spreader.

The design of each pile structure is tailored to the site conditions. For current planning purposes, the pile spacing is assumed to increase as you move from the shore toward the FNC over four segments:

- Shore to 1/3 point of structure
- 1/3 point to 1/2 point of structure
- 1/2 point to 3/4 point of structure
- 3/4 point to end of structure (enrockment only, no piles)

Steel marker pile at riverward end of structure.

The pile spacing within the first three segments depends on whether piles are timber or steel. For planning purposes (subject to change during the design phase), all timber piles are assumed to be 12 inches (in) in diameter and all steel piles are assumed to be 24 in in diameter. These assumptions represent maximum pile widths, though smaller piles could ultimately be selected

should more in-depth site assessments deem smaller pile widths acceptable. The permissible spacing for steel piles is twice the spacing of timber piles because the diameter of the steel piles is twice that of the timber piles. Both configurations would result in the same porosity.

The decision on what type of piles should be used will be made on a site-by-site basis depending on the site conditions (e.g., water depth, currents, wave conditions, foundation conditions, etc.) along with the availability and cost of materials at the time of design and construction. Timber piles will most likely be installed in areas of shallow water with loose/soft to medium dense foundation. Steel piles will most likely be installed in deep water or in dense/hard foundations. The USACE has assumed that one-third of the piles will be timber and two-thirds will be steel. This conservative assumption ensures that sufficient numbers of steel piles

and associated effects are accounted for should hard foundations be more prevalent. In the Application, the USACE noted that contractors expressed difficulties securing timber piles over the last 3–5 years. Therefore, this assumption also accounts for potential supply chain issues affecting the availability of timber pilings.

Table 1 summarizes the spacing assumptions for potential pile structures used at confined aquatic placement sites. For the first 3/4 of each structure (from the shore), the bottom width of the enrockment is assumed to be 50 ft (based on a water depth of 30 ft). For the outer (riverward) 1/4 of each structure, the bottom width of the enrockment increases to about 100 ft. The average width is about 65 ft. However, for site W–35.6–IW–D, the two structures will be primarily rock with steel marker piles; the average bottom width is assumed to be 100 ft.

TABLE 1—PILE SPACING ASSUMPTIONS FOR TIMBER AND STEEL PIPE PILES

Pile dike segment	Pile spacing for 12-in timber (ft)	Pile spacing for 24-in steel pipe (ft)
Shore to 1/3 point of structure	1.5	3
1/3 point to 1/2 point of structure	2.5	5
1/2 point to 3/4 point of structure	4	8

For planning purposes and the calculations included in this LOA, it is assumed that one-third of the piles will be timber and two-thirds will be steel. Timber piles will most likely be installed in areas of shallow water with loose/soft to medium dense foundation. Steel piles will most likely be installed in deep water or in dense/hard foundations. This is a conservative assumption to ensure sufficient numbers of steel piles and associated effects are accounted for should hard foundations be more prevalent. Prior contractors have also expressed difficulties securing timber piles over the last 3–5 years. Thus, this assumption also accounts for potential

supply chain issues affecting the availability of timber pilings. For a structure with a total length of L, the formulas for computing the number of piles are as follows:

- Timber piles number of piles = $0.351 \times L$
- Steel piles number of piles = $0.176 \times L$

The total length of proposed structures is approximately 13,050 ft. However, excluding W–35.6–IW–D (only marker piles) and the 2 sites beyond the scope of this LOA (W–24.9–IW–S and O–26.7–IW–S) the total length for estimating the number of piles is 8,796 ft (table 2). Pile driving at the 2 out-of-scope locations is tentatively

planned for 2032/2033 and 2033/2034, beyond the effective period of these proposed regulations. The assumed length of timber pile structures to be installed under this LOA is 2,932 ft (i.e., one-third of the total length) and the assumed length of steel pile structures is 5,864 ft (i.e., two-thirds of the total length). Using the equations above, the anticipated total number of timber piles will be 1,029 and the total number of steel piles will be 1,032 plus 6 additional marker piles for site W–35.6–IW–D. These total numbers of piles are for the 5 placement sites that will require pile driving under this LOA (see table 2).

TABLE 2—LOCATION AND PROPERTIES OF PROPOSED PILE STRUCTURES AT CONFINED AQUATIC PLACEMENT SITES

System name	Structures in system	Length of structure (ft)	Width of structure (ft)	Material	Anticipated LOA year(s)
O–23.5–BN–ADD2	4	1,544	50–100	Piles and enrockment	Year 1.
W–35.6–IW–D	2	1,555	100	Enrockment and 6 marker piles	Year 2.
O–23.5–BN–ADD1	5	2,119	50–100	Piles and enrockment	Year 3.
O–27.3–BN	3	1,906	50–100	Piles and enrockment	Year 4.
O–31.4–BN	3	3,227	50–100	Piles and enrockment	Year 5.

Note that the lower parts of the piles will be surrounded by enrockment (also referred to as stone or riprap). The thickness of the enrockment will be about one-third of the water depth in terms of low water. The volume of enrockment will depend on the

elevation profile of the riverbed along the structure alignment. NMFS, however, has determined that enrockment installation is not likely to result in harassment under the MMPA.

Table 3 shows the locations, number and types of piles, as well as pile

driving workdays anticipated to be required for the DMMP project spanning roughly 13 RM. These structures will support new confined aquatic placement sites in the LCR.

TABLE 3—IN-WATER WORK, PILE INSTALLATION, AND WORKDAY ASSUMPTIONS

In-water work location ¹	Timber piles	Steel pipe piles	Total piles	Anticipated pile driving workdays ²
LOA YR-1 (Nov. 2027–Feb. 2028)				
Enrockment placement and pile installation to construct 4 structures at Site O-23.5–BN–ADD2	181	181	362	25
LOA YR-2 (Nov. 2028–Feb. 2029)				
Construction of 2 new structures at Site W-35.6–IW–D using enrockment and marker piles only	NA	6	6	1
LOA YR-3 (Nov. 2029–Feb. 2030)				
Enrockment placement and pile installation to construct 5 structures at Site O-23.5–BN–ADD1	248	249	497	34
LOA YR-4 (Nov. 2030–Feb. 2031)				
Enrockment placement and pile installation to construct 3 structures at Site O-27.3–BN	223	224	447	30
LOA YR-5 (Nov. 2031–Feb. 2032)				
Enrockment placement and pile installation to construct 3 structures at Site O-31.4–BN	377	379	756	51
Total	1,029	1,038	2,068	141

¹ Reference system name that denotes the side of the channel (*i.e.*, O for Oregon; W for Washington), river mile, type of placement (*i.e.*, BN for beach nourishment; IW–S for in-water shallow; IW–D for in-water deeper than 20 ft).

² Though up to 20 piles will be installed in a day, we estimate the total number of workdays based on an average of 15 piles being installed per day to account for potential delays due to equipment, weather, and other unforeseen circumstances.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (see Proposed Mitigation and Proposed Monitoring and Reporting).

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 regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs) (see <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about

these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS' website at: <https://www.fisheries.noaa.gov/find-species>.

Table 4 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and the Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is 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 (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are

included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific and Alaska SARs. All values presented in table 4 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

TABLE 4 — MARINE MAMMAL SPECIES ¹ LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Order Carnivora—Pinnipedia						
<i>Family Otariidae (eared seals and sea lions):</i>						
California Sea Lion	<i>Zalophus californianus</i>	U.S.	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	>321
Steller Sea Lion	<i>Eumetopias jubatus</i>	Eastern	-, -, N	36,308 ⁵ (N/A, 36,308, 2022)	2,178	93.2
<i>Family Phocidae (earless seals):</i>						
Harbor Seal	<i>Phoca vitulina</i>	OR/WA Coastal	-, -, N	24,731 ⁶ (1999)	UND	10.6

¹ Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy at: <https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies>.

² 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.

³ NMFS marine mammal SARs online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

⁴ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

⁵ Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys. Estimates provided are for the U.S. only.

⁶ There is no current estimate of abundance available for this stock. Value presented is the most recent available and based on 1999 data.

As indicated above, all 3 species (with 3 managed stocks) in table 4 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur.

California Sea Lion

California sea lions are the most frequently sighted sea lion found in Washington waters and use haulout sites along the outer coast, the Strait of Juan de Fuca, and in the Puget Sound. The U.S. stock of California sea lions breeds on islands off the southern California coast. They are commonly found in Oregon haul-out sites from September to May and during this period, adult and subadult males have been observed in bays, estuaries, and offshore rocks along the Oregon coast. In fact, a few males have reported in Oregon waters throughout the year (Mate 1973). The population breeds in the California Channel Islands and most females and young pups remain in that region year-around (Mate, 1973; Oregon Department of Fish and Wildlife (ODFW), 2023). California sea lions may occur in the project vicinity and often use that same haulout sites as Steller sea lions (ODFW, 2023, see figure 4–2 in the Application).

Steller Sea Lion

Steller sea lions that occur in the LCR, including the project vicinity, are members of the eastern Distinct Population Segment (DPS), ranging from Southeast Alaska to central California, including Washington (Jeffries *et al.*, 2000; Scordino, 2006; NMFS, 2013). Steller sea lions have been detected in the LCR and may occur in the vicinity

of the project. All sea lions detected in the LCR are male and the nearest sea lion haulout sites are in Astoria and upriver near Rainier, Washington (USACE, 2024, see figure 4–2 in the Application). However, Steller sea lions will likely transit the Project Area during winter, depending on the timing of the eulachon spawning run which can attract large numbers of sea lions.

Harbor Seal

Harbor seals are the most common widely-distributed marine mammal found in Washington marine waters and are frequently observed in the nearshore marine environment. They can commonly be found on offshore rocks and islands, along shores, and on exposed flats in the estuary (Harvey, 1987). Note that the Oregon/Washington Coastal Stock was most recently estimated at 24,732 harbor seals in 1999 and more recent abundance data is not available. There is no current estimate of abundance for this stock (Carretta *et al.*, 2022).

Harbor seals in this population are typically non-migratory and reside year-round in the LCR, and generally remain in the same area throughout the year for breeding and feeding. Harbor seals in the LCR do exhibit some seasonal movement upriver, including into or through the Project Area of ensonification, to follow winter and spring runs of Pacific eulachon (*Thaleichthys pacificus*) and out-migrating juvenile salmon (*Oncorhynchus spp.*), and they are observed regularly in portions of the LCR including the Project Area. Within the LCR, they tend to congregate to feed

at the mouths of tributary rivers, including the Cowlitz and Kalama rivers (RMs 68 and 73, respectively). There are several known haul-out sites within 5 of the stretch of river (i.e., RM 23 to RM 36) proposed for new pile driving (see figure 4–1 in the Application) and highest utilization of these lower river sights has typically been observed in May/June (Wright and Riemer, 2023).

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.*). Subsequently, NMFS (2018, 2024) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the

lower bound from Southall *et al.* (2007) retained.

On May 3, 2024, NMFS published and solicited public comment on its draft Updated Technical Guidance (89 FR 36762), which includes updated hearing ranges and names for the marine mammal hearing groups and is intended to replace the 2018 Technical Guidance once finalized. The public comment

period ended on June 17th, 2024. Because NMFS may finalize the Guidance prior to taking a final agency action on this proposed rulemaking, we considered both the 2018 and 2024 Technical Guidance in our effects and estimated take analysis below. Marine mammal hearing groups and their associated hearing ranges from NMFS (2018) and NMFS (2024) are provided in

tables 5 and 6. In the draft Updated Technical Guidance, mid-frequency cetaceans have been re-classified as high-frequency cetaceans, and high-frequency cetaceans have been updated to very-high-frequency (VHF) cetaceans. Additionally, the draft Updated Technical Guidance includes in-air data for phocid (PA) and otariid (OA) pinnipeds.

TABLE 5—MARINE MAMMAL HEARING GROUPS
[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

TABLE 6—MARINE MAMMAL HEARING GROUPS
[NMFS, 2024]

Hearing group	Generalized hearing range *
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, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	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.

* 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.

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018, 2024) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or

reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which

comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10 to 20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include vibratory pile removal, and impact and vibratory pile driving. The sounds produced by these activities fall into 1 of 2 general sound types: impulsive and non-impulsive. Impulsive sounds (e.g., explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (American National Standards Institute (ANSI), 1986; National Institute for Occupational Safety and Health (NIOSH), 1998; ANSI, 2005; NMFS, 2018). Non-impulsive sounds (e.g., aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (e.g., Ward, 1997 in Southall *et al.*, 2007).

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. The vibrations produced also cause liquefaction of the substrate surrounding the pile, enabling the pile to be extracted or driven into the ground more easily. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

The likely or possible impacts of the USACE's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to be primarily acoustic in

nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving is the primary means by which marine mammals may be harassed from the proposed activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.*, 2007). In general, exposure to pile driving noise has the potential to result in an auditory threshold shift (TS) and behavioral reactions (e.g., avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses, such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (e.g., impulsive vs. non-impulsive), the species, age and sex class (e.g., adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.*, 2004; Southall *et al.*, 2007). Here we discuss physical auditory effects (TS) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced TS as a change, usually an 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, 2018, 2024). The amount of TS is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018, 2024), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (e.g., impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.*, how an animal uses sound within the frequency band of the

signal; e.g., Kastelein *et al.*, 2014), and the overlap between the animal and the source (e.g., spatial, temporal, and spectral).

Auditory Injury and Permanent Threshold Shift (PTS)—NMFS defines auditory injury as “damage to the inner ear that can result in destruction of tissue . . . which may or may not result in 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). Available data from humans and other terrestrial mammals indicate that a 40-dB threshold shift approximates PTS onset (see Ward *et al.*, 1958, 1959, 1960; Kryter *et al.*, 1966; Miller, 1974; Ahroon *et al.*, 1996; Henderson *et al.*, 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.*, 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible 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, 2018). Based on data from cetacean TTS measurements (Southall *et al.*, 2007, 2019), a TTS of 6 dB is considered the minimum TS clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000; Finneran *et al.*, 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and

the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present.

Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 2013). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. For pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), bearded seals (*Erignathus barbatus*) and California sea lions (Kastak *et al.*, 1999, 2007; Kastelein *et al.*, 2019b, 2019c, 2021, 2022a, 2022b; Reichmuth *et al.*, 2019; Sills *et al.*, 2020). These studies examined hearing thresholds measured in marine mammals before and after exposure to intense or long-duration sound exposures. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of TS at various post-exposure times.

The amount and onset of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity for a species or hearing group, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.*, a low frequency noise would need

to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.*, 2019a, 2019c). Note that in general, harbor seals have a lower TTS onset than other measured pinniped species (Finneran, 2015). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Mooney *et al.*, 2009; Finneran *et al.*, 2010; Kastelein *et al.*, 2014, 2015). This means that TTS predictions based on the total, SEL_{cum} will overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources. Nachtigall *et al.* (2018) describes measurements of hearing sensitivity of multiple odontocete species (*i.e.*, bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dBs above that inducing mild TTS (*e.g.*, a 40-dB TS approximates PTS onset (Kryter *et al.*, 1966; Miller, 1974), while a 6-dB TS approximates TTS onset (Southall *et al.*, 2007, 2019). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulsive sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS SEL_{cum} thresholds are 15 to 20 dB higher than TTS SEL_{cum} thresholds (Southall *et al.*, 2007, 2019). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Installing piles for this project requires either impact pile driving or vibratory pile driving. For this project, these activities would not occur at the same time, and there would be pauses

in activities producing the sound during each day. Given these pauses, and that many marine mammals are likely moving through the ensonified area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007; National Research Council (NRC), 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (*e.g.*, socializing or feeding); visible startle response or aggressive behavior (*e.g.*, tail/fluke slapping or jaw clapping); or avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to

industrial sound than most cetaceans. Please see appendices B–C of Southall *et al.* (2007) and Gomez *et al.* (2016) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (e.g., Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (e.g., Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (e.g., Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and “distress” is the cost of the response.

During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (e.g., Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (e.g., Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as “distress.” In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity and may occur whether the sound is natural (e.g., snapping shrimp, wind, waves, precipitation) or anthropogenic (e.g., pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (e.g., signal-to-

noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (e.g., sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (e.g., on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Although pinnipeds are known to haul out regularly on manmade objects, we believe that incidents of take resulting solely from airborne sound are unlikely because there are no known haulouts within the immediate project vicinity on the LCR. There is a possibility that an animal could surface in-water, but with head out, within the area in which airborne sound exceeds relevant thresholds and thereby be exposed to levels of airborne sound that we associate with harassment, but any such occurrence would likely be accounted for in our estimation of incidental take from underwater sound. Therefore, authorization of incidental take resulting from airborne sound for pinnipeds is not warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

The USACE's construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water SPLs and slightly decreasing water quality. No net habitat loss is expected, as the dock will be reconstructed within its original footprint. Construction activities are localized and would likely have temporary impacts on marine mammal habitat through increases in underwater sounds. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the Project Area (see discussion below). During pile driving activities, elevated levels of underwater noise would ensonify the Project Area where both fishes and marine mammals may occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction; however, displacement due to noise is expected to be temporary and is not

expected to result in long-term effects to the individuals or populations.

Temporary and localized reduction in water quality would occur because of in-water construction activities as well. Most of this effect would occur during the installation and removal of piles when bottom sediments are disturbed. The installation of piles would disturb bottom sediments and may cause a temporary increase in suspended sediment in the Project Area. In general, turbidity associated with pile installation is localized to about 25-ft (7.6-m) radius around the pile (Everitt *et al.*, 1980). Pinnipeds are not expected to be close enough to the pile driving areas to experience effects of turbidity and could avoid localized areas of turbidity. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals. The total riverbed area affected by pile installation and removal is a very small area compared to the vast foraging area available to marine mammals in the LCR and Washington's outer coast and contains no habitat areas of particular importance. Pile installation may have impacts on benthic invertebrate species primarily associated with disturbance of sediments that may cover or displace some invertebrates. The impacts would be temporary and highly localized, and no habitat would be permanently displaced by construction. Therefore, it is not expected to have impacts on foraging opportunities for marine mammals.

It is possible that avoidance by potential prey (*i.e.*, fish) in the immediate area may occur due to temporary loss of this foraging habitat. The duration of fish avoidance of this area after pile driving stops is unknown, but we anticipate a rapid return to normal recruitment, distribution and behavior. Any behavioral avoidance by fish of the disturbed area would still leave large areas of fish and marine mammal foraging habitat in the nearby vicinity in the in the Project Area and LCR.

Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*i.e.*, fish). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects

of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.*, Zelick *et al.*, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fish hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.*, 2008). The potential effects of noise on fish depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fish may include behavioral responses, hearing damage, barotrauma (*i.e.*, pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses, such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.*, feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.*, Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.*, Fewtrell and McCauley, 2012; Pearson *et al.*, 1992; Skalski *et al.*, 1992; Santulli *et al.*, 1999; Paxton *et al.*, 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.*, Pena *et al.*, 2013; Wardle *et al.*, 2001; Jorgenson and Gyselman, 2009; Cott *et al.*, 2012).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality (summarized in Popper *et al.*, 2014). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012b) showed that a TTS of 4 to 6 dB was recoverable within 24 hours for one species. Impacts would be most

severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.*, 2012a; Casper *et al.*, 2013, 2017).

Fish populations in the proposed Project Area that serve as marine mammal prey could be temporarily affected by noise from pile installation and removal. The frequency range in which fishes generally perceive underwater sounds is 50 to 2,000 Hertz (Hz), with peak sensitivities below 800 Hz (Popper and Hastings, 2009). Fish behavior or distribution may change, especially with strong and/or intermittent sounds that could harm fishes. High underwater SPLs have been documented to alter behavior, cause hearing loss, and injure or kill individual fish by causing serious internal injury (Hastings and Popper, 2005).

The greatest potential impact to fishes during construction would occur during impact pile driving. However, the duration of impact pile driving would be limited to the final stage of installation ("proofing") after the pile has been driven as close as practicable to the design depth with a vibratory driver. In-water construction activities would only occur during daylight hours, allowing fish to forage and transit the Project Area in the evening. Vibratory pile driving could elicit behavioral reactions from fishes such as temporary avoidance of the area but is unlikely to cause injuries to fishes or have persistent effects on local fish populations. Additionally, all pile installation would occur only during the USACE's and United States Fish and Wildlife Service designated in-water work window to minimize potential exposure of ESA-listed fish species migrating through the project site to noise from impact pile driving. Construction also would have minimal permanent and temporary impacts on benthic invertebrate species, a marine mammal prey source.

The area impacted by the project is relatively small compared to the available habitat in the remainder of the LCR, and there are no areas of particular importance that would be impacted by this project. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for the USACE's construction to affect the availability of

prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through this proposed rule, which will inform NMFS' consideration of "small numbers," the negligible impact determinations, and impacts on subsistence uses.

Harassment, defined previously in the Purpose and Need for Regulatory Action section, is the only type of take expected to result from these activities.

Authorized takes would primarily be by Level B harassment, as use of the acoustic source (*i.e.*, pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for phocids because predicted auditory injury zones are larger than for otariids. Auditory injury is unlikely to occur for otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. We describe how the proposed take numbers are estimated below.

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 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 proposed 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 PTS 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 dB (referenced to 1 micropascal (re 1 μ Pa)) for continuous (*e.g.*, vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa 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 (*e.g.*, conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The USACE's proposed activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μ Pa are applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0; NMFS, 2018) and the draft Updated Technical Guidance (NMFS, 2024) identify 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). This proposed rule estimates Level A harassment using the existing Technical Guidance (NMFS, 2018) as well as the draft Updated Technical Guidance (NMFS, 2024) because at the time of the final agency decision on this request for incidental take, it's possible NMFS may have made a final agency decision on the draft Guidance.

These thresholds are provided in tables 7 and 8 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance and NMFS' 2024 draft Updated Technical Guidance, both of which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

The USACE's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory driving) sources.

TABLE 7—NMFS' 2018 THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT (PTS)

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB.

TABLE 7—NMFS' 2018 THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT (PTS)—Continued

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak SPL thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and SEL_{cum} level (L_E) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for NMFS' 2018 Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with SEL_{cum} thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The SEL_{cum} thresholds 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 acoustic thresholds will be exceeded.

TABLE 8—NMFS' 2024 THRESHOLDS IDENTIFYING THE ONSET OF AUDITORY INJURY (AUD INJ)

Hearing group	AUD INJ acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Underwater		
Low-Frequency (LF) Cetaceans	Cell 1: $L_{p,0-pk,flat}$: 222 dB; $L_{E,p,LF,24h}$: 183 dB	Cell 2: $L_{E,p,LF,24h}$: 197 dB.
High-Frequency (HF) Cetaceans	Cell 3: $L_{p,0-pk,flat}$: 230 dB; $L_{E,p,HF,24h}$: 193 dB	Cell 4: $L_{E,p,HF,24h}$: 201 dB.
Very High-Frequency (VHF) Cetaceans	Cell 5: $L_{p,0-pk,flat}$: 202 dB; $L_{E,p,VHF,24h}$: 159 dB	Cell 6: $L_{E,p,VHF,24h}$: 181 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{p,0-pk,flat}$: 223 dB; $L_{E,p,PW,24h}$: 183 dB	Cell 8: $L_{E,p,PW,24h}$: 195 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{p,0-pk,flat}$: 230 dB; $L_{E,p,OW,24h}$: 185 dB	Cell 10: $L_{E,p,OW,24h}$: 199 dB.
In-Air		
Phocid Pinnipeds (PA) (In-Air)	Cell 11: $L_{p,0-pk,flat}$: 162 dB; $L_{E,p,PA,24h}$: 140 dB	Cell 12: $L_{E,p,PA,24h}$: 154 dB.
Otariid Pinnipeds (OA) (In-Air)	Cell 13: $L_{p,0-pk,flat}$: 177 dB; $L_{E,p,OA,24h}$: 163 dB	Cell 14: $L_{E,p,OA,24h}$: 177 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating AUD INJ onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for NMFS' 2018 Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds 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 acoustic thresholds will be exceeded.

Ensonified Area

This section describes the 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 (TL) coefficient.

The sound field in the Project Area is the existing background noise plus additional construction noise from the proposed project. Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the Project Area. The maximum (underwater) area ensonified is determined by the topography of the LCR, including intersecting land masses that will reduce the overall area of potential impact. Additionally, vessel traffic in the LCR during construction may contribute to elevated background

noise levels, which may mask sounds produced by the project.

TL is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B \times \log_{10} (R_1/R_2)$$

Where:

TL = transmission loss in dB;

B = transmission loss coefficient; for practical spreading equals 15;

R_1 = the distance of the modeled SPL from the driven pile; and,

R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is

assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6-dB reduction in sound level for each doubling of distance from the source ($20 \times \log_{10}[\text{range}]$). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source ($10 \times \log_{10}[\text{range}]$). A practical spreading value of 15 is often used

under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this

project, NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods (table 9). Generally, we choose source levels from similar pile types from locations (e.g., geology, bathymetry) similar to the project.

TABLE 9—PROXY SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

24-in Steel Pipe ¹ Vibratory (unattenuated)	159 dB _{RMS}		
24-in Steel Pipe ^{1,3} Impact (attenuated)	198 dB _{PEAK}	185 dB _{RMS}	171 dB _{SEL}
12-in Timber ² Vibratory (unattenuated)	162 dB _{RMS}		
12-in Timber ^{2,3} Impact (attenuated)	175 dB _{PEAK}	165 dB _{RMS}	155 dB _{SEL}

¹ Reference levels based on the Sand Island Test Piles project in the Columbia River (Robert Miner Dynamic Testing 2021). While the original study tested various pile tips for driving through existing enrockment, the DMMP will not use pile tips so we referenced sound levels solely for piles excluding tips during vibratory driving. For impact driving, all piles in the Sand Island study included tips so we used the average SPLs across all piles as a conservative estimate.

² All timber pile assumptions are based on Caltrans (2020).

³ We assume bubble curtains will be employed for all piles installed with an impact hammer under this LOA, thus, SPLs in this table reflect reference noise estimates reduced by 5 dB.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions

included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, the optional User Spreadsheet tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile driving,

the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported in table 10 below. The calculated Level A and Level B harassment isopleths are shown in table 11 and table 12.

TABLE 10—NMFS USER SPREADSHEET INPUTS

Pile size and type	Spreadsheet tab used	Weighting factor adjustment (kHz)	Number of piles per day	Duration to drive a single pile (min)	Number of strikes per pile
Vibratory pile driving and removal					
24-in steel pile (Vibratory)	A.1) Vibratory pile driving	2.5	20	25	NA
12-in Timber (Vibratory)	A.1) Vibratory pile driving	2.5	20	25	NA
Impact pile driving					
24-in steel pile (Impact attenuated)	E.1) Impact pile driving	2	20	NA	45
12-in Timber (Impact attenuated)	E.1) Impact pile driving	2	20	NA	45

TABLE 11—CALCULATED DISTANCE OF LEVEL A (BASED ON NMFS' 2018 TECHNICAL GUIDANCE) AND LEVEL B HARASSMENT BY PILE TYPE AND PILE DRIVING METHOD

Pile size and type	Level A harassment (m)		Level B harassment (m)
	Phocid	Otariid	
Vibratory pile driving			
24-in steel pile	12.63	0.9	3,981.1
12-in timber pile	19.9	1.4	6,309.6
Impact pile driving			
24-in steel pile	79.0	5.7	464.2
12-in timber pile	6.8	0.5	21.5

TABLE 12—CALCULATED DISTANCE OF LEVEL A (BASED ON NMFS' PROPOSED 2024 UPDATE TO THE 2018 TECHNICAL GUIDANCE) AND LEVEL B HARASSMENT BY PILE TYPE AND PILE DRIVING METHOD

Pile size and type	Level A harassment (m)		Level B harassment (m)
	Phocid	Otariid	
Vibratory pile driving			
24-in steel pile	35.9	12.1	3,981.1
12-in timber pile	56.9	19.1	6,309.6
Impact pile driving			
24-in steel pile	130.6	48.7	464.2
12-in timber pile	11.2	4.2	21.5

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations and describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization. The USACE referenced data provided by the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fish and Wildlife (WDFW) to support assumptions regarding marine mammal occurrence in the Project Area. The ODFW conducts periodic counts of pinnipeds at haul out sites along the Oregon coast and in the LCR. The WDFW has collected recent anecdotal evidence of pinniped abundance at haul out sites in the LCR near the confluence of the Cowlitz River at RM 67.5. While the confluence of the two rivers is located approximately 31.5 river miles upstream from the Project Area, it is the closest site that features data on pinniped activity. The USACE used the proximal count estimates from ODFW and WDFW to estimate the number of harbor seals, Steller sea lions, and California sea lions that could transit or occupy the Project Area during proposed pile driving in winter (*i.e.*, November through February). For sea lions, the USACE estimated the maximum number of animals likely to be encountered in a single day based on the maximum number of animals detected at haul out sites within 5- of proposed pile driving, as well as the closest haul out sites upstream or downstream. For harbor seals, the USACE estimated the harbor seal

density using the approximate span of river where they have been observed at haul out sites.

Harbor Seal

The most recent harbor seal aerial surveys were conducted by ODFW during the 2021 summer pupping season. The average, maximum daily count of harbor seals counted across all haulout sites in the project vicinity in May and June was 837 (pups and non-pups combined) (USACE, 2024). After applying the Huber *et al.* (2001) correction factor of 1.53, used to account for likely imperfect detection during surveys, the adjusted number of harbor seals that may have been present during the 2021 surveys was 1,281 individuals. However, that estimate is not necessarily representative of the number of harbor seals that may be present in winter.

Jeffries *et al.* (1984) synthesized survey data collected by the state of Washington to document pinniped abundance and distribution in the LCR between 1980 and 1983. Table 13 summarizes the harbor seal count by month detected over that roughly 3-year study period (Jeffries *et al.*, 1984). The USACE used this data to calculate the average, maximum total count observed across all haulout sites in the project vicinity to estimate the proportion of animals present from November through February relative to counts observed from May to June. The average harbor seal count observed between November and February was approximately 618 animals, whereas the average count for May and June was roughly 464. The count of harbor seals in winter was 1.33 times the number counted in May and June. To account for this seasonality, the

most recent estimate of 1,281 harbor seals in the project vicinity during the pupping season, based on ODFW counts, could equate to a maximum of 1,706 harbor seals in the project vicinity each day in winter. While the USACE and NMFS acknowledge that the seasonal correction factor is based on data that is over 40 years old, all recent surveys have focused solely on the summer pupping season and there is no winter data corresponding to those counts. Therefore, the USACE, with NMFS' concurrence, relied on available data from a historic study that included counts for multiple seasons in the same year.

The USACE assumed the maximum winter abundance of 1,706 individuals and an even distribution of animals throughout the span of river between the river mouth and the upstream end of Tenasillahe Island (figure 6–21 in the Application). The hatched area in the figure is roughly 377 square kilometers (km²) which yielded an approximate daily harbor seal density of 5 individuals per km² in the Project Area. The calculated take by Level A harassment is likely an overestimate because the likelihood of a harbor seal coming within a specified Level A harassment isopleth of the pile and remaining long enough to experience PTS during the brief period of potential impact driving that could be needed to reach the last ~5 ft of embedment depth is fairly low. In addition, the USACE utilized the Level A harassment isopleth area of the longest pile dike at each site, when in actuality, some sites have shorter structures, and a pile dike is composed of multiple individual piles with much smaller noise isopleths.

TABLE 13—MAXIMUM MONTHLY COUNTS OF HARBOR SEALS DETECTED DURING LOW-TIDE AERIAL SURVEYS AT HAULOUT LOCATIONS IN THE LOWER COLUMBIA RIVER ESTUARY BETWEEN 1980 AND 1983

[Adapted from Jeffries *et al.*, 1984]

Month	South Jetty	Baker Bay	Desdemona Sands	Taylor Sands	Grays Bay	Miller Sands	Green Island	N of Woody Island	Total
January	0	0	566	444	1	381	0	72	1,464
February	0	NS	NS	NS	NS	*200	NS	55	255
March	1	0	*650	548	0	82	0	3	1,284
April	0	*20	884	260	*20	137	0	18	1,339
May	0	1	568	4	4	0	16	0	593
June	1	0	273	22	11	1	*26	*0	334
July	0	0	525	21	10	0	38	0	594
August	3	7	378	0	0	32	35	0	455
September	4	11	563	7	12	0	26	0	623
October	0	*25	223	59	0	6	0	0	313
November	NS	NS	*230	NS	NS	NS	NS	NS	230
December	0	0	301	174	0	46	0	0	521

NS = Not Surveyed.

* Count based on visual estimate from airplane, boat, or jetty.

For harbor seals only, take by Level A and Level B harassment was calculated based on the following equations, which were performed for Level A and Level B harassment and for steel and timber piles:

Harassment = Harbor seal density *
 ensonified area * pile driving
 workdays

The estimated isopleth areas associated with the longest pile dike at each site are presented in table 14. These inputs were used in the equation above to estimate the number of harbor seals possible within those isopleths each day (table 15) and then calculate the overall level of take based on the number of workdays projected in each

year (table 16). The number of takes requested by Level A and Level B harassment by the USACE for Year 1 through Year 5 are shown in table 16. NMFS concurs with this assessment and is proposing to authorize harbor seal take according to the totals contained in table 16.

TABLE 14—PILE DIKE LENGTHS (m) AND CORRESPONDING LEVEL A AND LEVEL B HARASSMENT AREAS (KM²)

Site	Pile dike length (m)	Phocids level A (km ²) 24-in Steel Impact	All Marine Mammals level B (km ²) 24-in steel impact	All Marine Mammals level B (km ²) 24-in steel vibratory	All Marine Mammals level B (km ²) 12-in timber vibratory
O-23.5-BN-ADD1	22.40	0.213	0.74	37.29	81.45
O-23.5-BN-ADD2	25.00	0.180	0.58	18.06	30.79
O-27.3-BN	27.86	0.162	0.68	13.52	22.97
O-31.4-BN	31.46	0.293	1.05	17.97	26.33
O-35.6-IW-D	35.41	0.135	0.63	10.70	16.51

TABLE 15—ESTIMATED HARBOR SEALS IN LEVEL A AND LEVEL B HARASSMENT ZONES PER DAY

Site	Installation time-frame	HS * in Level A isopleth area 24-in steel impact	HS in Level B isopleth area 24-in steel impact	HS in Level B isopleth area 24-in steel vibratory	HS in Level B isopleth area 12-in timber vibratory
O-23.5-BN- ADD1	LOA YR-3	2	4	187	408
O-23.5-BN- ADD2	LOA YR-1	1	3	91	154
O-27.3-BN	LOA YR-4	1	4	68	115
O-31.4-BN	LOA YR-5	2	6	90	132
O-35.6-IW-D	LOA YR-2	1	4	54	83

TABLE 16—CALCULATED LEVEL A AND LEVEL B HARASSMENT TAKE FOR HARBOR SEALS DURING PILE DRIVING ACTIVITIES EACH YEAR

	Site	Steel pile driving workdays	Timber pile driving workdays	Level A (steel piles)	Level B (steel piles)	Level B (timber piles)
YR-1	O-23.5-BN-ADD2	13	12	26	2,405	4,896
YR-2	O-35.6-IW-D	1	0	1	90	0
YR-3	O-23.5-BN-ADD1	17	17	17	1,139	1,955
YR-4	O-27.3-BN	15	15	30	1,320	1,980
YR-5	O-31.4-BN	26	25	26	1,378	2,075

California and Steller Sea Lions

Take estimates for California and Steller sea lions were based on assumed daily abundances in the Project Area rather than the estimated densities. The ODFW counted sea lions during recent aerial surveys of three key haulout locations in the LCR. All sea lions detected in winter are non-pup males and average counts of both California and Steller sea lions observed during surveys between 2019 and 2022 are

shown in table 17. The haulout at East Mooring Basin (EMB) is just south of the Project Area and likely downstream of pile driving harassment isopleths. The USACE used the average counts observed at EMB (RM 15 from there) as a proxy for sea lions that may be present during pile driving and used the average across all winter months as a proxy for the number of sea lions in the Project Area since that haulout is closer to the Project Area (RM 23 to RM 36) compared to the Rainer (RM 67) and

Coffin Rock (RM 72) locations. Based on counts of sea lions at the EMB site (table 17), the USACE estimated 182 California sea lions and 3 Steller sea lions by Level B harassment per day in the project vicinity. Level A harassment is not likely since the Level A harassment zones for otariids are smaller than the shutdown zone proposed (15–20 m) for all pile driving scenarios as shown in table 12, and no such take is proposed for authorization.

TABLE 17—AVERAGE COUNTS OF CALIFORNIA AND STELLER SEA LIONS DETECTED AT HAULOUT LOCATIONS DEPICTED IN FIGURE 4–2 DURING ODFW WINTER AERIAL SURVEYS, 2019–2022
[USACE, 2024]

Haulout site	Month	Average of CSL	Average of SSL
East Mooring Basin (EMB)	November	128	0
	December	234	3
	January	166	4
	February	197	5

Take estimates for California and Steller sea lions were calculated based on the equation below and number of workdays shown in table 18:

Level B exposure = N animals/day *
total driving days

There could be 25 total days of noise exposure from pile driving during year 1 (YR–1); 34 days in YR–3; 30 days in YR–4, and up to 51 days in YR–5.

TABLE 18—PROPOSED TAKE BY LEVEL B HARASSMENT FOR CALIFORNIA AND STELLER SEA LIONS LIKELY TO BE IN THE PROJECT VICINITY

	Total pile driving Workdays	Level B harassment CSL	Level B harassment SSL
YR–1	25	4,550	75
YR–2	1	182	3
YR–3	34	6,188	102
YR–4	30	5,460	90
YR–5	51	9,282	153

The annual and total number of takes of marine mammal species requested by

the USACE and proposed for

authorization by NMFS are shown in table 19.

TABLE 19—PROPOSED TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT ANNUALLY OVER 5 YEARS

Species	Stock	Yr 1		Yr 2		Yr 3		Yr 4		Yr 5		5-Yr total	
		Level A	Level B	Level A	Level B	Level A	Level B	Level A	Level B	Level A	Level B	Level A	Level B
Harbor Seal	OR/WA Coastal	26	7,301	1	90	17	3,094	30	3,300	26	3,453	87	17,238
California sea lion	U.S .....	.....	4,550	.....	182	.....	6,188	.....	5,460	.....	9,282	.....	25,662
Steller sea lion	Eastern .....	.....	75	.....	3	.....	102	.....	90	.....	153	.....	423

To inform both the negligible impact analysis and the small numbers determination, NMFS assesses the maximum number of takes of marine mammals that could occur within any given year during the effective LOA

period. In this calculation, the maximum estimated number of Level A harassment takes in any one year is summed with the maximum estimated number of Level B harassment takes in any 1 year for each species to yield the

highest number of estimated take that could occur in any year (table 20). Table 20 also depicts the number of takes proposed relative to the abundance of each stock.

TABLE 20—MAXIMUM NUMBER OF PROPOSED TAKES (BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT) THAT COULD OCCUR IN ANY ONE YEAR OF THE PROJECT RELATIVE TO STOCK POPULATION SIZE

Species	NMFS stock abundance	Maximum Level A harassment	Maximum Level B harassment	Maximum annual take ¹	Total percent stock taken based on maximum annual take
Harbor seal	² 24,732	30	7,301	7,331	29.6
California sea lion	257,606	.....	9,282	9,282	3.6
Steller sea lion	36,308	.....	153	153	<0.01

¹ Calculations of the maximum annual take are based on the maximum requested Level A harassment take in any one year + the total requested Level B harassment take in any one year.

² The Oregon/Washington Coastal Stock was most recently estimated at 24,732 harbor seals in 1999 and more recent abundance data is not available (Carretta *et al.*, 2022).

Proposed Mitigation

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 2 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 (*e.g.*, likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (*i.e.*, probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (*i.e.*, probability implemented as planned); and
2. The practicability of the measures for applicant implementation, which

may consider such things as cost, impact on operations.

The mitigation measures described in the following sections would apply to the USACE in-water construction activities.

Proposed Shutdown and Monitoring Zones

In most impact and pile driving scenarios, the proposed shutdown zones exceed the calculated Level A isopleths; an exception occurs during impact pile driving of 24-in steel piles for phocids (*e.g.* harbor seals) when the calculated Level A harassment isopleth (130.6 m) exceeds the proposed shutdown zone of 50 m. There was concern that the potential for seals to enter into a shutdown zone of 130 m would result in frequent delays and could impede the project's schedule. Therefore, the shutdown zone will be established at 50 m for phocid pinnipeds during impact driving of 24-in steel piles.

TABLE 21—PROPOSED SHUTDOWN ZONE AND LEVEL B MONITORING ZONES BY ACTIVITY

Pile size and type	Shutdown zone (m)		Level B harassment (m)
	Phocid	Otariid	
Vibratory pile driving			
24-in steel pile	50	15	3,981.1
12-in timber pile	60	20	6,309.6
Impact pile driving			
24-in steel pile	50	50	464.2
12-in timber pile	15	15	21.5

Prior to pile driving, protected species observers (PSOs) would survey the

shutdown zones shown in table 21 and surrounding areas for at least 30

minutes before pile driving activities start. If marine mammals are found

within the shutdown zone, pile driving would be delayed until the animal has moved out of the shutdown zone, either verified by a PSO or by waiting until 15 minutes has elapsed without a sighting. If a marine mammal approaches or enters the shutdown zone during pile driving, the activity would be halted. Pile driving may resume after the animal has moved out of the shutdown zone or after at least 15 minutes has passed since the last observation of the animal.

All marine mammals would be monitored in the Level B harassment zone to the extent of visibility for the on-duty PSOs. If a marine mammal for which take is authorized enters the Level B harassment zone, in-water activities would continue and PSOs would document the animal's presence within the estimated harassment zone.

If a species for which authorization has not been granted, or for which the authorized takes are met, is observed approaching or within the Level B harassment zone, pile driving activities would be shut down immediately. Activities would not resume until the animal has been confirmed to have left the area or 15 minutes has elapsed with no sighting of the animal. If a shutdown zone is obscured by fog or other weather/sea conditions that restrict the observers' ability to observe, pile driving would not be initiated or would cease until the entire shutdown zone is visible so that monitoring may resume.

PSOs

The placement of PSOs during all pile driving and removal activities (described in detail in the Proposed Monitoring and Reporting section and Marine Mammal Monitoring Plan) will ensure that the Project Area is monitored to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions.

Pre- and Post-Activity Monitoring

Monitoring must take place from 30 minutes prior to initiation of pile driving activities (*i.e.*, pre-clearance monitoring) through 30 minutes post-completion of pile driving. Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for a 30-minute period. If a marine mammal is observed within the shutdown zones, pile driving activity would be delayed or halted. If work

ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.*, the entire shutdown zone and surrounding waters must be visible to the naked eye).

Bubble Curtain

A bubble curtain must be employed during all impact pile driving activities. The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column. The lowest bubble ring must be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring must ensure 100 percent substrate contact. No parts of the ring or other objects may prevent full substrate contact. Air flow to the bubblers must be balanced around the circumference of the pile.

Soft Start

Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the impact hammer operating at full capacity. For impact driving, an initial set of three strikes will be made by the hammer at reduced energy, followed by a 30-second waiting period, then 2 subsequent 3-strike sets before initiating continuous driving. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed 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.

Proposed Monitoring and Reporting

In order to issue an LOA for an activity, section 101(a)(5)(A) 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.

Visual Monitoring

Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- PSOs must be independent of the activity contractor (*e.g.*, employed by a subcontractor) and have no other assigned tasks during monitoring periods;
- At least 1 PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute education (*i.e.*, degree in biological science or related field) or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

- Where a team of 3 or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

- PSOs must record all observations of marine mammals as described in the Marine Mammal Monitoring Plan, regardless of distance from the pile being driven. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed.

PSOs should have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to: (1) the number and species of marine mammals observed; (2) dates and times when in-water construction activities were conducted; (3) dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and (4) marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

The USACE must employ a minimum of 2 PSOs. PSO locations will provide an unobstructed view of all water within the shutdown zone(s), and as much of the Level A harassment and Level B harassment zones as possible. PSOs would be stationed along the shore of the LCR. One would be located on the closest shoreline or construction barge adjacent to proposed pile driving and another observer could be stationed on a publicly accessible shoreline with a different vantage point of the disturbance area or be boat-based.

The USACE would ensure that construction supervisors and crews, the monitoring team, and relevant USACE staff are trained prior to the start of activities subject to the proposed LOA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project would be trained prior to commencing work. Monitoring

would occur for all in-water pile driving activities during the pile installation work window (November 1 to February 15).

Data Collection

PSOs would use approved data forms to record the following information:

- Dates and times (beginning and end) of all marine mammal monitoring;
- PSO locations during marine mammal monitoring;
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.*, vibratory, impact);
- Weather parameters and water conditions;
- The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;
- Distance and bearings of each marine mammal observed to the pile being driven or removed;
- Description of marine mammal behavior patterns, including direction of travel;
- Age and sex class, if possible, of all marine mammals observed; and
- Detailed information about implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal if any.

Reporting

The USACE must submit a draft monitoring report to NMFS within 90 calendar days of the completion of each construction year. A draft comprehensive 5-year summary report must also be submitted to NMFS within 90 days of the end of the effective period of the LOA. The reports must detail the monitoring protocol and summarize the data recorded during monitoring. Final annual reports and the final comprehensive report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report must be considered final. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments. The marine mammal report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;

- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.*, vibratory driving) and the total equipment duration for cutting for each pile;

- PSO locations during marine mammal monitoring;

- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;

- Upon observation of a marine mammal, the following information: (1) name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; (2) time of sighting; (3) identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; (4) distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); (5) estimated number of animals (min/max/best estimate); (6) estimated number of animals by cohort (*e.g.*, adults, juveniles, neonates, group composition, *etc.*); (7) animal's closest point of approach and estimated time spent within the harassment zone; and (8) description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the harassment zones, by species; and

- Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report would constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover

an injured or dead marine mammal, the USACE shall report the incident to the Office of Protected Resources (OPR), NMFS, and to the west coast regional stranding network as soon as feasible. If the death or injury was clearly caused by the specified activity, the USACE must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. The USACE must not resume their activities until notified by NMFS. 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.

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 California sea lions, Steller sea lions, and harbor seals, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar since they have comparable behavioral sensitivities and, therefore, no meaningful differences in terms of likely impacts. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Vibratory and impact pile driving activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level B harassment would be due to potential behavioral disturbance, and TTS. Level A harassment takes would be due to auditory injury. No mortality or serious injury is anticipated given the nature of the activity, even in the absence of the required mitigation. The potential for harassment is minimized through the construction method and the implementation of the proposed mitigation measures (see Proposed Mitigation section).

Take would occur within a limited, confined area (the LCR) of the stocks’ ranges. The duration and intensity of authorized harassment events would be minimized through use of mitigation measures described herein. Further, the amount of take proposed to be authorized is small when compared to stock abundance, and the project is not anticipated to impact any known important habitat areas for any marine mammal species.

Take by Level A harassment is proposed for a single species (harbor seal) to account for the potential that an animal could enter and remain within the area between a Level A harassment zone and the shutdown zone for a duration long enough to be taken by Level A harassment. Limited take by Level A harassment is expected to arise from, at most, a small degree of auditory injury (AUD INJ) during impact driving,

which will only be used briefly to achieve the final 5-ft of embedment depth for a given pile. Animals would need to be exposed to higher levels and/or longer duration in order to incur any more than a small degree of AUD INJ. Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, though, any AUD INJ or TTS potentially incurred here would not be expected to adversely impact individual fitness, let alone annual rates of recruitment or survival.

Marine mammal behavioral responses to pile driving, if any, are expected to be mild and temporary. Marine mammals found within the Level B harassment zone may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the limited number of piles to be installed per day and that pile driving would occur across a range of 1 to 51 days between November 1 and February 15 each year over the 5-year effective period of the LOA, the effects of any harassment would be temporary.

Impacts on marine mammal prey that would occur during the USACE’s proposed activity would have, at most, short-term effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. Indirect effects on marine mammal prey during the construction are expected to be minor, and these effects are unlikely to cause substantial effects on marine mammals at the individual level, with no expected effect on annual rates of recruitment or survival.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks’ annual rates of recruitment or survival. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary 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 intensity of anticipated takes by Level B harassment is relatively low for all stocks and would not be of a duration or intensity expected to result in impacts on reproduction or survival;
- No important habitat areas have been identified within the Project Area;
- For species proposed for authorization, the Project Area is a very small and peripheral part of their range and anticipated habitat impacts are minor;
- The USACE would implement mitigation measures, such as bubble curtains and soft-starts for impact pile driving; and
- Monitoring and shutdowns would minimize the numbers of marine mammals exposed to injurious levels of sound to ensure that take by Level A harassment would result, at most, in a small degree of AUD INJ.

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 proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed 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 maximum number of individuals taken in any year 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 maximum annual 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.

Table 20 demonstrates the maximum number of Level A and Level B harassment events per year. Our analysis shows that no more than 29.6 percent of harbor seals, 3.6 percent of California sea lions and less than 0.01

percent of Steller sea lions could be taken by Level A and Level B harassment. The numbers of animals proposed to be taken for these stocks would be considered small relative to the relevant stock's abundances, even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily 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.

Adaptive Management

The regulations governing the take of marine mammals incidental to the USACE's construction activities would contain an adaptive management component. The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from completed projects to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the USACE regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or LOAs issues pursuant to these regulations.

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 proposed rules, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the USACE's request and the proposed regulations (see **ADDRESSES**). All comments germane to this rulemaking will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This proposed rule and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The USACE is the sole entity that would be subject to the requirements in these proposed regulations, and the USACE is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Therefore, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a Federal agency.

List of Subjects in 50 CFR Part 217

Administrative practice and procedure, Exports, Fish, Imports,

Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: November 4, 2024.

Samuel D. Rauch, III,

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

For the reasons set forth in the preamble, NMFS proposes to amend 50 CFR part 217 as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Add subpart H to read as follows:

Subpart H—Taking Marine Mammals Incident to the Lower Columbia River Dredged Material Management Plan, Oregon and Washington

Sec.

217.70 Specified activity and geographical region.

217.71 Effective dates.

217.72 Permissible methods of taking.

217.73 Prohibitions.

217.74 Mitigation requirements.

217.75 Requirements for monitoring and reporting.

217.76 Letters of Authorization.

217.77 Renewals and modifications of Letters of Authorization. 217.78—217.279 [Reserved]

§ 217.70 Specified activity and geographical region.

(a) Regulations in this subpart apply only to the United States Army Corps of Engineers (USACE) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occur in the areas outlined in paragraph (b) of this section and that occur incidental to construction activities, including maintenance and replacement of piles, as designated in the Lower Columbia River Dredged Material Management Plan, Oregon and Washington. Requirements imposed on the USACE pursuant to this subpart must be implemented by those persons it authorizes or funds to conduct activities on its behalf.

(b) The taking of marine mammals by the USACE may be authorized in a Letter of Authorization (LOA) only if it occurs near the Mouth of the Columbia River in Oregon and Washington.

§ 217.71 Effective dates.

Regulations in this subpart are effective from November 1, 2027, through February 29, 2032.

§ 217.72 Permissible methods of taking.

Under an LOA issued pursuant to § 216.106 of this chapter and § 217.76, the Holder of the LOA (hereinafter “USACE”) may incidentally, but not intentionally, take marine mammals within the area described in § 217.70(b) by harassment associated with construction activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

§ 217.73 Prohibitions.

Except for the takings contemplated in § 217.72 and authorized by an LOA issued under this subpart, it is unlawful for any person to do any of the following in connection with the activities described in § 217.70:

(1) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under this subpart;

(2) Take of any marine mammal not specified in such LOA;

(3) Take any marine mammal specified in such LOA in any manner other than as specified;

(4) Take a marine mammal specified in such LOA if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(5) Take a marine mammal specified in such LOA after NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.74 Mitigation requirements.

When conducting the activities identified in § 217.70(a), the mitigation measures contained in any LOA issued under this subpart must be implemented. These mitigation measures include but are not limited to:

(1) A copy of the LOA must be in the possession of the USACE, supervisory construction personnel, lead protected species observers (PSOs), and any other relevant designees of the USACE operating under the authority of the LOA at all times that activities subject to the LOA are being conducted.

(2) The USACE shall conduct training between supervisors and crews, the PSO team, and relevant USACE staff are trained prior to the start of construction activity subject to this subpart, so that responsibilities, communication procedures, monitoring protocols, and

operational procedures are clearly understood. New personnel joining during the project must be trained in the aforementioned matters prior to commencing work.

(3) The USACE must employ PSOs and establish monitoring locations as described in the Marine Mammal Monitoring Plan (see § 217.75). The USACE must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions.

(4) Monitoring must take place from 30 minutes prior to initiation of pile driving activity (*i.e.*, pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity.

(5) Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the shutdown zones are clear of marine mammals.

(6) For all pile driving activity, the USACE must implement shutdown zones with radial distances as identified in an LOA issued under this subpart.

(7) If a marine mammal is observed entering or within the shutdown zones, pile driving activity must be delayed or halted. Pile driving must be commenced or resumed as described in paragraph (a)(9) of this section.

(8) If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

(9) The USACE must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 15 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary, to avoid direct physical interaction.

(10) The USACE must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period. Then two subsequent reduced-energy strike sets would occur. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

(11) The USACE must deploy PSOs as indicated in an NMFS-approved Marine Mammal Monitoring Plan.

(12) The USACE must employ bubble curtain systems during all impact driving except under conditions where the water depth is less than 0.67 m (2 ft) in depth. Bubble curtains must meet the following requirements:

(i) The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column.

(ii) The lowest bubble ring must be in contact with the mudline and/or rock bottom for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline and/or rock bottom contact. No parts of the ring or other objects shall prevent full mudline and/or rock bottom contact.

(iii) The bubble curtain must be operated such that there is equal balancing of air flow to all bubble rings.

(13) For all pile driving activities, land-based PSOs must be stationed at the best vantage points practicable to monitor for marine mammals and implement shutdown/delay procedures.

(14) Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone.

§ 217.75 Requirements for monitoring and reporting.

(a) The USACE must submit a Marine Mammal Monitoring Plan to NMFS for approval at least 90 days in advance of construction. Marine mammal monitoring must be conducted in accordance with the conditions in this section and the approved Monitoring Plan.

(b) Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:

(1) PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods.

(2) At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(3) Other PSOs may substitute other relevant experience, education (*i.e.*, degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a

NMFS-issued incidental take authorization.

(4) Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(5) PSOs must record all observations of marine mammals as described in the Marine Mammal Monitoring Plan, regardless of distance from the pile being driven. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed.

(c) The USACE must establish monitoring locations as described in the Monitoring Plan. For all pile driving activities, a minimum of 1 PSO must be assigned to each active pile driving location to monitor the shutdown zones.

(d) The USACE must submit a draft monitoring report to NMFS within 90 calendar days of the completion of each construction year. A draft comprehensive 5-year summary report must also be submitted to NMFS within 90 days of the end of the project. The reports must detail the monitoring protocol and summarize the data recorded during monitoring. Final annual reports and the final comprehensive report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report must be considered final. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments. The reports must contain the informational elements described in paragraphs (d)(1) through (5) of this section at minimum:

(1) Dates and times (beginning and end) of all marine mammal monitoring;

(2) Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed, by what method (*i.e.*, impact or vibratory), the total duration of driving time for each pile (vibratory driving), and number of strikes for each pile (impact driving);

(3) PSO locations during marine mammal monitoring.

(4) Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), Beaufort sea state, and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated

observable distance (if less than the harassment zone distance); and

(5) Upon observation of a marine mammal, the following information should be collected:

(i) PSO who sighted the animal, observer location, and activity at time of sighting;

(ii) Time of sighting;

(iii) Identification of the animal (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

(iv) Distances and bearings of each marine mammal observed in relation to the pile being driven for each sighting (if pile driving was occurring at time of sighting);

(v) Estimated number of animals (min/max/best);

(vi) Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);

(vii) Animal's closest point of approach and estimated time spent within the harassment zone;

(viii) Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses to the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

(ix) Number of marine mammals detected within the harassment zones, by species;

(x) Detailed information about any implementation of any mitigation (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in the behavior of the animal, if any; and

(xi) All PSO datasheets and/or raw sightings data.

(e) In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the USACE must report the incident to NMFS Office of Protected Resources (OPR), and to the West Coast Regional Stranding Coordinator, as soon as feasible. If the death or injury was caused by the specified activity, the USACE must immediately cease the specified activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this subpart and the LOA issued under § 216.106 of this chapter and § 217.76. The USACE must not resume their activities until notified by NMFS. The report must include the following information:

(1) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(2) Species identification (if known) or description of the animal(s) involved;

(3) Condition of the animal(s) (including carcass condition if the animal is dead);

(4) Observed behaviors of the animal(s), if alive;

(5) If available, photographs or video footage of the animal(s); and

(6) General circumstances under which the animal was discovered.

§ 217.76 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to this subpart, the USACE must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed February 29, 2032.

(c) If an LOA expires prior to February 29, 2032, the USACE may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the USACE must apply for and obtain a modification of the LOA as described in § 217.77.

(e) The LOA must set forth the following information:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA must be based on a determination that the level of

taking will be consistent with the findings made for the total taking allowable under this subpart.

(g) Notice of issuance or denial of an LOA must be published in the **Federal Register** within 30 days of a determination.

§ 217.77 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 217.76 for the activity identified in § 217.70(a) may be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart; and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under this subpart were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting that do not change the findings made for this subpart or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 217.76 for the activity identified in § 217.70(a) may be modified by NMFS under the following circumstances:

(1) NMFS may modify (including augment) the existing mitigation,

monitoring, or reporting measures (after consulting with USACE regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in this subpart;

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from USACE's monitoring from previous years;

(B) Results from other marine mammal and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by this subpart or subsequent LOAs; and

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS must publish a notice of proposed LOA in the **Federal Register** and solicit public comment; and

(2) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in an LOA issued pursuant to § 216.106 of this chapter and § 217.76, an LOA may be modified without prior notice or opportunity for public comment. Notification would be published in the **Federal Register** within 30 days of the action.

§§ 217.78–217.79 [Reserved]

[FR Doc. 2024–26069 Filed 11–12–24; 8:45 am]

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Notices

Federal Register

Vol. 89, No. 219

Wednesday, November 13, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

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 December 13, 2024 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.

Economic Research Service

Title: Corn and Soybean Grower Survey.

OMB Control Number: 0536–NEW.

Summary of Collection: 0536–NEW. The proposed data collection will use a survey of corn and soybean farmers in the Midwestern U.S. to study farmers' preferences for participating in programs that support cover cropping and gather new information about current cover cropping practices. The survey will use questions on contract enrollment to examine how contract flexibility, ease of applying, payments, and other aspects of cover crop contracts affect farmers' willingness to enroll their corn and soybean fields in cover crop programs. Results will be compared between farmers with no history of cover cropping in Federal programs and those who have cover cropped in Federal Programs.

Need and Use of the Information: USDA agencies are interested in supporting the long-run adoption of climate smart conservation practices such as cover crops. There are multiple Federal, state, and private programs that support planting cover crops. This study will provide information about current use of cover crops as well as what influences participation on programs for cover crops. Data will be used for research purposes and only reported in the aggregate. The information provided by this study will benefit farmers, non-governmental organizations, and industry stakeholders as well as policymakers and program managers at the local, State, Tribal, and National levels.

Description of Respondents: Individuals.

Number of Respondents: 2,500.

Frequency of Responses: One time.

Total Burden Hours: 2,411 hours.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–26252 Filed 11–12–24; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0022]

Movement of Organisms Modified or Produced Through Genetic Engineering; Notice of Additional Modifications Exempt Plants Can Contain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are adding modifications a plant may contain and qualify for exemption from regulations governing movement of organisms modified or produced using genetic engineering because the modifications are achievable through conventional breeding. An earlier notice proposed five types of modifications. Based on a review of public comments, we have been able to streamline and simplify our description of these modifications and are now finalizing two additional modifications a plant can contain and qualify for exemption. This action updates and clarifies the types of modifications that can be made to plants that qualify for exemption to reflect advances in science and technology, and what is achievable through conventional breeding methods to facilitate the application of biotechnology for the development of new crops.

DATES: The APHIS website will be updated with these additional modifications on November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Dr. Neil Hoffman, Science Advisor, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 78, Riverdale, MD 20737–1238; Neil.E.Hoffman@usda.gov; (301) 851–3877.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 govern the movement (importation, interstate movement, or release into the environment) of certain organisms modified or produced through genetic engineering. The U.S. Department of

Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) first issued these regulations in 1987 under the authority of the Federal Plant Pest Act of 1957 and the Plant Quarantine Act of 1912, two acts that were subsumed into the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) in 2000, along with other provisions. Since 1987, APHIS has amended the regulations seven times, in 1988, 1990, 1993, 1994, 1997, 2005, and 2020.

On May 18, 2020, we published in the **Federal Register** (85 FR 29790–29838, Docket No. APHIS–2018–0034) a final rule¹ that marked the first comprehensive revision of the regulations since they were established in 1987. The final rule provided a clear, predictable, and efficient regulatory pathway for innovators, facilitating the development of organisms modified or produced using genetic engineering (modified organisms) that are unlikely to pose plant pest risks.

The May 2020 final rule described the scope or applicability of regulations and stated that the regulations do not apply to plants with modifications that are achievable through conventional breeding (85 FR 29790–29796). To ensure the regulations do not apply to plants that are equivalent to those that could be developed through conventional breeding, the May 2020 final rule established a regulatory exemption to initially identify and continuously update modifications that are achievable through conventional breeding and, thus, exempt from regulation (85 FR 29791–29796; § 340.1(b)).

Initially, APHIS identified three commonly known modifications achievable through conventional breeding methods, including small insertions/deletions at a single locus of a plant's genome (85 FR 29792; § 340.1(b)(1) through (3)). Specifically, § 340.1(b) exempted plants that contain a single modification of one of the following types, specified in § 340.1(b)(1) through (3):

- The genetic modification is a change resulting from cellular repair of a targeted DNA break in the absence of an externally provided repair template; or
- The genetic modification is a targeted single base pair substitution; or
- The genetic modification introduces a gene known to occur in the plant's gene pool or makes changes in a targeted sequence to correspond to a known allele of such a gene or to a

known structural variation present in the gene pool.

Knowing that it is impracticable to identify and list the universe of modifications that are achievable through conventional breeding at any given time because of advances in knowledge, technology and conventional breeding methods, the May 2020 final rule also established a process for listing additional modifications that plants can contain while still being exempted from the regulations (85 FR 29793–29795; § 340.1(b)(4)). Thus, § 340.1(b)(4) provides that the Administrator may propose to exempt plants with additional modifications, based on what could be achieved through conventional breeding. Such proposals may either be APHIS-initiated or may be initiated via a request that is accompanied by adequate supporting information and submitted by another party. In either case, APHIS will publish a notice in the **Federal Register** of the proposal, along with the supporting documentation, and will request public comments. After reviewing the comments, APHIS will publish a subsequent notice in the **Federal Register** announcing its final determination. A list specifying modifications a plant can contain and be exempt pursuant to § 340.1(b)(4) is available on the APHIS website at <https://www.aphis.usda.gov/biotech-exemptions>.

On November 15, 2023, we published a notice in the **Federal Register** (88 FR 78285–78291, Docket No. APHIS–2023–0022) proposing the five modifications that plants could contain and be eligible for exemption:

First, we proposed that a diploid or autopolyploid plant with any combination of complete loss of function modifications in one to all alleles of a single genetic locus, or an allopolyploid plant with any combination of complete loss of function modifications in one or both alleles of a single genetic locus on up to four pairs of homoeologous chromosomes, without the insertion of exogenous DNA, would qualify for exemption (proposed 340.1(b)(4)(vi) (Additional Modification 1 (AM1))). APHIS explained that this category was intended to apply to scenarios involving targeted DNA breaks—through insertions, deletions, and other types of modifications (such as a nick)—created using different techniques that might not be expressly outlined in the initial modifications APHIS described in the May 2020 final rule (namely, paragraphs (b)(1) and (2) of § 340.1), but functionally would achieve the same end result—loss of function. In addition,

it proposed to extend loss of function mutations without the insertion of exogenous DNA to polyploid plants.

Second, we proposed that any diploid or autopolyploid plant in which the genetic modification is a single contiguous deletion of any size, resulting from cellular repair of one or two targeted DNA breaks on a single chromosome or at the same location(s) on two or more homologous chromosomes, without insertion of DNA, or with insertion of DNA in the absence of a repair template, would qualify for exemption (proposed 340.1(b)(4)(vi)(AM2)). As proposed, allopolyploid plants with additional modifications to homoeologous loci of homoeologous chromosomes would not have qualified for exemption.

Third, we proposed to allow the modifications described at § 340.1(b)(2) and (3) to be made to all alleles of a genetic locus on the homologous chromosomes of autopolyploids (proposed 340.1(b)(4)(vi)(AM3)). As proposed, allopolyploid plants with additional modifications to homoeologous loci of homoeologous chromosomes would not have qualified for exemption.

Fourth, we proposed that plants with up to four modifications, made simultaneously or sequentially, of types that already qualify such plants for exemption when made individually, and provided each modification is at a different genetic locus, would be exempt from regulation because such modifications are achievable through conventional breeding methods (proposed 340.1(b)(4)(vi)(AM4)). It proposed that allopolyploid plants could contain up to four of the proposed complete loss of function modifications described under § 340.1(b)(2) and (3) or a combination thereof, provided each modification is introduced into just one allele; however, allopolyploid plants would not be exempt if they contain a modification that is allowable only in diploid and autopolyploid plants.

Fifth, we proposed that plants that have previously completed voluntary reviews confirming the plants' exempt status as described in § 340.1(e), which provides the process by which developers can request such a confirmation of exempt status, and that have been produced, grown, and observed consistent with conventional breeding methods appropriate for the plant species, could be successively modified in accordance with any of the modifications listed under paragraph 340.1(b) of the regulations (proposed 340.1(b)(4)(vi)(AM5)).

¹ To view the final rule and supporting documents, go to <https://www.regulations.gov/docket/APHIS-2018-0034>.

We initially took comments on the notice through December 15, 2023. In a notice published in the **Federal Register** on December 27, 2023 (88 FR 89362, Docket No. APHIS–2023–0022), we reopened the comment period, and extended it until January 19, 2024.

We received 6,477 comments by the end of the reopened comment period. The comments were diverse and from interest groups, industry representatives, industry trade organizations, private individuals, scientists, plant breeders, and crop specialists.

Based on a review of public comments, we have made several revisions to the five proposed modifications, simplifying and consolidating them into two modification categories, AM1 and AM2. To achieve this, APHIS consolidated the first and second proposed modifications to create the AM1 described in this final notice. The intent of the first and second proposed modifications was to provide developers with greater flexibility in how they could generate targeted breaks in a plant's DNA like those that occur through conventional breeding methods. AM1, as finalized, carries through this intent by building on the existing modification described at § 340.1(b)(1), which currently allows a single targeted break in DNA and self-repair (*i.e.*, a non-templated insertion, deletion, or a combination of insertion and deletion (indel) to rejoin the DNA). AM1 now allows more than one cut to make the targeted break and the use of external templates in some circumstances. The finalized AM1 also carries through the original intent of the proposal by allowing developers to use a deletion of any size resulting from a targeted break, thereby recovering the functionality APHIS originally included in the 2019 proposed rule (84 FR 26514–26541, Docket No. APHIS–2018–0034) but did not expressly articulate in the May 2020 final rule, and which APHIS proposed as additional modifications in the November 2023 notice (88 FR 78286, 88 FR 78288, Docket No. APHIS–2023–0022). Collectively, as described in this final notice, AM1 allows plants with modifications involving an insertion or deletion (indel), or contiguous deletion of any size, made at a targeted location, with or without insertion of DNA if generated without using a repair template, or without insertion of DNA if generated using a repair template, to qualify for exemption.

Similarly, APHIS consolidated the third and fourth proposed modifications to create the AM2 described in this final notice. The intent of the third and fourth proposed modifications was to

make modifications that are already listed in the regulations (§ 340.1(b)(2) and (3)) available for use in polyploid plants and to increase the number of modifications that can be made simultaneously or sequentially to plants. AM2 carries through this intent by exempting plants with up to 12 modifications, made simultaneously or sequentially, if each modification occurs in a different gene and is of a type listed under § 340.1(b). By increasing the number of modifications that can be made to a plant, AM2 also effectively allows all modifications listed in § 340.1(b) to be made in all polyploids.

Finally, the fifth proposed modification would have required developers to complete a confirmation process to verify a plant's exempt status before making sequential modifications and outlined conditions to ensure that simultaneous or sequential modifications were made in plants that had been produced, grown, and observed, consistent with conventional breeding practices. APHIS has not finalized a modification associated with this proposal. Instead, to stay true to the voluntary nature of APHIS' confirmation request process and ensure that plants are developed consistent with conventional breeding practices, APHIS will only accept voluntary requests to confirm a plant's exempt status for plants that have been produced. This means APHIS will no longer accept confirmation requests involving plants with hypothetical modifications because, if produced, the plants may not be viable, may not have the intended phenotype, or have a different genotype than originally requested.

We wish to highlight additional distinctions between AM1 and AM2 described in this final notice, and the modifications we initially proposed. First, we are no longer restricting AM1 to loss of function modifications if the gain of function (GOF) modification results from natural DNA repair in the absence of a repair template. We received comments and supporting literature during the comment period that such GOF modifications can be accomplished through conventional breeding techniques. Second, we are no longer making distinctions between allopolyploids and autopolyploids when describing the modifications. We received comments during the comment period indicating the distinction between allopolyploids and autopolyploids was not necessary, with documentation demonstrating that similar modifications can be made in the two ploidy types by conventional breeding. Eliminating this distinction

was a key factor that enabled us to consolidate the modifications from five to two and simplify our description of the modifications overall. Third, we are increasing the number of simultaneous or sequential modifications from 4 (as proposed) to 12 (as described in this final notice). In the proposal we published in November 2023, we noted that we welcomed comments from the public on the number of individual modifications that are achievable simultaneously or sequentially in plants based on conventional breeding methods, and comments on the reasons for or against allowing for simultaneous or sequential modifications in all plants. We received comments during the comment period requesting an increase in the number of simultaneous or sequential modifications covered by the exemption and documentation that more than four modifications are possible by conventional breeding. In our discussion below, we further describe these comments and the literature references we received that show 12 simultaneous or sequential modifications are achievable through conventional breeding. Fourth, we are no longer considering hypothetical plants for confirmation requests based on comments we received on AM5 suggesting the exclusion of hypothetical plants from the scope of exemption would simplify the exemption. We are also clarifying that any plant not subject to part 340 (because it is not modified, meets the criteria for a regulatory exemption, or has completed the regulatory status review process) may be modified in accordance with the exemption.

Below, we first discuss the specific comments that resulted in the changes to the modifications we proposed in the November 2023 notice. We then discuss the other comments received on the notice.

Comment: Many commenters felt that we should not make a distinction between Loss of Function (LOF) and GOF mutations in AM1. They noted that the distinction greatly increases the complexity of the modification descriptions.

Response: Proposed AM1 described LOF modifications in all alleles of a single genetic locus in diploids and autopolyploids and on up to four pairs of homoeologous chromosomes in allopolyploids. Our proposal limited the modification to LOF mutations because GOF modifications are statistically less common than LOF mutations, and we thought the same GOF mutation would not be expected to occur across multiple alleles in allopolyploids by conventional breeding. Based on

comments we received demonstrating proof of concept that GOF mutations can occur across all subgenomes in allopolyploids (e.g., (Ostlie, *et al.*, 2015)), we are revising AM1 to allow GOF modifications that result from the generation of insertions and deletions (indels) that occur through DNA break and repair.

Because we are dispensing with distinctions between LOF and GOF and allopolyploids and autopolyploids, we no longer consider it useful to have a separate modification that allows for a deletion of any size (proposed AM2). Instead, we have introduced this functionality into the final AM1. Indels are typically modifications that are under 50 base pairs (bp) whereas deletions of any size are a type of structural variant (Mahmoud, *et al.*, 2019).

As noted previously, we are revising AM1 to: “An indel or contiguous deletion of any size, made at a targeted location, with or without insertion of DNA if generated without using a repair template, or without insertion of DNA if generated using a repair template.”

We wish to emphasize that AM1 is not prescriptive in how indel modifications or contiguous deletions are made. It is based on the outcome rather than any specific techniques used. We also wish to resolve confusion around our use of the phrase “without the insertion of exogenous DNA.” Our intent is to ensure exempt plants are free of foreign DNA in the final product, but not to prohibit foreign DNA used to make the final product. For example, CRISPR-Cas9, a foreign DNA, could be used to make a modification and plants with the modification and lacking CRISPR-Cas9 would still qualify for the exemption. To be clear, to qualify for AM1, the final plant must not retain foreign DNA. Lastly, although we initially defined GOF and LOF based on gene activity, commenters noted they were confused, because LOF of a gene can result in a GOF in phenotype and vice versa. Also, by our proposed definition, promoter deletions that led to either increases or decreases in the expression of a downstream gene could be GOF or LOF, respectively. AM1, as described in this final notice, no longer makes a distinction between LOF and GOF, thereby resolving this confusion and incongruence and mooted these comments.

Comment: The language of the proposed modifications is complex and can be simplified by not making a distinction between autopolyploids and allopolyploids and loss of function and gain of function modifications.

Response: After reading information provided in the comments describing the types of modifications that can be made in allopolyploids, APHIS agrees that our descriptions of modifications that plants can contain and qualify for exemption can be simplified to eliminate the distinction between autopolyploid and allopolyploids and allow gain of function indels. More detail is provided in responses below.

Comment: Many commenters felt the modifications should not make a distinction between autopolyploids and allopolyploids and noted that regulatory authorities in no other countries make this distinction.

Response: Although APHIS initially made a distinction between allopolyploids (such as wheat) and autopolyploids (such as potato) in the proposed modifications, based on our review of the comments and cited literature, we agree that such distinction is not necessary.

For example, we originally proposed that AM4 would have allowed multiple modifications involving single base pair substitutions and insertions described in § 340.1(b)(2) and (3), for autopolyploids as homozygous modifications and for allopolyploids only as heterozygous modifications. In the comments, we learned of two reasons to change our view on this distinction. First, in some allopolyploids, such as wheat, that are largely self-pollinating, homozygous modifications routinely accumulate, and heterozygous alleles are less common (Rutkoski, *et al.*, 2022). Second, doubled haploids are commonly used in breeding to generate homozygous alleles in a single generation in over 250 species (Maluszynski, *et al.*, 2003). Commenters provided 4 examples of 4-to-8 homozygous mutations pyramided in wheat and rapeseed (Tyagi, *et al.*, 2014; Zhang, *et al.*, 2019; Zheng, *et al.*, 2020; Luo, *et al.*, 2021; Wang, *et al.*, 2023b). Given this new information, we have removed the distinction between allopolyploids and autopolyploids in AM2 as described in this final notice.

Similarly, as originally proposed, AM1, would have limited the number of knockouts of a single genetic locus in allopolyploids to four pairs of homoeologous chromosomes, consistent with the limit of four modifications in proposed AM4, but counting modifications differently in autopolyploids and allopolyploids. As described in more detail below in our discussion of final AM2, which allows multiple modifications, we will now count modifications in the same way in autopolyploids and allopolyploids.

Along these lines, as originally proposed, AM3 would have allowed single nucleotide substitutions (also known as base pair substitutions) to all alleles of a single genetic locus in autopolyploids, but not allopolyploids. In response to this proposal, commenters provided references to published scientific data to demonstrate the use of conventional breeding to produce an identical homozygous single nucleotide substitution across all three subgenomes of wheat (Ostlie, *et al.*, 2015). This modification, a cytosine to thymine (C/T) transition that converted valine at amino acid 2004 to an alanine, created resistance to ACCase type inhibitors (Ostlie, *et al.*, 2015) and the researchers enhanced their chances of finding the desired modification by using selection with ACCase inhibitors. To evaluate whether the single nucleotide substitution across all three subgenomes could be found without selection, we examined the EMS generated mutant collection (Krasileva, *et al.*, 2017) that is publicly available through the EnsemblPlants database (<https://plants.ensembl.org/index.html>). The technology created by (Krasileva, *et al.*, 2017) makes it possible to identify mutations across multiple genomes. Plants with the desired mutations can then be crossed to generate plants with the identified mutations across three genomes. Using this source, we identified 11 cases where wheat lines had C/T mutations that resulted in identical mutations in ACCase in all 3 subgenomes (D53N; G55D; V212M; A321T; G543D; G655E; S708N; G1377D; A1848T; G1984E; E2203K) and 2 cases where wheat lines had G/A mutations that resulted in the identical ACCase mutation in all three subgenomes (P647S and L1003F). This finding demonstrated to us that the Krasileva mutagenesis library could be used to identify plants with the identical single nucleotide substitution across all three subgenomes even in the absence of selection. This is a proof of concept that single nucleotide substitutions across subgenomes can be isolated using ordered mutant libraries prepared from allopolyploids.

Mutagenized lines tend to create specific types of DNA modifications. For example, ethyl methanesulfonate (EMS) mutagenesis preferentially converts the base guanine (G) to adenine (A) and the base cytosine (C) to thymine (T) (Leitao, 2012). A similar mutagen, methyl methanesulfonate (MMS) preferentially converts A to T, T to A, A to G, and T to C (Leitao, 2012). Radiation mutagenesis by gamma radiation or fast neutron bombardment

preferentially results in deletions (Wyant, *et al.*, 2022). Historically, breeders have created collections of lines based on naturally occurring variation to be used for their breeding pool. Naturally occurring mutations have been shown to occur at comparable frequencies for all 12 combinations of nucleotide substitutions (Weng, *et al.*, 2018). A recent trend is to characterize the collection by whole genome sequencing (genotyping by sequencing) to facilitate identification of specific mutations. Sequenced collections of diversity panels are available in Arabidopsis (The 1001 Genomes Consortium, 2016), maize (Bukowski, *et al.*, 2018), rice (Zhao, *et al.*, 2021), soybean (Torkamaneh, *et al.*, 2021), cotton (He, *et al.*, 2021), canola (Hurgobin, *et al.*, 2018), tobacco (Thimmegowda, *et al.*, 2018), strawberry (Qiao, *et al.*, 2021), alfalfa (Shen, *et al.*, 2020), sorghum (Jensen, *et al.*, 2020), and wheat (Brinton, *et al.*, 2020), to name a few. In some cases, second releases are available with more sequenced lines covering greater variation than the original. We can expect these community resources to include more species and details over time. Genotyping by sequencing is generally applicable to any species.

Given the new information about the availability, for breeding purposes, of naturally occurring and mutagenized collections genotyped through sequencing, APHIS concludes that it is possible to identify and introduce single nucleotide substitutions and deletions across the subgenomes of allopolyploids by conventional breeding.

As originally proposed, AM3 would have also allowed a modification that introduces a gene known to occur in the plant's gene pool or makes changes in a targeted sequence to correspond to a known allele of such a gene or to a known structural variation present in the gene pool for autopolyploids, but not for allopolyploids. In the comments, we were made aware of an example where homozygous copies of a cellulose synthase-like F6 gene were introduced into all three subgenomes of wheat (Danilova, *et al.*, 2019). This new information demonstrates that sequences from the gene pool can be introduced into all subgenomes of allopolyploids by conventional breeding.

Based on the comments and information we collectively received related to the proposed modification described as AM3, and as discussed in the above paragraphs, we are removing the proposed limitation to autopolyploids. The modifications described in § 340.1(b)(2) and (3) apply

to a single modification. As a result, they were effectively limited to a single pair of homologous chromosomes in polyploids species. As discussed more fully below, based on the comments and literature in this final notice, we will allow up to 12 such modifications in plants (now AM2). This means modifications can now be made across subgenomes of polyploids and the plants can qualify for exemption from regulation, further removing distinctions involving ploidy plants.

As originally proposed, AM2 would have allowed a modification consisting of a single contiguous deletion of any size in diploids and autopolyploids. Given the proof of concept for using an ordered mutant collection to identify single nucleotide substitutions across subgenomes of allopolyploids, we considered whether a similar approach could be used to identify similar deletions across subgenomes such that allopolyploids would also qualify for proposed AM2. (Krasileva, *et al.*, 2017) identified just 1268 deletions in their mutant collection, which is not surprising based on observations that EMS primarily creates point mutations (Gilchrist and Haughn, 2010). Fast neutron or gamma radiation mutagenesis, however, predominantly creates deletions (Gilchrist and Haughn, 2010; Kumawat, *et al.*, 2019) and mutant population resources using these techniques have been reported (Anai, 2012; Du, *et al.*, 2021). It is likely that ordered mutant collections prepared by fast neutron bombardment or gamma radiation mutagenesis can be used to isolate similar, but not identical, deletions across subgenomes. Given this, and for simplicity, the functionality described in the modification proposed AM2, is now included in the modification described as AM1 in this final notice.

Comment: Many commenters felt that proposed AM4 was overly limiting because breeders routinely combine many more favorable genes, alleles, or quantitative trait loci (QTL) than four during a breeding project. One commenter suggested there should be no upper limit following the lead of other countries such as Canada. Another noted that a complex trait such as flowering time may require the combination of 50 to 100 QTLs.

Response: In the May 2020 final rule, when USDA first adopted the exemption for plants with modifications achievable through conventional breeding, APHIS explained:

"There are many biological and practical factors that affect a plant breeder's ability to develop a new crop variety by introducing genetic variation

and intentionally selecting for desired traits. These include the number of targeted loci and type of desired genetic changes, the genetic distance between the desired changes, generation time, breeding system (sexual or asexual), ploidy type and level and genomic complexity, resource availability (time, money, labor, and genomic resources), extent of domestication, and other factors. These factors, and thus the extent of intentionally selected genetic variation that can be introduced, vary widely among plant species. Moreover, new plant breeding techniques can make possible more complex combinations of genetic modifications than can practically be achieved through conventional breeding methods.

Initially, the exemptions will apply only to plants containing a single targeted modification in one of the categories listed. APHIS anticipates scientific information and/or experience may, over time, allow APHIS to list additional modifications that plants can contain and still be exempted from the regulations so that the regulatory system stays up to date and keeps pace with advances in scientific knowledge, evidence, and experience. This may include multiple simultaneous genomic changes." (U.S. Department of Agriculture Animal and Plant Health Inspection Service, 2020c).

Since APHIS initially adopted its exemption 4 years ago, there has been steady introgression of desired genes, alleles, and QTLs in several crops through modern conventional breeding methods. Genomic assisted breeding, genetic mapping and studies, high through-put genotyping, speed breeding, multi-parent advance generation intercrosses, and pyramid breeding strategies, to name a few, have advanced quickly and are now affordable for many crop types. New methods, like OutcrossSeq (Chen, *et al.*, 2021), are consistently emerging to improve and accelerate breeding methods for difficult to breed crops, like those for which no inbred lines are available for genetic study and breeding because they are self-incompatible, clonally propagated, or have a long generation time, making the identification or integration of agronomically important genes difficult, particularly in crops with a complex autopolyploid genome or with predominant asexual reproduction.

We also considered the progress made in breeding potato, a clonally propagated crop. Clonally propagated crops are thought to be difficult to breed because, as a result of not requiring seed production, they accumulate genetic alterations that are detrimental to breeding and hence require

heterozygosity for vigorous growth (Brown, *et al.*, 2017; Kardile, *et al.*, 2022). Recently much progress has been made in breeding inbred diploid potato lines by overcoming self-incompatibility (Kardile, *et al.*, 2022) and purging deleterious alleles causing inbreeding depression in homozygous lines (Zhang, *et al.*, 2021). These developments have led to the first potato elite inbred lines established through selfing that were crossed to successfully exploit heterosis in the F1 generation (Zhang, *et al.*, 2021).

Similarly, in banana, another clonally propagated crop, low fertility and seed viability, abnormal meiosis, and inbreeding depression have been breeding challenges, but some progress has been made in overcoming fertility problems and seed viability by screening for fertile plants and using embryo rescue to improve seed germination ((Brown, *et al.*, 2017; Batte, *et al.*, 2019)). The insight gained in overcoming inbreeding depression in potato will likely be used in other clonal crops such as banana. We are witnessing conventional breeding advancements that were once used nearly exclusively to improve easy to breed crops, now being actively used in breeding programs for difficult to breed crops.

Some crops that play key roles in nutrition security, sustainable agriculture, biodiversity, and cultural traditions, have been overlooked in agricultural crop development because they represent a small percentage of total tonnage and acreage of production or belong to resource poor nations. These crops may be difficult to breed because genetic tools have yet to be developed. However, this situation could change as advanced breeding tools become more affordable, due to the steep decline in sequencing costs, and therefore more widely deployed in all crops.

Commenters provided APHIS with examples demonstrating that many more than four favorable alleles or QTL can be pyramided. In some cases, modifications are made to more than one gene to create the desired trait. In one example, (Ye, *et al.*, 2008) noted that, in theory, with marker assisted selection coupled with gene pyramiding and double haploid practices, “a plant having as many as twenty target markers can be obtained at an almost perfect certainty in about three rounds of selection.” APHIS found several examples in rice where 10 to 11 favorable alleles or QTLs were successfully pyramided (Das, *et al.*, 2018; Dixit, *et al.*, 2020; Sandhu, *et al.*, 2021; Yadav, *et al.*, 2021). In one of the cases, the group initially pyramided 15

alleles and QTLs, with at least some in a heterozygous (non-fixed) condition but lost some in later generations that they might have retained had they chosen to use double haploid technology to fix the alleles and QTLs of interest. We found cases for pyramiding eight alleles or QTLs in tomato (Hanson, *et al.*, 2016), eight and perhaps more in wheat (Tyagi, *et al.*, 2014; Rahman, *et al.*, 2020), seven in canola (Wang, *et al.*, 2023b), six in potato (Rogozina, *et al.*, 2021), five in apple (Baumgartner, *et al.*, 2015), five in tobacco (Lewis, *et al.*, 2020), five in soybean (Diers, *et al.*, 2023), five in grape (Hádlík, *et al.*, 2024), four in coffee (de Almeida, *et al.*, 2021; Saavedra, *et al.*, 2023), and three in poplar (Lv, *et al.*, 2021). In many cases, these pyramids were fixed in the homozygous state, while in other species that are typically vegetatively propagated, some were present in the heterozygous state. For the potato and grape examples, the papers describe cases where breeder collections were screened with markers for resistance genes and individuals in the collection, representing historical crosses, were found to have pyramids of resistance genes. The other examples represent cases where the pyramids were specifically bred *de novo* to combine target genes in the population.

Given the breeding advances that have been made in many crops, the number of modifications that can be made in any crop is not static. Periodic updates to the modifications plants can contain and qualify for exemption, like this one, will remain necessary moving forward. In general, the greater the number of favorable alleles or QTLs to be pyramided in a crop, the greater the number of plants that need to be screened to obtain the desired plant. Various techniques, such as second filial (F2) enrichment, are used to reduce the numbers of plants required, but the numbers of plants required nonetheless rise exponentially with the number of alleles or QTLs to be pyramided (Bonnett, *et al.*, 2005; Wang, *et al.*, 2023a). The extent of pyramiding that is possible also depends on whether the alleles or QTLs are all present in elite lines, such that little or no backcrossing may be required to remove deleterious alleles, or whether the alleles and QTLs are being introgressed from multiple different non-elite lines and wild relatives, requiring extensive backcrossing. Taking these factors and the noted differences between species into consideration, in the final notice we are establishing the number of allowable modifications based on a

number that is readily achievable in crops with advanced breeding systems and extending this number to all crops as we see evidence of breeding advances being widely deployed. As we described earlier, for rice at least 10 modifications have already been achieved multiple times (Das, *et al.*, 2018; Dixit, *et al.*, 2020; Rahman, *et al.*, 2020; Sandhu, *et al.*, 2021; Yadav, *et al.*, 2021). Given the rapid advances in plant breeding this number of modifications will quickly, if not already, become out of date.

Therefore, in this final notice, AM2 will allow up to 12 modifications made simultaneously or sequentially. Setting the limit at 12 modifications also enables an even number of modifications in diploids, triploids, tetraploids, hexaploids, and octaploids. In terms of counting modifications, both a modification to a single allele and a pair of functionally equivalent modifications to a pair of alleles on homologous chromosomes will count as one modification. Thus, where all alleles of a given locus are modified, the maximum number of modified loci is 12 in diploids, 6 in tetraploids, 4 in hexaploids, and 3 in octoploids. Triploids and pentaploid modifications will be counted as tetraploids and hexaploids, respectively. In polyploids, if only one allele is modified in the case of a dominant mutation, the loci modified can exceed 6, 4, and 3 in tetraploids, hexaploids, and octoploids, respectively. In terms of counting, there are at least three cases where multiple DNA breaks or edits can be made and “counted” as a single modification:

1. When two guide RNAs are used to cut out a single contiguous portion of a gene or to otherwise make a single deletion of any size.

2. When multiple indels are created near the target site or at any other unintended sites with near homology to the target site with one indel being functional while the other indels have no additional effect.

3. A gene in the gene pool is inserted into the genome or an existing gene is edited several times to correspond to a gene in the gene pool.

As noted previously, in this final notice, the proposed AM4 is renumbered as AM2 and is revised as follows: “Plants with up to 12 modifications, made simultaneously or sequentially, are exempt from regulation if each modification individually qualifies the plant for exemption and occurs in a different gene.”

With respect to this final version of AM2, we wish to clarify that the phrase “individually qualifies the plant for exemption” refers to the modifications described at § 340.1(b) that qualify

plants for exemption and does not include the exemptions described in § 340.1(c). We also wish to note that when AM2 is used in combination with AM1, we are restricting the use of repair templates to create modifications across subgenomes. As noted above, we expect that ordered mutant libraries could be used to identify similar but not identical deletions across subgenomes in allopolyploid species. We have not yet identified any literature demonstrating that identical indel or deletion modifications can be achieved across subgenomes using conventional breeding methods. For this reason, we are restricting the application of AM2 in combination with AM1, when a repair template is used, to allow modification to one pair of homologous chromosomes. If new literature emerges demonstrating an identical indel or deletion modification can be achieved across subgenomes using conventional breeding methods, we will reconsider this restriction.

Comment: Several commenters asked APHIS to clarify whether AM5 applies to plants that have been cleared through the regulatory status review or petition process. Another concern raised was that AM5 would change a voluntary consultation process into a mandatory process with the requirement that the exemption only applied to plants that are “produced, grown, and observed consistent with conventional breeding methods.” Another commenter suggested removing the requirement for a plant to be produced, grown, and observed consistent with conventional breeding methods because it is not clear what APHIS meant. Some commenters noted that APHIS could restrict hypothetical, successively modified plants from AM5 by stating in associated guidance that plants that are merely hypothetical in nature would not be eligible for subsequent hypothetical modifications because they have not yet been produced, grown, and observed consistent with conventional breeding methods for the appropriate plant species.

Response: APHIS acknowledges that plants that are not subject to part 340, because they have undergone the petition process, the regulatory status review process, or meet the criteria for regulatory exemption, may be modified in accordance with the exemption. Therefore, it is no longer necessary to use proposed AM5 to describe this allowance. APHIS wishes to clarify that an exempt plant can only contain a single modification to a particular gene. For example, this means that once a modification has been made to a particular gene and that plant is not

subject to part 340, plants with successive modifications to the same gene will not qualify for exemption because such modifications are not achievable through conventional breeding.

APHIS agrees with the commenters who suggested that APHIS should no longer consider hypothetical modifications for confirmation requests. APHIS is concerned that allowing large numbers of hypothetical modifications will overburden APHIS with confirmation requests for plants that have little or no value because the plants may not be viable, may not have the intended phenotype, or have a different genotype than originally requested.

Response to General Comments on the Proposed Modifications

Comment: Pay special attention to the massive lawsuits resulting from the human health impacts of glyphosate, which would not have happened if glyphosate-resistant genetically modified organisms (GMOs) had not been released into the environment.

Response: While it is true that glyphosate has been the subject of litigation, APHIS does not agree with the commenter that glyphosate use on glyphosate resistant (GR) crops has been the primary subject of the litigation. Glyphosate is widely used in the residential lawn and garden market business segment. When glyphosate is used in the lawn and garden markets, glyphosate is not sprayed on GR crops. According to Werner Baumann, CEO of Bayer AG, more than 90 percent of the Roundup litigation claims Bayer has faced in recent years have come from the U.S. residential lawn and garden market business segment that do not involve the application of glyphosate onto GR crops (Brooks, 2021).

Comment: Absent case-specific government oversight, testing, and approval of individual GMO products, how would “voluntary” testing by manufacturers protect Americans from potentially negative health effects of consuming products engineered under such broad exemptions?

Response: The modifications (AM1 and AM2) described in this final notice pertain to products that otherwise could be produced by conventional breeding. Although conventional breeding is not risk free, the risks associated with it are manageable by accepted standards (National Research Council, 1989). The health effects of products that qualify for exemption are not expected to be different than the risks posed by conventionally bred crops and likewise manageable by accepted standards.

Comment: What level of documentation and data transparency would be required of GMO producers who might exploit the proposed exemptions?

Response: The developers of crops that qualify for exemption have no requirements to submit documentation to APHIS. If they wish confirmation from APHIS that their particular crop meets the criteria for exemption, the developer can request a confirmation request. Information needed for a confirmation request is detailed in a guide found on APHIS’ Biotechnology Regulatory Services website (<https://www.aphis.usda.gov/sites/default/files/requesting-confirmation-of-exemption.pdf>). Again, however, we wish to reiterate that this final notice describes modifications pertaining to products that could otherwise have been developed through conventional breeding. This limitation on the scope of the modifications that plants can contain and qualify for exemption precludes the sort of abuse envisioned by the commenters.

Comment: Would third-party testing be required before releasing food products produced using the proposed modifications and exempt from regulation?

Response: Oversight of all food products including those produced using plants that qualify for exemption is conducted by the U.S. Food and Drug Administration (FDA). FDA recently released guidance for industry on foods derived from plants produced using genome editing (U.S. Food and Drug Administration, 2024). FDA explained in the New Plant Variety (NPV) policy that the regulatory status of a food, irrespective of the method by which it is developed, is dependent upon objective characteristics of the food and the intended use of the food (or its components) (57 FR 22984 at 22984).² Please see the FDA’s guidance for more information (U.S. Food and Drug Administration, 2024).

Comment: One commenter suggested that USDA conduct public trials to establish the modifications are safe before finalizing the exemptions.

Response: We disagree. The modifications described in this final notice only pertain to plants with modifications that could otherwise be achieved through conventional breeding. Conventionally bred crops have a history of safe use. Public field trials of crops with modifications eligible for exemption would not be expected to reveal otherwise because

² May 29, 1992 (57 FR 22984–23005; Docket No. 92N–0139).

the use of genetic engineering, in and of itself, does not present an increased plant pest risk (National Research Council, 1987; National Research Council, 1989; National Academies of Sciences Engineering and Medicine, 2016).

Comment: The proposed modifications sidestep National Environmental Protection Act (NEPA) review, transparency, and public participation.

Response: We disagree with this comment. The exemption at § 340.1(b) excludes from the scope of regulation at part 340, modified plants that could have been created through conventional breeding to ensure that plants with similar characteristics are treated similarly from a regulatory perspective. APHIS assessed this exemption in the Programmatic Environmental Impact Statement (PEIS) prepared to support the 2020 revisions to part 340, which included a thorough, detailed, and transparent review, and invited public comment on, the description of why modified plants described at § 340.1(b) fall outside of APHIS's authority under the regulations. APHIS explained that modified plants that qualify for exemption under § 340.1(b), are no different, as a class, and in terms of plant pest risk, from comparable plants that are made through conventional breeding, which, likewise, do not come before APHIS. In May 2020, when APHIS adopted the revised part 340, APHIS expressly stated in the final rule that it would continue to update the modifications that plants can contain and qualify for exemption to further clarify the types of modified plants that do not fall within the scope of regulation. As described in the PEIS, where, as here, modified plants are not within APHIS's scope of regulation or jurisdictional authority, a NEPA analysis is not required. It is also worth noting that the modifications described in this final notice would have also fallen outside the scope of the legacy regulations previously codified at part 340, because plants with such modifications would not have met the definition of a "regulated article." §§ 340.0, 340.1 (2019). Many developers provide transparency by voluntarily submitting confirmation requests to APHIS. When APHIS confirms a modified plant meets the criteria for exemption from regulation, APHIS posts on its website the incoming submission and our response, redacted to protect Confidential Business Information, as appropriate.

Comment: The modifications may increase the amount of genome edited crops in the food supply and lead to an

increase in commingling of genome edited crops with crops that are not produced with genetic engineering or genome editing including organic crops. Crops created using genome editing may not be disclosed as bioengineered. For these two reasons, consumers wishing to purchase food made without this technology may have more limited consumer choice.

Response: Again, it is worth noting that the modifications described in this final notice would have also fallen outside the scope of the legacy regulations previously codified at 7 CFR part 340, because plants with such modifications would not have met definition of a "regulated article." §§ 340.0, 340.1 (2019). With that said, genome edited crops that meet the criteria for exemption from part 340 are currently not permitted to be used in organic production (National Organic Standards Board, 2019). Inadvertent commingling of crops exempted from part 340 would not result in loss of organic certification to the organic producer, however. Although commingling is possible, if it were to occur, we expect it to occur at a low frequency.

As we noted in the PEIS associated with the 2020 revisions to part 340, on average 1 to 3 percent of non-GE farmers have reported commodity rejection by suppliers due to the presence of GE crop material, and the number of organic farms reporting economic losses from the presence of GE material was 0.7 percent in 2010 (U.S. Department of Agriculture Animal and Plant Health Inspection Service, 2020a). In the PEIS, we also noted that we expected innovation in the agricultural biotechnology to increase under revised part 340, and there could be seen a wider variety of modified crop plants in commercial production. If development and adoption by growers of new varieties of modified crop plants does occur, there may be an increase in the potential for incidents of unintended presence of modified crop material in non-modified crops or crop products. This would primarily be due to the possibility that there would be more modified crop varieties in production and therefore more non-modified crop types that could potentially have commingling issues with the corresponding GE crops. An increase in development and adoption of new varieties of modified crops would entail maintaining segregation of modified crop products from a wider variety of non-modified and identity-preserved cropping systems along supply chains.

Though the likelihood of commingling could increase, there are

incentives to keep it low. Identity preserved systems are in place to guard against commingled products entering the marketplace and non-modified producers have economic incentives to keep it low. Furthermore, most modified plants exempt from § 340.1(b) are not immediately commercialized as they may still be subject to regulation by FDA and U.S. Environmental Protection Agency (EPA), as appropriate. From our experience with the Am I Regulated Program (AIR) under the legacy regulations, there were roughly 80 cases of plants that completed the AIR process, but only three of the modified plants were or are being grown in the United States for commercial purposes (High Oleic Acid soybean, waxy corn, and a reduced pungency mustard green). Additionally, it has been our experience that many developers whose products meet the criteria for exemption nonetheless ask for confirmation letters because the letters help them market their products domestically and overseas. These letters are posted on the APHIS website and are available to the public. Organic and other growers of non-modified crops have this resource to become aware of new genome edited crops. Conversations between neighbors and other voluntary interactions are another way for an organic grower to learn whether their neighbors are growing GE crops, and if so, to take steps to minimize commingling.

Comment: Some commenters expressed concern about off target and unintended effects.

Response: APHIS considers some off-target and unintended effects. For example, APHIS considers the unintended retention of exogenous DNA inserted as part of the modification process to be an unintended modification (e.g., DNA encoding genome modification machinery such as the Cas9 protein). APHIS also considers modifications to DNA sequences that are highly similar to the target sequence as unintended modifications (e.g., sequences found in multigene families that have the same or highly similar sequences as the intended target, pseudogenes, or other conserved sequences), as those sequences would likely be modified at frequencies exceeding low-similarity promiscuous binding. Except for § 340.1(b)(3) and AM2 involving § 340.1(b)(3) type modifications (i.e., modifications that allow for the insertion of a gene from a plant's gene pool), the modified plant must be free of any DNA that was deliberately inserted as part of the modification process, including vector sequences, and requests to confirm a plant's exempt status should include

scientific methodology describing the design or verification steps taken to anticipate, reduce, and monitor for off-target modifications to highly similar sequences. For § 340.1(b)(3) and AM2 involving § 340.1(b)(3) type modifications, only DNA from within the gene pool may be retained in the plant.

APHIS does not consider modifications occurring at sites without similarity to the target region, as these are associated with spontaneous or other types of background mutation that occur naturally in plants and do not raise plant pest risk concerns in conventional breeding programs. APHIS does not believe it is necessary to regulate such modifications of genome editing in plants because (1) the mutation rate from genome editing at sites without similarity to the target region is low relative to the background mutation rate that occurs in conventional breeding, and (2) whatever changes do occur are likely to be segregated away from the target mutation during the breeding process. Comprehensive CRISPR/Cas off-target analysis on a genome-wide scale has been performed in rice, maize, tomato, and Arabidopsis (Feng, *et al.*, 2014; Peterson, *et al.*, 2016; Nekrasov, *et al.*, 2017; Feng, *et al.*, 2018; Tang, *et al.*, 2018; Lee, *et al.*, 2019). In these cases where the frequency of mutation at sites without similarity to the target region was measured in CRISPR/Cas expressing lines and their progeny, the authors concluded that the rate of mutation was below the level of background mutation induced during seed multiplication or tissue culture (Hahn and Nekrasov, 2019). Although there can be variation in mutation rates due to the nature of the technique used and the biological system to which it is applied, the mutation rates in such conventional breeding techniques as chemical and irradiation-based mutagenesis dwarf the rate associated with genome editing methods.

Due to the nature of plant breeding—in which populations are created and evaluated, and individual plants are selected for the intended modifications—untargeted modifications (or untargeted mutations) are likely to be lost unless they are genetically linked to the targeted modification that is introduced. For these reasons, APHIS does not consider untargeted modifications (untargeted mutations) when determining eligibility for an exemption. This is also consistent with APHIS' approach regarding conventional breeding techniques.

APHIS believes that similar products should have similar regulatory

requirements. Crops made by conventional breeding are not reviewed for spontaneous and/or background mutations.

Comment: There should be no exemptions. There needs to be comprehensive safety testing and long-term environmental monitoring for all GE crops.

Response: This comment is outside the scope of this notice, and, for reasons discussed in the final rule (U.S. Department of Agriculture Animal and Plant Health Inspection Service, 2020c), we disagree with the commenter.

Comment: USDA does not and cannot demonstrate that GE plants thus exempted would not pose increased plant pest or noxious weed risks. Plants that are exempt are more disease susceptible, *e.g. Nicotiana attenuata*, low lignin plants.

Response: Consistent with the provisions in § 340.1(b)(4), the modifications that APHIS has described are not based on plant pest risk per se but, instead, are based on whether the modified plant could have been achieved through conventional breeding. Plants produced through conventional breeding are not risk free; rather, their risks are at an acceptable level that has historically not merited regulation. Plants with additional modifications listed in this final notice are not expected to have any greater risk than those having a history of safe use.

Comment: USDA has placed limitations on the modifications and these limitations are not based on plant pest risk.

Response: As described in the regulations, the modifications described in this final notice are based on modifications that could be achieved through conventional breeding. For each modification, APHIS has identified literature and publicly available information indicating proof of concept that the additional modifications are achievable through conventional breeding.

Comment: Modifications should be inclusive of the current state of scientific knowledge and not just the literature record because the literature does not capture the full range of modifications that are achievable through conventional breeding.

Response: Consistent with the provision at § 340.1(b)(4), APHIS has developed the modifications based on available literature and public information (including the comments we received in response to the proposal) describing modifications achievable through conventional breeding.

Comment: The modifications should broaden the origin boundaries for

insertions to include any sequences in the kingdom Plantae versus sexual compatibility.

Response: We acknowledge that examples of horizontal gene transfer have occurred in plants on an evolutionary time scale. Our review of the literature indicates these types of insertions do not routinely occur during the conventional plant breeding process. At this time, we will not broaden the modifications to allow insertions from any species within the kingdom Plantae.

Comment: USDA should broadly exempt all gene edited products.

Response: The exemption at § 340.1(b) is for DNA modifications that could be achieved through conventional plant breeding. Based on the available literature and public information, some types of gene editing can accomplish modifications beyond what can currently be achieved through conventional breeding. Although products with these types of edits are not currently exempt from regulation, most non-exempt plants have a pathway for commercialization through the regulatory status review process to evaluate the plant pest risk of those products.

Comment: A commenter advised APHIS to conduct regular and frequent review of regulations to stay relevant in light of new scientific developments.

Response: APHIS agrees and in fact does so. APHIS also reminds stakeholders that under § 340.1(b)(4), they can help APHIS ensure the regulations are current by informing APHIS of new scientific developments that demonstrate that additional modifications are possible through conventional breeding.

Response To Specific Comments on the Proposed Modifications

Comment: APHIS should also consider the de-regulation of cis genetically engineered crops, made by targeted insertion or CRISPR transposition systems (emerging tools to be utilized in crops).

Response: Plants with targeted insertions qualify for the exemption listed at § 340.1(b)(3) if the inserted sequence is found within the plant's gene pool. CRISPR transposition systems can be used to make cisgenic modifications to plants that qualify for exemption provided the CRISPR tools (or any foreign DNA) are segregated away from the final product.

Comment: APHIS should provide guidance for when a plant contains a modification meets more than one of the criteria for exemption.

Response: The commenter has presented an example where two cuts

are made to a single locus, a deletion that would qualify under AM1 and a targeted insertion that would qualify under § 340.1(b)(3). In cases where a plant has been edited in a manner that meets the description of more than one of the modifications listed under § 340.1(b), developers can claim either type of modification as the basis for their confirmation request.

With the new AM2, there will be cases where a plant may have modifications of multiple types listed under paragraph 340.1(b). For example, a developer might make an indel modification to one gene and a single nucleotide substitution to a second gene. In that case the developer should claim AM2 for the multiple modifications and specify the type of each modification made in the plant. APHIS will provide additional examples on its website for greater clarity. It will be fact specific based on the specific nature of the plant. We invite developers to consult with us to determine the appropriate path.

Comment: Commenters raised the point that the notice did not address triploid crops such as watermelon, banana, and plantain and aneuploids such as peppermint and complex auto/allopolyploids such as sweet potato. A commenter also pointed out that for many species the distinction between auto and allopolyploids is not always straightforward. For example, homologous recombination, one of the distinguishing characteristics of autopolyploid is thought to occur to varying degrees in allopolyploids.

Response: As we are no longer making a distinction between autopolyploids and allopolyploids in the modifications described in this final notice, these points are now moot.

Comment: A comment was made that the term “loci” is not precise when applied to allopolyploids because it implies a positional relationship remains intact in evolution and positional relationships between homoeologs could have changed during speciation prior to polyploidization.

Response: We agree with the commenter. It can be difficult to tell whether a gene in one subgenome directly corresponds to a similar gene on another subgenome. Confusion can result because gene families may have arisen due to gene duplication prior to the hybridization event that resulted in the speciation, and after speciation genetic rearrangements may have altered positional information (Adams and Wendel, 2005; Soltis, *et al.*, 2014). Furthermore, after speciation gene inactivation may have reduced the number of gene family members on one

subgenome relative to another further confounding the evolutionary relationships between genes (Adams and Wendel, 2005; Soltis, *et al.*, 2014). We wish to clarify that our meaning for genetic locus in allopolyploids pertains to a single pair of alleles in each subgenome at a fixed location and need not reflect positional relationships across other subgenomes.

Comment: Commenters requested clarification as to when an external template may be used.

Response: An external repair template may be used to generate a modification and the plant will qualify for an exemption when creating:

1. An indel without insertion of DNA or a single contiguous deletion of any size provided the final product does not retain foreign DNA (AM1). When combined with AM2, application of AM1/AM2 is restricted in creating exact modifications across subgenomes. For indels or deletions that require exact modifications for the desired outcome, the exemption allows modification to one pair of homologous chromosomes. If an external template is used to make an indel or deletion that need not be specific, such as for gene inactivation, the restriction of AM1/AM2 to one pair of homologous chromosomes does not apply;

2. A single base pair (nucleotide) substitution (§ 340.1(b)(2)); and

3. Insertion based on sequences within the gene pool (§ 340.1(b)(3)).

When an external repair template is used to make a targeted insertion representing a sequence outside the gene pool, the plant would not qualify for exemption.

Comment: The proposed modifications are at odds with international regulations especially on the number of edits allowed and with respect to ploidy. The USDA should consider evaluations undertaken by expert agencies in other geographies such as Argentina, Brazil, Canada, and the European Union.

Response: In response to these comments, APHIS has reviewed the frameworks for other international and domestic regulatory agencies that oversee products of biotechnology. Globally, regulatory frameworks for biotechnology leverage different authorities and definitions, and subsequently have different approaches to regulation. One approach uses the definition of a “living modified organism” from the Cartagena Protocol on Biosafety (Secretariat of the Convention on Biological Diversity, 2000) to determine what biotechnology products fall under a regulatory scope. This approach is now used by many

countries, including Argentina.

Beginning in 2015, and continuing with updates through 2021, Argentina has maintained a regulatory framework³ for new breeding technologies, including genome editing (Lema, 2020). In Argentina, all modified plants require evaluation to determine whether or not they are considered a GMO under Argentina law. Under the “Argentina Model,” products developed using genome editing are not considered genetically modified organisms unless they contain a “new combination of genetic material,” which it defines as “change produced in the genome of the organism by the incorporation, in a stable and joint manner, of ONE (1) or more genes or nucleic acid sequences that are part of a defined genetic construction.” Regardless of the outcome of this analysis, Argentina may impose monitoring requirements on any plant product based on its characteristics and/or novelty. Countries that have adopted approaches that are similar to the Argentina Model, include Chile, Brazil, Paraguay, Uruguay, Colombia, Guatemala, Honduras, Japan, the Philippines, and Israel.

Other countries have also recently considered how to regulate the products of genome editing within their existing regulatory frameworks. For example, in 2023, the Canadian Food Inspection Agency updated their guidance to clarify that genome edited crops do not present novel risks and, like certain other crops grown in Canada, do not require review unless the crop has an herbicide resistance trait or has both a novel trait and a potential to have significant environmental impacts (Government of Canada, 2023b; Government of Canada, 2023a). The United Kingdom also finalized a “Genetic Technology Act”⁴ in 2023 to establish new regulatory and marketing standards for plants and animals that are “precision bred” and remove such products from regulation as genetically modified organisms. Under this law, a modified plant is “precision bred” if “(a) any feature of its genome results from the application of modern biotechnology, (b) every feature of its genome that results from the application of modern biotechnology is stable, (c) every feature of its genome that results from the application of modern biotechnology could have resulted from traditional processes, whether or not in conjunction with selection techniques, alone, and (d) its genome does not

³ <https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-21-2021-346839/texto>.

⁴ Genetic Technology (Precision Breeding) Act 2023 (legislation.gov.uk).

contain any feature that results from the application of any artificial modification technique other than modern biotechnology produced through precision breeding techniques, so long as they could have resulted from traditional processes.” (emphasis added).

In February 2024, the European Parliament voted in favor of proposed legislation⁵ that would consider plants produced through “New Genomic Techniques” (NGT) (like genome editing) as conventional equivalents if such plants could also occur naturally or be produced by conventional breeding. Under the proposal, an NGT plant “is considered equivalent to conventional plants when it differs from the recipient/parental plant by no more than 20 genetic modifications” of various types (European Commission, 2023b). These include targeted modifications are similar to those APHIS has identified in § 340.1(b)(1) through (3) and in AM1 and AM2 (small insertions, deletions of any length, nucleotide substitutions, and insertions or substitutions of DNA present in the gene pool of the plant). The proposal, which has not yet reached consensus agreement among EU members, includes a mandatory verification that a plant meets the NGT criteria. Most recently, on July 11, 2024, the European Food Safety Authority (EFSA) published an opinion (European Food Safety Authority Panel on Genetically Modified Organisms, *et al.*, 2024) on the definitions and scientific justification of the NGT proposal in response to an analysis by the French Agency for Food, Environmental and Occupational Health & Safety. EFSA concluded that “it is scientifically justified to consider [certain NGT plants identified in the proposal] as equivalent to conventionally bred plants.” As a next step, the Council of the European Union will begin negotiations with member states about the specifics of the legislation—that is to say, this law is not yet final.

Changes in regulatory approaches involving products of genome editing are also being made in southeast Asia. Most recently, in July of 2024, Thailand revised its regulations to allow for the certification and subsequent release into the environment of “organisms developed from gene editing technology,” defined as “organisms that have been genetically improved in a manner similar to mutation or

hybridization, where the final product contains genetic material from donor organisms that can naturally crossbreed with the recipient organisms.” In August 2024, the Singapore Food Agency (SFA) published its framework for genome edited crops (Singapore Food Agency, 2024). SFA will regulate crops that contain foreign DNA, which includes crops with DNA that could not have been inserted naturally or been introduced into the crop using conventional breeding techniques. In cases where the developer determines their crop contains foreign DNA, SFA requires the crop to undergo a pre-market safety assessment. For crops with modifications made through genome editing that do not involve the retention of foreign DNA, developers are encouraged (but not required) to notify SFA in cases where they determine their crop does not contain foreign DNA.

Within the United States, in May 2023, the EPA issued a final rule exempting a class of plant-incorporated protectants (PIPs) created using genetic engineering from registration requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and from the food or feed residue tolerance requirements under the Federal Food, Drug, and Cosmetic Act (FFDCA) (U.S. Environmental Protection Agency, 2023). The final rule exempts PIPs from FIFRA registration and FFDCA tolerance requirements in cases where they both pose no greater risk than PIPs that EPA has already concluded meet safety requirements, and when they could have otherwise been created through conventional breeding, as follows: PIPs in which genetic engineering has been used to insert or modify a gene to match a gene found in a sexually compatible plant; and, loss-of-function PIPs in which the genetically engineered modification reduces or eliminates the activity of a gene, which then helps make the plant resistant to pests. EPA’s PIP exemption does not limit the number of modifications developers can make using genetic engineering provided the resulting PIPs meet the criteria for exemption. More recently, on February 22, 2024, FDA issued updated guidance related to the handling of NPV to affirm that “the regulatory status of foods derived from plant varieties produced using genome editing will, like that of food from other plant varieties, be based on the objective characteristics of the food and the intended use of the food (or its components)” (U.S. Food and Drug Administration, 2024).

Although there are some differences in specific details, in general, we see countries around the world adopting a

similar approach as we have for the movement of plants developed using new genome editing techniques: If a modified plant could have been developed using conventional breeding, the level of regulatory oversight will more closely align with a conventionally developed product. In 2020, when APHIS first adopted the exemption for plants with modifications achievable through conventional breeding, APHIS explained:

“There are many biological and practical factors that affect a plant breeder’s ability to develop a new crop variety by introducing genetic variation and intentionally selecting for desired traits. These include the number of targeted loci and type of desired genetic changes, the genetic distance between the desired changes, generation time, breeding system (sexual or asexual), ploidy type and level and genomic complexity, resource availability (time, money, labor, and genomic resources), extent of domestication, and other factors. These factors, and thus the extent of intentionally selected genetic variation that can be introduced, vary widely among plant species. Moreover, new plant breeding techniques can make possible more complex combinations of genetic modifications than can practically be achieved through conventional breeding methods.

Initially, the exemptions will apply only to plants containing a single targeted modification in one of the categories listed. APHIS anticipates scientific information and/or experience may, over time, allow APHIS to list additional modifications that plants can contain and still be exempted from the regulations so that the regulatory system stays up to date and keeps pace with advances in scientific knowledge, evidence, and experience. This may include multiple simultaneous genomic changes.” (U.S. Department of Agriculture Animal and Plant Health Inspection Service, 2020c).

As discussed above, APHIS has received numerous comments and supporting literature and has conducted our own extensive literature review indicating that 12 modifications are within the scope of conventional breeding for diploids and polyploids. Based on this new information, we have eliminated most restrictions on the modification of allopolyploids, eliminated the restrictions with regard to GOF modifications, and increased to 12 the number of modifications that can be made simultaneously or sequentially in plants that qualify for exemption. As such, the modifications described in this final notice bring APHIS’ treatment of plants with modifications that are

⁵ https://food.ec.europa.eu/document/download/c03805a6-4dcc-42ce-959c-e4d609010fa3_en?filename=gmo_biotech_ngt_proposal_2023-411_en.pdf.

achievable through conventional breeding into greater alignment with other countries that have adopted regulatory approaches that consider most genome edited plants as conventional equivalents, including those that allow multiple modifications and modifications in ploidy plants.

Comment: A commenter noted that several modifications might be made to the same genetic locus if successive rounds of mutagenesis were used. Thus, it seems unnecessary to limit targeted base pair substitutions to one base pair in § 340.1(b)(2).

Response: APHIS is not aware, and the commenter did not provide an example of this type of modification made by conventional breeding. Until we have more concrete proof of concept, APHIS will limit targeted modifications to a single modification per gene. This limitation applies to successive modifications made to a plant that qualifies for exemption under § 340.1(b).

Comment: A commenter noted that a certain number of nucleotides can always be present in a plant's genome simply by chance. In the European Union's proposal for the regulation of NGT, insertions or substitutions of up to twenty nucleotides are considered to be exempted from the GMO regulations, irrespective if they result in GOF or LOF. A similar sentiment was expressed in the comment that sequences of smaller sizes from outside the breeder's gene pool should be exempted.

Response: As noted above, the European Union proposal is not yet final and remains under negotiation within the European Union. As part of considering this proposal, the European Commission has made available a document entitled, "Potential criteria to determine whether a plant obtained by targeted mutagenesis or cisgenesis could also occur naturally or be produced by conventional breeding techniques," which includes a disclaimer indicating this "draft has not been adopted or endorsed by the European Commission (European Commission, 2023a). Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission." Although we are not revising the modifications to incorporate this suggestion at this time, we will continue to follow developments in the European Union as they are finalized. With that said, we wish to note that within this final notice, in AM1, we allow insertions that occur in the absence of a repair template. This repair could result in a sequence not within the gene pool and

there is no restriction on the size of the repair (insertion).

Comment: One commenter asked for clarification as to whether, in proposed AM4 and AM5, heterozygosity refers to genomic rather than allelic.

Response: In the proposed modifications, the heterozygosity referred to allelic. However, the modifications described in this final notice no longer make distinctions between allopolyploids and autopolyploids, so this point is now moot.

Comment: One commenter noted that the observation mandate in AM5 unfairly penalizes crops with excessively long breeding cycles such as trees or berries, and research groups with limited access to field trials such as small universities.

Response: Moving forward, we will only consider confirmation requests for actual plants with up to 12 modifications. Our standard for the exemption is based on a conventional breeding standard and crops with long breeding cycles are also at a similar disadvantage compared to short cycle crops under conventional breeding. The regulatory status review process provides another pathway to commercialization that may be more advantageous for long cycle crops that require more than 12 simultaneous modifications.

Comment: There is ongoing litigation on the revisions to 7 CFR part 340. New modifications should not be finalized prior to judicial ruling on the ongoing litigation.

Response: We disagree with this comment.

In May 2020, when APHIS issued the final rule outlining the updates to 7 CFR part 340, APHIS anticipated scientific information and/or experience would, over time, allow APHIS to list additional modifications that plants can contain and be exempted from the regulations so that the regulatory system stays up to date and keeps pace with advances in scientific knowledge, evidence, and experience. To ensure the regulations do not apply to plants that are equivalent to those that could be developed through conventional breeding, the May 2020 final rule established a regulatory process for continuously identifying and updating modifications that are achievable through conventional breeding and, thus, exempt from regulation (85 FR 29791–29796; § 340.1(b)). To this end, § 340.1(b)(4) provides that the Administrator may propose to exempt plants with additional modifications, based on what could be achieved through conventional breeding through

a notice published in the **Federal Register**.

As of August 2, 2024, APHIS has issued 96 responses confirming the exempt status of modified plants, reviewed 70 other modified plants through the regulatory status review process, and continued to gather information and literature about what can be achieved through conventional breeding methods. For example, as discussed more fully above, since APHIS initially adopted its exemption 4 years ago, advances in conventional breeding methods have enabled the steady introgression of desired genes, alleles, and QTLs in several crops (Krishna, *et al.*, 2023; Abdul Aziz and Masmoudi, 2024). Genomic assisted breeding, genetic mapping and studies, high through-put genotyping, speed breeding, multi-parent advance generation inter-crosses, and pyramid breeding strategies have advanced quickly and are now affordable for many crop types (Krishna, *et al.*, 2023; Abdul Aziz and Masmoudi, 2024), and new methods are consistently emerging to improve and accelerate breeding methods for difficult to breed crops, particularly in crops with a complex autopolyploid genome or with predominant asexual reproduction (Chen, *et al.*, 2021). It is important that APHIS update its list of modifications plants can contain and qualify for exemption from regulations to ensure its regulations reflect these advances in science and technology and remain rooted in the best science.

Indeed, since July 2021, APHIS has followed the established regulatory processes to identify modifications that plants can contain without being subject to part 340 (86 FR 37988 (July 19, 2021); 88 FR 78285). In late July 2021, plaintiffs filed a lawsuit in the United States District Court for the Northern District of California to challenge APHIS' May 2020 final rule.⁶ During the pendency of this litigation, countries around the globe have updated their biotechnology policies and regulations related to new plant breeding techniques (or plants with modifications achievable through conventional breeding). As described in greater detail above, many of these countries, including the United Kingdom, the Philippines, Singapore, and Thailand, treat genome edited plants (including polyploid plants) that are free of exogenous DNA as conventional plants irrespective of the number of modifications made to the plants. In contrast, because APHIS was an early

⁶ *National Family Farm Coalition, et al. v Vilsack, et al.* No. 3:21-cv-05695.

leader in establishing a regulatory exemption for plants with modifications that are achievable through conventional breeding, APHIS initially limited developers to a *single* modification of the type described in § 340.1(b)(1) through (3)—a narrower standard for conventional equivalence compared to both international regulatory frameworks and scientific literature describing what can be accomplished today through conventional breeding methods. To ensure the United States maintains its position as a global leader in agricultural biotechnology regulation and that its regulatory system and list of modifications exempt plants can contain is current and accurately reflects what can be achieved through conventional breeding methods, it is essential that APHIS issue this final notice updating the types of modifications plants can contain and qualify for exemption from regulation.

Issuing this notice is also important to avoid differential treatment for products produced through genetic engineering that are otherwise equivalent to conventionally bred and/or developed products. As discussed above, plants with modifications that are achievable through conventional breeding that qualify for exemption, are no different, as a class, and in terms of plant pest risk, from comparable plants that are made through conventional breeding, which, likewise, do not come before APHIS. Updating the list of modifications that plants can contain and qualify for exemption will ensure that APHIS’ regulations do not impose unnecessary costs on modified plants that are equivalent to those developed through conventional breeding, including expenses associated with obtaining a permit, complying with permitting conditions, and preparing submissions for regulatory status review (*i.e.*, the case-by-case method for determining whether a modified plant is

subject to part 340, described in § 340.5).

To put these costs in perspective, developers with modified plants that do not meet the criteria for regulatory exemption have the option for obtaining a permit that authorizes the use of the modified plant under conditions or submitting a regulatory status review request that seeks a determination that the plant is not subject to part 340, because it is unlikely to present an increased plant pest risk compared to the non-modified version of the plant. To date, roughly 45 percent of APHIS’ regulatory status review submissions have involved plants with modifications that would likely meet the criteria for exemption described in this final notice. On average, APHIS has taken roughly 234 days to complete its evaluation of these modified plants and determine they are not subject to regulation under part 340. Until now, developers have incurred costs associated with regulatory uncertainty, obtaining a permit and complying with associated conditions if they wish to engage in regulated activities (which, could range in cost from \$13,000–\$671,000, depending on a variety of factors) (U.S. Department of Agriculture Animal and Plant Health Inspection Service, 2020b), and preparing regulatory status review submissions for modified plants that were intended to be exempt from regulation, while APHIS has expended staff resources evaluating modified plants that were not intended to fall within the scope of part 340, which has increased workloads, and, in turn, drawn criticism for increased regulatory processing times and calls for improvement (Bass and Kovak, 2024; Kovak and Bass, 2024; US Congress Committee on Appropriations, 2024). Beyond this, if APHIS were to continue imposing unnecessary regulatory costs on plants with modifications achievable through conventional breeding, the United States could face the risk of U.S.

investors going to countries with regulatory frameworks that already treat such modifications as conventional equivalents, including global agricultural competitors (Clayton Yeutter Institute Round Table Discussion, 2023), at a time when the United States seeks to advance the U.S. bioeconomy and biotechnology.

Along these lines, in September 2022, the President issued Executive Order 14081, entitled “Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure Bioeconomy,” which directs regulatory agencies to improve the efficiency of biotechnology regulations (Executive Office of the President, 2022). Issuing this notice directly supports Section 8 of this Executive Order, will aid the United States in maintaining its position as a global leader in agricultural biotechnology, and will help keep U.S. developers working in the United States on products that help U.S. producers tackle climate, resource, and food security challenges.

Lastly, it is important to note that the modified plants that are described in this final notice and that are eligible for exemption under § 340.1(b) have never been subject to regulation under part 340—these modified plants were not intended to be within the scope of the revised regulations (part 340 (2020)) and were not within the scope of the legacy regulations (part 340 (2019)), and their conventionally bred counterparts have not been subject to regulation. In fact, if the May 2020 final rule that established the exemption for plants with modifications achievable through conventional breeding were to be set aside, it would mean that all the plants containing the modifications described in this notice—and more—would still be outside the scope of regulation.

The following table summarizes the modifications and their applicability to polyploids:

TABLE 1—SUMMARY OF MODIFICATIONS AND APPLICABILITY TO POLYPOIDS

Notes	Designation	Modification
1 pair of homologous chromosomes	§ 340.1(b)(1)	The genetic modification is a change resulting from cellular repair of a targeted DNA break in the absence of an externally provided repair template.
1 pair of homologous chromosomes	§ 340.1(b)(2)	The genetic modification is a targeted single base pair substitution.
1 pair of homologous chromosomes	§ 340.1(b)(3)	The genetic modification introduces a gene known to occur in the plant’s gene pool or makes changes in a targeted sequence to correspond to a known allele of such a gene or to a known structural variation present in the gene pool.
1 pair of homologous chromosomes across subgenomes without repair template and one pair of homologous chromosomes with repair template.	340.1(b)(4)(vi)(AM1) ..	An indel or contiguous deletion of any size, made at a targeted location, with or without insertion of DNA if generated without using a repair template, or without insertion of DNA if generated using a repair template.

TABLE 1—SUMMARY OF MODIFICATIONS AND APPLICABILITY TO POLYPOIDS—Continued

Notes	Designation	Modification
Allows up to 12 simultaneous (multiplex) or sequential modifications.	340.1(b)(4)(vi)(AM2) ..	Plants with up to 12 modifications, made simultaneously or sequentially, are exempt from regulation if each modification individually qualifies the plant for exemption and occurs in a different gene. Modifications to either a single allele or pair of alleles on homologous chromosomes will count as one modification. See website for information on counting modifications.

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Accordingly, pursuant to the process established under § 340.1(b)(4), we are adopting the two additional modifications articulated in this notice for the reasons set forth in our initial notice and in this final notice.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 6th day of November 2024.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2024–26232 Filed 11–12–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Environmental Impact Statement; Coon Creek Watershed

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability; record of decision.

SUMMARY: This notice of availability presents the Record of Decision (ROD) on a Watershed Project Plan—Programmatic Environmental Impact Statement (Plan-PEIS) for the Coon Creek Watershed prepared in partnership with La Crosse, Monroe, and Vernon Counties, Wisconsin (Sponsors). This notice announces the plan to proceed with the implementation of Alternative 2—Proposed Action—Decommission Dams, identified in the Plan-PEIS. Alternative 2 proposes to decommission all 14 dams by excavating a notch to pass the 100-year flood without impounding water. This action will avoid environmental impacts to the extent possible and mitigate impacts that are unavoidable.

ADDRESSES: You may request a copy of the ROD from: Steve Becker, NRCS State Conservation Engineer, 8030 Excelsior Drive, Suite 200, Madison, WI 53717.

FOR FURTHER INFORMATION CONTACT: Steve Becker; telephone: (608) 400–6176; or email: steve.becker@usda.gov. Individuals who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Decision

Natural Resources Conservation Service (NRCS) has prepared a ROD following completion of the Plan-PEIS. The Plan-PEIS provides a retrospective analysis of the existing flood control project and then evaluates alternatives for the final disposition of 14 flood control dams. The purpose of the Plan-PEIS is to ensure agencies consider the environmental impacts of their action in decision making. NRCS involvement is through Public Law 83–566, Watershed Protection and Flood Prevention Act, as amended. The ROD is available for viewing at the following link: <https://www.wfkandccwatersheds.com/2023>.

NRCS has decided to assist the Sponsors with implementing Alternative 2 which proposes to decommission all 14 dams in the watershed.

Background

The Coon Creek Watershed has an area of 90,601 acres (141.6 square miles) to the confluence with the Mississippi River. The focused planning area for the Plan-PEIS is 68,762 acres (107.4 square

miles). The Plan-PEIS follows an original Watershed Work Plan developed in 1958 to reduce flood damages in the Coon Creek valley under the Watershed Protection and Flood Prevention Act of 1954, as amended.

The major problems in the watershed in 1958 were floodwater damages to: crops and pasture, fences, farmsteads, machinery, buildings, livestock, county and township roads and bridges, and urban areas of Coon Valley and Chaseburg. Project measures implemented under the original Watershed Work Plan included 14 flood control dams installed between 1961 and 1964 with a total capacity of 1,160 acre-feet to regulate flood flows from 21 square miles, or 27 percent of the watershed above the village of Coon Valley. Project measures also included a multitude of land treatment practices to reduce erosion and sedimentation behind the dams. The dams have now completed their Federal interest or original economic evaluation period of 50 years.

On the night of August 27, 2018, seven watershed dams over-topped and three dams failed including the Luckasson Dam (CC 21); Blihovde Dam (CC23); Korn Dam (CC 29). Rainfall amounts up to 11 inches were reported on the night of August 27 and early morning of August 28. Additional rainfall amounts up to 7 inches were reported in the afternoon of August 28 after the dam failures.

The dams failed (breached) along the interface between the earthfill and highly jointed sandstone abutments. Each breach extended full depth to the valley floor. No one was injured or killed. Large debris fields were observed downstream of the dams for about 2 miles. Barns and outbuildings were destroyed. An unoccupied house was moved off its foundation. Agricultural lands and road crossings were damaged. Engineering investigations concluded that flow through the jointed sandstone during high pool stage caused internal erosion and piping of the earthfill dam and contributed to the failures. The Sponsors and NRCS are concerned that a similar vulnerability exists in the remaining 11 dams.

Environmental Review

The ROD summarizes the findings of the Plan-PEIS and provides the basis for a decision to decommission 14 flood control dams in the Coon Creek watershed. The watershed project plan and the environmental document were combined in the single Plan-PEIS document. NRCS is the lead Federal agency responsible for the content and quality of the Plan-EIS for the purposes

of the National Environmental Policy Act (NEPA), Principles, Requirements, and Guidelines (PR&G) for Federal Investments in Water Resources and National Historic Preservation Act (NHPA) compliance.

The ROD is issued for the NEPA process (42 U.S.C. 4321–4347) which follows the NRCS NEPA regulations in 7 CFR part 650, subpart A, and 7 CFR part 622. The NRCS NEPA regulations adopt the Council of Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508) in total.

Alternatives

Considered alternatives included: no action, repair, rehabilitation, relocation, replacement, removal, and construction of additional dams. Considered alternatives also included the substitution of large watershed dams with a multitude of smaller farm ponds. Further effort was made to evaluate the effects of various land management strategies to reduce watershed runoff and flood damages were compared for present land use against a full watershed conversion from cropland to grassland.

Two of nine alternatives were provided for detailed study and comparative analysis: No action and Decommission dams. The No Action alternative does not address dam safety. Two failed dams, plus three failures in the adjacent Coon Creek Watershed, present a high probability for future failures. The State Dam Safety Program has issued an administrative order to Monroe County, as the owner, to repair or remove the two failed dams; similarly, they would likely order the repair or removal of the seven remaining dams if they fail in the future. The Decommission Dams alternative proposes to decommission all nine dams to prevent future dam failures and potential loss of life and property damage.

Factors Considered in Making the Decision

Geologic and geotechnical engineering investigations were conducted following the failures of CC 21, CC 23, and CC 29. The investigation report concluded that flow through the fractured sandstone abutments during high pool stages contributed to the failures. A similar vulnerability is believed to exist in the remaining structures.

Failure of the remaining dams could result in loss of life and would likely cause downstream flood, erosion, and sedimentation damages to cropland, farm structures, road crossings, and utilities. Dam failures would also result

in erosion and sedimentation of streams resulting in adverse impacts to fish and wildlife habitat.

All programmatic alternatives have submarginal economic performance. They have negative discounted net economic efficiency and very low benefit to cost ratios. However, the preferred alternative of dam decommissioning decreases People at Risk (PAR) from a dam failure and increases length of natural stream connectivity for habitat and recreation. The preferred alternative is justified by the social (PAR and recreation) and environmental (stream restoration) accounting of the PR&G for Federal Investments in Water Resources.

Public Notice

As specified in 7 CFR 650.12(c) and 40 CFR 1505.2, the Draft PEIS public notice was initiated by publication of the Draft PEIS on December 22, 2023, and published in the **Federal Register** (88 FR 88610), as identified by EIS number 20230180 in the Environmental Protection Agency's (EPA) Central Data Exchange (CDX) system. Concluding the initial public notice, essential comments were addressed and incorporated in the Final PEIS. The Final PEIS was made available for review through EPA's CDX system on May 17, 2024, and published in the **Federal Register** (89 FR 43401).

Conclusion

The Plan-PEIS for the Coon Creek Watershed uses all practical means, consistent with considerations of national policy, to meet the goals established in NEPA. The Plan-PEIS will serve the overall public interest and meet the needs of the project sponsors. The Plan-PEIS has been prepared, reviewed, and accepted in accordance with the provisions of NEPA as implemented by Departmental regulations for the preparation of a PEIS. After considering a broad range of alternatives, the PEIS has found Alternative 2—Proposed Action—Decommission Dams, to be the environmentally preferable alternative to serve the Sponsor's purpose and need.

NRCS has decided to assist Sponsors with the implementation of Alternative 2 to decommission all 14 dams by excavating a notch to pass the 100-year flood without impounding water while avoiding environmental impacts to the extent possible and mitigating for impacts that are unavoidable.

NRCS has prepared a concise ROD for this action. The ROD was prepared and will be signed by the State Conservationist (STC) following the 30-day administrative action period

initiated by the EPA's publication of the notice of availability of the Final PEIS in the **Federal Register**. The ROD will be distributed to all who provided essential comments on the Draft PEIS and will be available for review upon request.

Federal Assistance Programs

The title and number of the Federal Assistance Program as found in the Assistance Listing¹ to which this document applies is 10.904, Watershed Protection and Flood Prevention.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This project is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and telephone) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may

¹ See <https://sam.gov/content/assistance-listings>.

be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at: <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; (2) Fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Joseph Schmelz,

*Acting Wisconsin State Conservationist,
Natural Resources Conservation Service.*

[FR Doc. 2024-26266 Filed 11-12-24; 8:45 am]

BILLING CODE 3410-16-P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights (USCCR).

ACTION: Notice.

SUMMARY: The Commission announces a public briefing, Federal Response to Teacher Shortage Impacts on Students with Disabilities.

DATES: Friday, November 15, 2024, 10 a.m. ET.

ADDRESSES: The briefing is open to the public and can be attended via live stream on the Commission's YouTube page at: <https://www.youtube.com/usccr>.

FOR FURTHER INFORMATION CONTACT: Joe Kim (202) 499-0263; publicaffairs@usccr.gov.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 116-156, 1134 Stat. 700 (2020), the U.S. Commission on Civil Rights will hold a briefing on, Friday, November 15, 2024, on the Federal Response to Teacher Shortage Impacts on Students with Disabilities. This investigation will analyze how national teacher shortages, exacerbated by the 2020 pandemic, have impacted students with disabilities. The investigation will focus on challenges schools face in hiring and retaining special education professionals, and the federal government's response to address these challenges.

This briefing is open to the public and is accessible via live stream at <https://www.youtube.com/usccr>. (* Streaming information subject to change.)

Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, November 15, 2024, is <https://www.streamtext.net/player?event=USCCR>. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

To request additional accommodations, persons with disabilities should email access@usccr.gov by Tuesday, November 12, 2024, indicating "accommodations" in the subject line.

Briefing Agenda for Federal Response to Teacher Shortage Impacts on Students With Disabilities

10 a.m.-4:50 p.m.

All times Eastern Standard Time

I. Introductory Remarks: 10:00-10:10 a.m.

II. Panel 1: Public Education in the Post-Pandemic Era: 10:10-11:20 a.m.

III. Break: 11:20-11:30 a.m.

IV. Panel 2: Education Advocacy Discussion of the Teacher Shortage: 11:30 a.m.-12:40 pm

V. Lunch: 12:40-2:10 p.m.

VI. Panel 3: From the Field: Educators on the Teacher Shortage: 2:10 p.m.-3:20 p.m.

VII. Break: 3:20-3:30 p.m.

VIII. Panel 4: From the Field: Hearing from Impacted Persons: 3:30-4:40 p.m.

IX. Closing Remarks: 4:40-4:50 p.m.

X. Adjourn Meeting.

** Public Comments will be accepted through written testimony.

* Schedule is subject to change.

Call for Public Comments

In addition to the testimony collected on Friday, November 15, 2024, via public briefing, the Commission welcomes the submission of material for consideration as we prepare our report. Please submit such information to teachershortage@usccr.gov no later than December 16, 2024, or by mail to OCRE/ Public Comments, ATTN: Teacher Shortage, U.S. Commission on Civil Rights, 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425.

Dated: November 8, 2024.

Tina Louise Martin,

USCCR Director of Management.

[FR Doc. 2024-26494 Filed 11-8-24; 4:15 pm]

BILLING CODE 6335-01-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; Annual Integrated Economic Survey (AIES)

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 August 26, 2024, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Annual Integrated Economic Survey (AIES).

OMB Control Number: 0607-1024.

Form Number(s): This electronic collection has no form number.

Type of Request: Regular submission, Request for a Revision of a Currently Approved Collection.

Number of Respondents: 305,340.

Average Hours per Response: 2 hours, 34 minutes.

Burden Hours: 784,950.

Needs and Uses: The U.S. Census Bureau requests Office of Management and Budget (OMB) approval to revise the Annual Integrated Economic Survey (AIES). The AIES is a survey which has integrated and replaced seven existing annual business surveys into one survey. The AIES provides the only comprehensive national and subnational data on business revenues, expenses, and assets on an annual basis. The AIES is designed to combine several Census Bureau collections to reduce respondent burden, increase data quality, and allow the Census Bureau to operate more efficiently.

The AIES collects the following information from employer businesses in sample:

- Business characteristics, including employment, operating status, organizational change, ownership information, and co-op status
- Business classification, including business activity, type of operation, and tax status

- Revenue, including sales, shipments, and receipts, revenue by class of customer, taxes, contributions, gifts, and grants, products, and e-commerce activity
- Operating expenses, including purchased services, payroll, benefits, rental payments, utilities, interest, resales, equipment, materials and supplies, research and development, and other detailed operating expenses
- Assets, including capital expenditures, and inventories
- Robotic equipment expenditures and usage

Additional topics of collections in the AIES include sources of revenue and/or expense for providers (e.g., hospitals and other businesses in the health industry) of select services such as inpatient days, outpatient visits to hospitals, patient visits for other selected health industries, revenue from telemedicine services, and expenses for electronic health records. Merchandise lines data will be collected from businesses operating in select retail industries. North American Product Classification System (NAPCS) broadlines will be collected from businesses in manufacturing.

The AIES may include new questions each year based on relevant business topics. Potential topics for such new questions could include technological advances, management and business practices, exporting practices, and globalization. Any new questions will be submitted to OMB for review using the appropriate clearance vehicle.

To reduce respondent burden in the 2024 Annual Integrated Economic Survey, the Census Bureau plans to implement several key changes to streamline the data collection process. In the 2023 AIES, we collected select data at both the company and establishment levels. For the 2024 AIES, we will collect this overlapping data exclusively at the establishment-level, allowing the Census Bureau to derive necessary company-level information without additional input from respondents. We have also eliminated questions that frequently resulted in poor reporting and significant data suppression, leading to a clearer and more manageable survey experience. To further enhance efficiency, some items will now be collected only in the first year of a new sample, facilitating effective content rotation. Additionally, we have combined specific content to minimize suppression rates and increase the availability of usable data. The Census Bureau removed content that was not disseminated to the public and/or was collected solely for a federal

stakeholder, which was deemed non-essential for their programs following discussions with the stakeholders and gaining mutual agreement.

Additionally, approximately 80,000 single-unit companies will be removed from collection and will not receive a questionnaire. The Census Bureau will obtain data for these non-mailed companies using information from the administrative records of the IRS and the Social Security Administration.

These changes are designed to create a more efficient survey process while maintaining our commitment to high data quality standards.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the collection or the OMB Control Number 0607–1024.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–26270 Filed 11–12–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–883]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results and Rescission, in Part, 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) preliminarily finds that certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea) were sold in the United States at less than normal value during the period of review (POR) October 1, 2022, through September 30,

2023. Additionally, Commerce is rescinding the review, in part, with respect to 46 companies that had no entries of subject merchandise during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2016, Commerce published in the **Federal Register** an antidumping duty order on hot-rolled steel from Korea.¹ On October 3, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the Order for the POR.² On December 6, 2023, based on timely requests for an administrative review, Commerce initiated this administrative review of the Order with respect to 48 companies.³ On May 22, 2024, pursuant to 19 CFR 351.213(h)(2), we extended the deadline to issue these preliminary results to no later than October 30, 2024.⁴ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁵ The deadline for the preliminary results is now November 6, 2024.

Scope of the Order

The products covered by this Order are hot-rolled steel from Korea. A full description of the scope of the Order is contained in the Preliminary Decision Memorandum.⁶

¹ See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders*, 81 FR 67962 (October 3, 2016) (Order).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review and Join Annual Inquiry Service List*, 88 FR 68098 (October 3, 2023).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 84784, 84786–87 (December 6, 2023).

⁴ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2022–2023," dated May 22, 2024.

⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁶ See Memorandum, "Decision Memorandum for the Preliminary Results of Antidumping Duty

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review when there are no reviewable suspended entries. Based on our analysis of U.S. Customs and Border Protection (CBP) information, we preliminarily determine that 46 companies had no entries of subject merchandise during the POR.⁷ On December 19, 2023, we notified interested parties of our intent to rescind this administrative review with respect to the 46 companies, listed in Appendix II of this notice, that had no reviewable suspended entries during the POR.⁸ No parties commented on our intent to rescind. As a result, we are

rescinding this review, in part, with respect to the 46 companies, as listed in Appendix II of this notice.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). We calculated export price and constructed export price in accordance with section 772 of the Act and we calculated normal value in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as Appendix I to this notice. The

Preliminary Decision Memorandum is a public document and is made available to the public 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 Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Results of Review

We preliminarily determine that the following estimated weighted-average dumping margins exist for the period October 1, 2022, through September 30, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
Hyundai Steel Company	0.89
POSCO; POSCO International Corporation ⁹	2.10

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any 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).

Public Comment

As provided in sections 782(i)(3)(A)–(B) of the Act, we intend to verify the response of POSCO and POSCO International Corporation after these preliminary results. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the verification report is issued in this review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁰ Interested parties who submit case briefs or rebuttal briefs in this administrative review must submit: (1) a table of contents listing

each issue; and (2) a table of authorities.¹¹

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this administrative review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹² Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results of this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the

service of documents in 19 CFR 351.303(f).¹³

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce via ACCESS within 30 days after the date of publication of this notice. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised at the hearing will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.¹⁴ Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in written briefs, no later

Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea; 2022–2023,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum), at 3–5.

⁷ See Memorandum, “Mandatory Respondent Identification,” dated December 19, 2023.

⁸ See Memorandum, “Intent to Rescind Review, in Part,” dated December 19, 2023.

⁹ As we did in previous segments of this proceeding, we continue to treat these two companies as a single entity for the preliminary results of this review. *See, e.g., Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2019–2020*, 87 FR 12660, 12661 n.2 (March 7, 2022).

¹⁰ See 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in*

Antidumping and Countervailing Duty Proceedings, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹¹ See 19 CFR 351.309(c)(2) and (d)(2).

¹² We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹³ See *APO and Service Final Rule*, 88 FR 67069.

¹⁴ See 19 CFR 351.310(d).

than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of the final results of this administrative review, pursuant to section 751(a)(2)(A) of the Act, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. If a respondent's weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.50 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).¹⁵ If the respondent's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.¹⁶

For entries of subject merchandise during the POR produced by either of the individually examined respondents for which they did not know that the merchandise was destined to the United States, we will instruct CBP to liquidate these entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.¹⁷ For the companies identified in Appendix II for which we are rescinding the review with these preliminary results, we will instruct CBP to assess antidumping duties on all appropriate entries at rates equal to the cash deposit of antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue these rescission instructions to CBP after the date of publication of this notice in the **Federal Register**.

The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future

deposits of estimated duties, where applicable.¹⁸ Commerce intends to issue assessment instructions regarding the individually examined respondents to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the individually examined respondents will be equal to the weighted-average dumping margins established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the investigation but the producer is, then the cash deposit rate will be the rate established in the most recently completed segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 6.05 percent, the all-others rate established in the investigation.¹⁹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that

reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of countervailing duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(d)(3), 19 CFR 351.213(h)(2), and 19 CFR 351.221(b)(4).

Dated: November 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Rescission of Administrative Review, in Part
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

Appendix II

Companies Rescinded From the Administrative Review

1. Aekyung Chemical
2. AJU Besteel Co., Ltd.
3. Ameri Source Korea
4. Chemaven Co., Ltd.
5. Cj Cheiljedang Corp.
6. Cj Global Logistics Service Inc.
7. Dongkuk Industries Co., Ltd.
8. Dongkuk Steel Mill Co., Ltd.
9. Geco Industries Co., Ltd.
10. Geumok Tech. Co., Ltd.
11. Goi Tech Industries Co., Ltd.
12. Golden State Corporation
13. Gs Global Corp.
14. Gs Holdings Corp.
15. Hanawell Co., Ltd.
16. Hanjin Gls Co., Ltd.
17. Hankook Co., Ltd.
18. HISTEEL
19. Hyosung Corporation
20. Hyosung Tnc Corporation
21. Hyundai Glovis Co., Ltd.
22. Hyundai Rb Co., Ltd.
23. Il Jin Nts Co., Ltd.
24. Inchang Electronics Co., Ltd.
25. J&K Korea Co., Ltd.
26. Jeil Industries Co., Ltd.
27. Jeil Metal Co., Ltd.
28. Jin Young Metal
29. Jun Il Co., Ltd.
30. KG Dongbu Steel Co., Ltd.
31. KG Steel Corporation
32. Kumkang Kind Co., Ltd.
33. Lg Electronics Inc.
34. Maxflex Corp.
35. Mitsubishi Corp. Korea
36. Mitsui Chemicals & Skc Polyurethane
37. Nexteel Co., Ltd.
38. Samsung Electronics Co., Ltd.
39. SeAH Steel Corporation
40. Sja Inc. (Korea)

¹⁵ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

¹⁶ *Id.*, 77 FR at 8102–03; see also 19 CFR 351.106(c)(2).

¹⁷ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹⁸ See section 751(a)(2)(C) of the Act.

¹⁹ See *Order*, 81 FR at 67965.

41. Solvay Silica Korea
42. Soon Ho Co., Ltd.
43. Sumitomo Corp. Korea Ltd.
44. Sungjin Precision
45. Wintec Korea Inc.
46. Wonbangtech Co., Ltd.

[FR Doc. 2024–26253 Filed 11–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–176]

Low Speed Personal Transportation Vehicles From the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Jerry Xiao at (202) 202–482–2273 and Gordon Struck at (202) 202–482–8151, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2024, the U.S. Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation of imports of low speed personal transportation vehicles (LSTPVs) from the People's Republic of China (China).¹ Currently, the preliminary determination is due no later than December 4, 2024.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1)(A)(b)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) the petitioner² makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are

cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On November 5, 2024, the petitioner submitted a timely request that Commerce postpone the preliminary determination in the LTFV investigation.³ The petitioner requested postponement of the preliminary determination because it believes that additional time is necessary to ensure that Commerce, the petitioner, and any other interested parties are able to sufficiently review all questionnaire responses and request clarification and additional information as necessary.”⁴

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations by 50 days (*i.e.*, 190 days after the date on which this investigation was initiated). As a result, Commerce will issue its preliminary determination no later than January 23, 2025. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–26222 Filed 11–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–876]

Certain Epoxy Resins From Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that imports of certain epoxy resins (epoxy resins) from Taiwan are being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2023, through March 31, 2024. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beuley or Benito Balasteros, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3269 or (202) 482–7425, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 29, 2024.¹ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.² On August 12, 2024, Commerce postponed the preliminary determination of this investigation until November 6, 2024.³

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.⁴ A list of topics

¹ *See Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Initiation of Less-Than-Fair-Value Investigations*, 89 FR 33324 (April 29, 2024) (*Initiation Notice*).

² *See* Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

³ *See Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 89 FR 65583 (August 12, 2024).

⁴ *See* Memorandum, “Decision Memorandum for the Preliminary Determination in the Less-Than-

¹ *See Certain Low Speed Personal Transportation Vehicles from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 89 FR 57865 (July 10, 2024) (*Initiation Notice*).

² The petitioner is the American Personal Transportation Vehicle Manufacturers Coalition.

³ *See* Petitioner's Letter, “Request for Postponement of the Preliminary Determination,” dated November 5, 2024.

⁴ *Id.* at 2.

included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The products covered by this investigation are epoxy resins from Taiwan. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*, as well as additional language proposed by Commerce. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, see the Preliminary Scope Decision Memorandum.⁷ Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*. See the scope in Appendix I to this notice. Pursuant to 19 CFR 351.309(c)(2), interested parties may address these comments in scope case briefs, which may be submitted no later than 30 days after the issuance of the Preliminary Scope Decision Memorandum.⁸

Methodology

Commerce is conducting this investigation in accordance with section

Fair-Value Investigation of Certain Epoxy Resins from Taiwan" dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁶ See *Initiation Notice*, 89 FR at 33324–25.

⁷ See Memorandum, "Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Preliminary Scope Decision Memorandum," dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

⁸ *Id.*

731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, see the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated weighted-average dumping margins for Chang Chun Plastics Co., Ltd. (Chang Chun) and Nan Ya Plastics Corporation (Nan Ya) that are not zero, *de minimis*, or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.⁹

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

⁹ With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. As complete publicly ranged sales data were available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, see Memorandum, "Calculation of the All-Others Rate for the Preliminary Determination," dated November 6, 2024.

Exporter/producer	Weighted-average dumping margin (percent)
Chang Chun Plastics Co., Ltd	9.43
Nan Ya Plastics Corporation	20.61
All Others	14.81

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. However, because Commerce preliminarily did not make an affirmative determination for countervailable export subsidies in the companion CVD proceeding,¹⁰ Commerce has not offset the estimated weighted-average dumping margins in the table above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary

¹⁰ See *Certain Epoxy Resins from Taiwan: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 89 FR 74896 (September 13, 2024), and accompanying Preliminary Decision Memorandum.

determination within five days of any 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).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. A timeline for the submission of case briefs and written comments will be released to interested parties at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹¹ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹²

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹³ Further, we request that interested parties limit their executive summary of each issue to no more than

450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁴

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On October 4, 2024, pursuant to 19 CFR 351.210(e), Nan Ya requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹⁵ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the

preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: November 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation is fully or partially uncured epoxy resins, also known as epoxide resins, polyepoxides, oxirane resins, ethoxyline resins, diglycidyl ether of bisphenol, (chloromethyl)oxirane, or aromatic diglycidyl, which are polymers or prepolymers containing epoxy groups (*i.e.*, three-membered ring structures comprised of two carbon atoms and one oxygen atom). Epoxy resins range in physical form from low viscosity liquids to solids. All epoxy resins are covered by the scope of this investigation irrespective of physical form, viscosity, grade, purity, molecular weight, or molecular structure, and packaging.

Epoxy resins may contain modifiers or additives, such as hardeners, curatives, colorants, pigments, diluents, solvents, thickeners, fillers, plasticizers, softeners, flame retardants, toughening agents, catalysts, Bisphenol F, and ultraviolet light inhibitors, so long as the modifier or additive has not chemically reacted so as to cure the epoxy resin or convert it into a different product no longer containing epoxy groups. Such epoxy resins with modifiers or additives are included in the scope where the epoxy resin component comprises no less

¹¹ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹² See 19 CFR 351.309(c)(2) and (d)(2).

¹³ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁴ See *APO and Service Final Rule*.

¹⁵ See Nan Ya's Letter, "Request for Extension of Final Determination," dated October 4, 2024.

than 30 percent of the total weight of the product. The scope also includes blends of epoxy resins with different types of epoxy resins, with or without the inclusion of modifiers and additives, so long as the combined epoxy resin component comprises at least 30 percent of the total weight of the blend.

Epoxy resins that enter as part of a system or kit with separately packaged co-reactants, such as hardeners or curing agents, are within the scope. The scope does not include any separately packaged co-reactants that would not fall within the scope if entered on their own.

The scope includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, introducing, or removing modifiers or additives, or performing any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the subject country.

The scope also includes epoxy resin that is commingled or blended with epoxy resin from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the scope are phenoxy resins, which are polymers with a weight greater than 11,000 Daltons, a Melt Flow Index (MFI) at 200 °C (392 °F) no less than 4 grams and no greater than 70 grams per 10 min, Glass-Transition Temperatures (T_g) no less than 80 °C (176 °F) and no greater than 100 °C (212 °F), and which contain no epoxy groups other than at the terminal ends of the molecule.

Excluded from the scope are certain paint and coating products, which are blends, mixtures, or other formulations of epoxy resin, curing agent, and pigment, in any form, packaged in one or more containers, wherein (1) the pigment represents a minimum of 10 percent of the total weight of the product, (2) the epoxy resin represents a maximum of 80 percent of the total weight of the product, and (3) the curing agent represents 5 to 40 percent of the total weight of the product.

Excluded from the scope are preimpregnated fabrics or fibers, often referred to as “pre-pregs,” which are composite materials consisting of fabrics or fibers (typically carbon or glass) impregnated with epoxy resin.

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3907.30.0000. Subject merchandise may also be entered under subheadings 3907.29.0000, 3824.99.9397, 3214.10.0020, 2910.90.9100, 2910.90.9000, 2910.90.2000, and 1518.00.4000. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Discussion of the Methodology

V. Currency Conversion

VI. Recommendation

[FR Doc. 2024–26258 Filed 11–12–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–166]

Certain Epoxy Resins From the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain epoxy resins (epoxy resins) from the People’s Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2023, through March 31, 2024. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–6312.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this LTFV investigation on April 23, 2024.¹

On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.² On August 12, 2024, Commerce postponed the preliminary determination of this investigation until November 6, 2024.³

¹ See *Certain Epoxy Resins from the People’s Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Initiation of Less-Than-Fair-Value Investigations*, 89 FR 33324 (April 29, 2024) (*Initiation Notice*).

² See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

³ See *Certain Epoxy Resins from the People’s Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 89 FR 65583 (August 12, 2024).

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.⁴ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The products covered by this investigation are epoxy resins from China. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce’s regulations,⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*, as well as additional language proposed by Commerce. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, see the Preliminary Scope Decision Memorandum.⁷ Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*. See the scope in Appendix I to this notice. Pursuant to 19 CFR 351.309(c)(2), interested parties may submit additional comments on the scope of this investigation in scope case briefs, which may be submitted no later than 30 days after the issuance of the

⁴ See Memorandum, “Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Epoxy Resins from the People’s Republic of China,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁶ See *Initiation Notice*, 89 FR at 33324–25.

⁷ See Memorandum, “Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Epoxy Resins from the People’s Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Preliminary Scope Decision Memorandum,” dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

Preliminary Scope Decision Memorandum.⁸

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with 772(a) of the Act. Because China is a non-market economy, within the meaning of section 771(18) of the Act, Commerce has calculated normal value in accordance with section 773(c) of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences, for the China-wide entity, which includes (1) Huntsman Advanced Materials (Guangdong) Company Ltd.; (2) Artmate Co. Ltd.; (3) Changzhou Original Chemical Co., Ltd.; (4) Jiangsu

Ruiheng New Material Technology Co., Ltd.; (5) Jiangsu Sanmu Group Co., Ltd.; (6) Jushi Group Company Ltd.; (7) Mercury Far East Enterprise Ltd.; and (8) Shandong Deyuan Epoxy Resin Co., Ltd. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206(c), Commerce preliminarily determines that critical circumstances exist with respect to imports of epoxy resins from China for the China-wide entity. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice*,⁹ Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.¹⁰ In this case, because no respondent qualified for a separate rate, producer/exporter combination rates were not calculated. For a full description of the separate rate status of interested parties in this investigation, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists:

Producer/exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset (percent))
China-Wide Entity	354.99 *	344.45

* Rate based on facts available with adverse inferences.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as indicated in the chart above as follows: (1) for all combinations of China producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (2) for all third-country exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the China-wide entity that supplied that third-country exporter.

Section 733(e)(2) of the Act provides that, given an affirmative determination

of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise from the China-wide entity. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of merchandise from the China-wide entity that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies,

Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the "Preliminary Determination" section's chart of estimated weighted-average dumping margins above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margin calculated in this preliminary determination unadjusted for the passed-through domestic subsidies or for export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of its 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). However,

⁸ *Id.*

⁹ *See Initiation Notice*, 89 FR at 33328–33329.

¹⁰ *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market

Economy Countries," (April 5, 2005) (Policy Bulletin 05.1), available at <https://access.trade.gov/Resources/policy/bull05-1.pdf>.

because Commerce preliminarily applied adverse facts available (AFA) to the China-wide entity in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the petition, there are no calculations to disclose.

Verification

Because the mandatory respondent in this investigation did not provide information requested by Commerce, and Commerce preliminarily determines that the mandatory respondent was uncooperative, verification will not be conducted.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 14 days after the date of publication of the preliminary determination, unless Commerce alters the time limit.¹¹ Rebuttal briefs, limited to issues raised in case briefs, may be submitted not later than five days after the date for filing case briefs.¹² Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹³

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide, at the beginning of their briefs, a public, executive summary for each issue raised in their briefs.¹⁴ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the

service of documents in 19 CFR 351.303(f).¹⁵

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants and whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: November 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary, for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation are fully or partially uncured epoxy resins, also known as epoxide resins,

polyepoxides, oxirane resins, ethoxyline resins, diglycidyl ether of bisphenol, (chloromethyl)oxirane, or aromatic diglycidyl, which are polymers or prepolymers containing epoxy groups (*i.e.*, three-membered ring structures comprised of two carbon atoms and one oxygen atom). Epoxy resins range in physical form from low viscosity liquids to solids. All epoxy resins are covered by the scope of this investigation irrespective of physical form, viscosity, grade, purity, molecular weight, or molecular structure, and packaging.

Epoxy resins may contain modifiers or additives, such as hardeners, curatives, colorants, pigments, diluents, solvents, thickeners, fillers, plasticizers, softeners, flame retardants, toughening agents, catalysts, Bisphenol F, and ultraviolet light inhibitors, so long as the modifier or additive has not chemically reacted so as to cure the epoxy resin or convert it into a different product no longer containing epoxy groups. Such epoxy resins with modifiers or additives are included in the scope where the epoxy resin component comprises no less than 30 percent of the total weight of the product. The scope also includes blends of epoxy resins with different types of epoxy resins, with or without the inclusion of modifiers and additives, so long as the combined epoxy resin component comprises at least 30 percent of the total weight of the blend.

Epoxy resins that enter as part of a system or kit with separately packaged co-reactants, such as hardeners or curing agents, are within the scope. The scope does not include any separately packaged co-reactants that would not fall within the scope if entered on their own.

The scope includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, introducing, or removing modifiers or additives, or performing any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the subject country.

The scope also includes epoxy resin that is commingled or blended with epoxy resin from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the scope are phenoxy resins, which are polymers with a weight greater than 11,000 Daltons, a Melt Flow Index (MFI) at 200 °C (392 °F) no less than 4 grams and no greater than 70 grams per 10 min, Glass-Transition Temperatures (Tg) no less than 80 °C (176 °F) and no greater than 100 °C (212 °F), and which contain no epoxy groups other than at the terminal ends of the molecule.

Excluded from the scope are certain paint and coating products, which are blends, mixtures, or other formulations of epoxy resin, curing agent, and pigment, in any form, packaged in one or more containers, wherein (1) the pigment represents a minimum of 10 percent of the total weight of the product, (2) the epoxy resin represents a maximum of 80 percent of the total weight of the product, and (3) the curing agent represents 5 to 40 percent of the total weight of the product.

¹¹ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

¹² *Id.*

¹³ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁴ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁵ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023).

Excluded from the scope are preimpregnated fabrics or fibers, often referred to as “pre-pregs,” which are composite materials consisting of fabrics or fibers (typically carbon or glass) impregnated with epoxy resin.

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3907.30.0000. Subject merchandise may also be entered under subheadings 3907.29.0000, 3824.99.9397, 3214.10.0020, 2910.90.9100, 2910.90.9000, 2910.90.2000, and 1518.00.4000. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Discussion of the Methodology
- V. Preliminary Affirmative Determination of Critical Circumstances
- VI. Adjustment Under Section 777A(f) of the Act
- VII. Adjustment to Cash Deposit Rate for Export Subsidies
- VIII. Recommendation

[FR Doc. 2024–26255 Filed 11–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–841, A–570–925]

Sodium Nitrite From Federal Republic of Germany and People’s Republic of China: Final Results of Expedited Third Sunset Reviews of Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these expedited sunset reviews, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on sodium nitrite from the Federal Republic of Germany (Germany) and the People’s Republic of China (China) would be likely to lead to the continuation or recurrence of dumping at the dumping margins identified in the “Final Results of Reviews” section of this notice.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3642.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2024, Commerce published the notice of initiation of the third sunset reviews of the *Orders*,¹ pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On July 10, 2024, Commerce received a notice of intent to participate from Chemtrade Chemicals US LLC (Chemtrade), the domestic interested party, within the 15-day period specified in 19 CFR 351.218(d)(1)(i).³ Chemtrade claimed interested party status under section 771(9)(C) of the Act, as a producer of the domestic like product in the United States. On July 22, 2024, Commerce tolled certain deadlines in these administrative proceedings by seven days.⁴ The deadline for the final results of these sunset reviews is now November 5, 2024.

On July 31, 2024, Chemtrade filed adequate substantive responses within the deadline specified in 19 CFR 351.218(d)(3)(i).⁵ Commerce did not receive a substantive response from any respondent interested party. As a result, pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the *Orders*.

Scope of the Orders

The merchandise covered by these *Orders* is sodium nitrite from China and Germany. For a complete description of the scope of the *Orders*, see the Issues and Decision Memorandum.⁶

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews, including the likelihood of the continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the *Orders* were to be revoked, is provided in the Issues and Decision Memorandum. A list of the

¹ See *Sodium Nitrite from the Federal Republic of Germany and the People’s Republic of China: Antidumping Duty Orders*, 73 FR 50593 (August 27, 2008) (*Orders*).

² See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 54435 (July 1, 2024).

³ See Chemtrade’s Letters, “Notice of Intent to Participate,” dated July 10, 2024.

⁴ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁵ See Chemtrade’s Letters, “Substantive Response to Notice of Initiation of Five-Year (Sunset) Reviews of the Antidumping Duty Orders on Imports from China and Germany and the Countervailing Duty Order on Imports from China,” dated July 31, 2024.

⁶ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders on Sodium Nitrite from the Federal Republic of Germany and the People’s Republic of China,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

topics discussed in the Issues and Decision Memorandum is included as 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 <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed at <http://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1), and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to the continuation or recurrence of dumping. We determine that the weighted-average dumping margins likely to prevail are up to 190.74 percent for China and 237.00 percent for Germany.

Notification Regarding Administrative Protective Orders (APOs)

This notice serves as the only reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of 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 these results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: November 5, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. History of the *Orders*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins of Dumping Likely to Prevail
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2024–26221 Filed 11–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-896]

Common Alloy Aluminum Sheet From India: Final Results of Countervailing Duty Administrative Review; 2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Hindalco Industries Limited (Hindalco) and Manaksia Aluminium Company Limited (MALCO), received countervailable subsidies during the period of review (POR), January 1, 2022, through December 31, 2022.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Samuel Evans or Elizabeth Beuley, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2420 or (202) 282-3269, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2024, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** and invited interested parties to comment.¹ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.² On August 7, 2024, Commerce extended the deadline for issuing the final results.³ The deadline for the final results is now November 5, 2024. For a complete description of the events that occurred since the publication of the *Preliminary Results*, see the Issues and Decision Memorandum.⁴

¹ See *Common Alloy Aluminum Sheet from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2022*, 89 FR 35788 (May 2, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

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 Countervailing Duty Administrative Review,” dated August 7, 2024.

⁴ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Common Alloy Aluminum Sheet from India; 2022,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Scope of the Order⁵

The merchandise covered by this Order is common alloy aluminum sheet from India. For a complete description of the scope of this *Order*, see the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is provided in the 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 directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Changes Since the Preliminary Results

Based on our analysis of comments from interested parties and the results of verification, we made certain changes to Hindalco’s and MALCO’s countervailable subsidy rate calculations from the *Preliminary Results*. For a full description of these changes, see the Issues and Decision Memorandum.⁶

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.⁷ For a full description of the methodology underlying all of Commerce’s conclusions, see the Issues and Decision Memorandum.

Company Not Selected for Individual Review

The Act and Commerce’s regulations do not address the establishment of a

⁵ See *Common Alloy Aluminum Sheet from Bahrain, India, and the Republic of Turkey: Countervailing Duty Orders*, 86 FR 22144 (April 27, 2021) (*Order*).

⁶ For a full description of these revisions, see the Issues and Decision Memorandum.

⁷ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review, pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 705(c)(5) of the Act, which provides instructions for determining the all-others rate in an investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 705(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely on the basis of facts available.

Accordingly, to determine the rate for Virgo Aluminum Limited (Virgo), the company not selected for individual examination in this review, because the rates calculated for Hindalco and MALCO were above *de minimis* and not based entirely on facts available, we are assigning Virgo a weighted average of the subsidy rates calculated for Hindalco and MALCO using each company’s public ranged data for the value of its exports of subject merchandise to the United States.⁸

Final Results of Review

As a result of this review, Commerce determines the following net countervailable subsidy rates exist for the period January 1, 2022, through December 31, 2022:

Company	Subsidy rate (percent <i>ad valorem</i>)
Hindalco Industries Limited ⁹	41.46
Manaksia Aluminium Company Limited	1.72
Virgo Aluminum Limited	3.59

Disclosure

Commerce intends to disclose the calculations performed for these final results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the

⁸ See Memorandum, “Calculation of Rate for Company Not Selected for Individual Examination,” dated concurrently with this notice.

⁹ As discussed in the *Preliminary Results* PDM, Commerce found the following companies to be cross-owned with Hindalco: Minerals & Minerals Limited and Utkal Alumina International Limited. For these final results, we continue to find these companies to be cross-owned with Hindalco.

Federal Register, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the companies listed above for shipments of the subject merchandise which entered, or were withdrawn from warehouse for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the all-others rate or most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as the final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: November 5, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Subsidies Valuation
- V. Analysis of Programs
- VI. Discussion of the Issues
 - Comment 1: Whether to Modify the Benefit Calculation for the Remission of Duties and Taxes on Export Products (RODTEP) Program for MALCO
 - Comment 2: Whether the Provision of Coal for Less Than Adequate Remuneration (LTAR) Program is Specific
 - Comment 3: Whether the Selection of the Coal Benchmark is Appropriate
 - Comment 4: Whether Commerce's Financial Contribution Analysis for the Provision of Bauxite Mining Rights for LTAR Program is Appropriate
 - Comment 5: Whether the Provision of Bauxite Mining Rights for LTAR Program is Specific
 - Comment 6: Whether the Selection of the Bauxite Benchmark is Appropriate
 - Comment 7: Whether to Change the Calculation of the Social Welfare Surcharge in the Calculation of the Bauxite Benchmark
 - Comment 8: Whether to Include a Profit Rate in the Calculation of the Benefit for the Provision of Bauxite Mining Rights for LTAR Program
 - Comment 9: Whether the Selection of the Ocean Freight Benchmark for the Provision of Coal for LTAR and the Provision of Bauxite Mining Rights for LTAR Programs is Appropriate
- VII. Recommendation

[FR Doc. 2024–26220 Filed 11–12–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–818]

Agreement Suspending the Antidumping Duty Investigation on Lemon Juice From Argentina; Preliminary Results of 2022–2023 Administrative Review

AGENCY: Enforcement & Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that the respondents selected for individual examination, Argenti Lemon S.A. (Argenti Lemon), Citromax S.A.C.I (Citromax), and SA San Miguel A.G.I.C.I. y F (San Miguel), complied with the 2016 Agreement

Suspending the Antidumping Duty Investigation on Lemon Juice from Argentina (2016 Agreement), for the period of review (POR) October 1, 2022, through September 31, 2023. Commerce also preliminarily determines that the 2016 Agreement met the statutory requirements under sections 734(c) and (d) of the Tariff Act of 1930, as amended (the Act) during the POR.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Jill Buckles, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–6230.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2016, Commerce signed an agreement under section 734(c) of the Act, with representatives of Argentine lemon juice producers/exporters accounting for substantially all imports of lemon juice from Argentina, suspending the antidumping duty (AD) investigation on lemon juice from Argentina.¹

On October 30, 2023, Ventura Coastal, LLC (petitioner) filed a request for an administrative review of the 2016 Agreement.² Commerce published a notice of its initiation of the administrative review of the 2016 Agreement on December 6, 2023.³ On January 23, 2024, Commerce selected three companies as mandatory respondents, listed in alphabetical order: Argenti Lemon, Citromax, and San Miguel.⁴

On May 30, 2024, Commerce extended the deadline for completing the preliminary results of this review until October 30, 2024.⁵ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁶ The deadline for the preliminary results is now November 6, 2024. For a complete description of the events between the

¹ See *Lemon Juice from Argentina: Continuation of Suspension of Antidumping Investigation*, 81 FR 74395 (October 26, 2016) (2016 Agreement).

² See Petitioner's Letter, "Request for Administrative Review," dated October 30, 2023.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 84784 (December 6, 2023).

⁴ See Memorandum, "Respondent Selection," dated January 23, 2024 (Respondent Selection Memorandum).

⁵ See Memorandum, "Extension of Deadline for Preliminary Results of the 2023–2024 Administrative Review of the 2016 Agreement Suspending the Antidumping Duty Investigation on Lemon Juice from Argentina," dated May 30, 2023.

⁶ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

initiation of this review and these preliminary results, *see* the Preliminary Decision Memorandum.⁷

Scope of the 2016 Agreement

Merchandise covered by the 2016 Agreement is typically classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 2009.39.6020, 2009.31.6020, 2009.31.4000, 2009.31.6040, and 2009.39.6040. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this 2016 Agreement is dispositive. For a complete description of the scope of the 2016 Agreement, *see* the Preliminary Decision Memorandum.

Methodology and Preliminary Results

Commerce has conducted this review in accordance with section 751(a)(1)(C) of the Act, which specifies that Commerce shall “review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.” In this case, Commerce and representatives of the Argentine lemon juice producers/exporters accounting for substantially all imports of lemon juice from Argentina signed the 2016 Agreement, which suspended the underlying antidumping duty investigation, on October 20, 2016. Pursuant to the 2016 Agreement, the Argentine signatories agreed to sell subject merchandise at or above certain minimum reference prices, and that their pricing would eliminate at least 85 percent of the dumping determined in the AD investigation.⁸ The Argentine signatories also agreed to provide documentation upon request from Commerce,⁹ provide certifications each quarter,¹⁰ and provide Argentine customs data each quarter¹¹ to allow Commerce to monitor the 2016 Agreement.

After reviewing the information received from the mandatory respondents in their initial and supplemental questionnaire responses, we preliminarily determine that the mandatory respondents complied with the requirements of the 2016 Agreement during the POR. Additionally, we

preliminarily determine that the 2016 Agreement functioned as intended and that the 2016 Agreement continued to meet the statutory requirements under sections 734(c) and (d) of the Act during the POR.

For a full description of the analysis underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Verification

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Interested parties may submit case briefs not later than seven days after the date on which the last verification report is issued in this administrative review.¹² Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the date for filing case briefs.¹³ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁴

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁵ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not

including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁶

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party’s name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. An electronically filed hearing request must be received successfully in its entirety by Commerce’s electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Final Results of Review

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act, unless extended.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the 2016 Agreement
- IV. Preliminary Results of Review
- V. Recommendation

[FR Doc. 2024–26261 Filed 11–12–24; 8:45 am]

BILLING CODE 3510-DS-P

⁷ See Memorandum, “Decision Memorandum for the Preliminary Results of the 2022–2023 Administrative Review: Lemon Juice from Argentina,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁸ See 2016 Agreement at Section VI and Appendix I.

⁹ *Id.* at Sections VII.B.1, VII.B.2, and VII.B.4.

¹⁰ *Id.* at Section VII.C.3.

¹¹ *Id.* at Section VII.A.3.

¹² See 19 CFR 351.309(c)(1)(ii).

¹³ See 19 CFR 351.309(d); *see also* *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹⁴ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁵ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁶ See *APO and Service Final Rule*.

DEPARTMENT OF COMMERCE**International Trade Administration****[C–533–878]****Stainless Steel Flanges From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2022**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that countervailable subsidies are being provided to a producer and exporter of stainless steel flanges from India during the period of review (POR), January 1, 2022, through December 31, 2022. Additionally, Commerce is rescinding this review with respect to five companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sun Cho, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6458.

SUPPLEMENTARY INFORMATION:**Background**

On October 5, 2018, Commerce published the countervailing duty order on stainless steel flanges from India.¹ On December 6, 2023, Commerce published a notice of initiation of an administrative review of the *Order*.² On May 30, 2024, Commerce extended the time period for issuing these preliminary results by 120 days, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).³ On July 22, 2024, Commerce tolled certain deadlines in this administrative review by seven days.⁴ The deadline for these preliminary results is now November 6, 2024.

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁵ A list of topics

discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The merchandise covered by the *Order* is stainless steel flanges from India. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found countervailable, we preliminarily find that there is a subsidy, *i.e.*, a financial contribution that gives rise to a benefit to the recipient, and the subsidy is specific.⁶ For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

Commerce's practice is to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(1), when the interested party that requested a review withdraws the request within 90 days of publication of notice of initiation of the requested review. Commerce received timely-filed withdrawal requests with respect to five companies, pursuant to 19 CFR 351.213(d)(1): (1) BFN Forgings Private Limited; (2) Chandan Steel Limited; (3) Fivebros Forgings Private Limited; (4) Hilton Metal Forging Limited; and (5) Kisaan Die Tech Pvt Ltd.⁷ Because the withdrawal requests were timely-filed, and no other party requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding

Administrative Review: Stainless Steel Flanges from India; 2022," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁶ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁷ See Preliminary Decision Memorandum at the section titled "Partial Rescission of Administrative Review."

this review of the *Order* with respect to these five companies.

Preliminary Results of Review

For the period January 1, 2022, through December 31, 2022, we preliminarily find that the following net countervailable subsidy rate exists:

Producer/exporter	Subsidy rate (percent <i>ad valorem</i>)
Pradeep Metals Limited	1.75

Disclosure

We will disclose to parties to this proceeding the calculations performed for these preliminary results within five days of the date of publication of these preliminary results in accordance with 19 CFR 351.224(b).

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.⁸ Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.⁹

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁰ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its

⁸ See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

⁹ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁰ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹ See *Stainless Steel Flanges from India: Countervailing Duty Order*, 83 FR 50336 (October 5, 2018) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 84784 (December 6, 2023).

³ See Memorandum, "Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated May 30, 2024.

⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁵ See Memorandum, "Decision Memorandum for the Preliminary Results of the Countervailing Duty

requirements pertaining to the service of documents in 19 CFR 351.303(f).¹¹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using Enforcement and Compliance's ACCESS system.¹² Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.¹³ If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries in accordance with the final results of this review. If the assessment rate calculated for Pradeep Metals Limited in the final results is zero or *de minimis*, we will instruct CBP to liquidate all appropriate entries without regard to countervailing duties.

For the companies for which this review is rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2022, through December 31, 2022, in accordance with 19 CFR 351.212(c)(1)(i).

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the preliminary results of this review in the **Federal Register** for those companies for which Commerce is rescinding the review and no earlier than 35 days after the date of publication of the final results of this

review in the **Federal Register** for Pradeep. 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

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for the company listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, except where the rate calculated in the final results is zero or *de minimis*, no cash deposit will be required. For all non-reviewed firms or companies for which we rescinded the review, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.211(b)(4).

Dated: November 5, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Rescission of Administrative Review, In Part
- V. Subsidies Valuation Information
- VI. Benchmarks and Interest Rates
- VII. Analysis of Programs
- VIII. Recommendation

[FR Doc. 2024–26216 Filed 11–12–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–874]

Certain Hot-Rolled Steel Flat Products From Japan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that one of the two producers/exporters of hot-rolled steel flat products (hot-rolled steel) from Japan, sold subject merchandise in the United States at prices below normal value during the period of review (POR) October 1, 2022, through September 30, 2023.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Jack Zhao or Myrna Lobo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1396 and (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on hot-rolled steel from Japan in accordance with section 751(a)(1)(B) of Tariff Act of 1930, as amended (the Act).¹ Commerce initiated this administrative review of the Order on December 6, 2023, covering ten producers and/or exporters.² On March 4, 2024, JFE Shoji Corporation and JFE Shoji America, LLC withdrew its request for review, pursuant to 19 CFR 351.213(d)(1).³ On March 5, 2024, the petitioner withdrew its request for review with respect to JFE Steel Corporation and its affiliated companies.⁴ As all parties that

¹ See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders*, 81 FR 67962 (October 3, 2016) (Order).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 84784 (December 6, 2023).

³ See JFE's Letter, "Withdrawal of Review Request," dated March 4, 2024 (JFE Letter of Withdrawal).

⁴ See Petitioner Letter, "Partial Withdrawal of Request for Administrative Review," dated March 5, 2024 (Petitioner Letter of Withdrawal).

¹¹ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

¹² See 19 CFR 351.310(c).

¹³ See 19 CFR 351.310.

requested a review for JFE and its affiliates have withdrawn their requests, and the requests for withdrawal are timely, Commerce is rescinding the review with respect to the JFE companies.⁵ The remaining companies subject to this review are Nippon Steel Corporation (NSC)⁶ and Tokyo Steel Manufacturing Co., Ltd. (Tokyo Steel).

On June 13, 2024, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1), we extended the deadline for the preliminary results of this review until October 30, 2024.⁷ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁸ The deadline for these preliminary results is now November 6, 2024. For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁹

Scope of the Order

The merchandise covered by the Order is hot-rolled steel from Japan. For a complete description of the scope of

the Order, *see* the Preliminary Decision Memorandum.¹⁰

Methodology

Commerce is conducting this administrative review in accordance with section 751(a) of the Act. Export price and constructed export price were calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary 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 to ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed at

<https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Commerce received timely-filed withdrawal requests for JFE.¹¹ Because the withdrawal requests were timely filed and no other party requested a review of JFE, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the Order with respect to the JFE companies: JFE Steel Corporation, JFE Shoji Corporation, JFE Shoji Trade Corporation, and JFE Shoji Trade America.

Preliminary Results

We preliminarily determine the following estimated weighted-average dumping margins for the period October 1, 2022, through September 30, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
Nippon Steel Corporation/Nippon Steel Nisshin Co., Ltd./Nippon Steel Trading Corporation ¹²	29.03
Tokyo Steel Manufacturing Co., Ltd	0.00

Disclosure and Public Comment

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any 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).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than seven days after the date on which the final verification report is issued in this review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed

not later than five days after the date for filing case briefs.¹³ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁴

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each

issue raised in their briefs.¹⁵ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁶

⁵ The JFE companies for which this administrative review was initiated are: JFE Steel Corporation, JFE Shoji Corporation, JFE Shoji Trade Corporation, and JFE Shoji Trade America.

⁶ NSC is a single entity comprised of the following companies: Nippon Steel Corporation; Nippon Steel Nisshin Co., Ltd.; and Nippon Steel Trading Corporation. *See Certain Hot-Rolled Steel Flat Products from Japan: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 46713 (September 5, 2019).

⁷ *See* Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated June 13, 2024.

⁸ *See* Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁹ *See* Memorandum, “Decision Memorandum for the Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Reviews: Certain Hot-Rolled Steel Flat Products from Japan: 2022–2023,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

¹⁰ *Id.*

¹¹ *See* JFE Letter of Withdrawal; *see* Petitioner Letter of Withdrawal.

¹² This rate is also applicable to Nippon Steel & Sumikin Logistics Co., Ltd. for whom a review was initiated and NSC identified as its wholly owned

subsidiary. *See* NSC’s April 17, 2024 Initial Section A questionnaire response at Exhibit A–5 and May 24, 2024 Initial Section C questionnaire response at C–41.

¹³ *See* 19 CFR 351.309(d); *see also* *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹⁴ *See* 19 CFR 351.309(c)(2) and (d)(2).

¹⁵ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁶ *See APO and Service Final Rule.*

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.¹⁷

Verification

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon for the final results.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margins for NSC and Tokyo Steel are not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If NSC's and Tokyo Steel's weighted-average dumping margins are zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews*, i.e., "{w}here the weighted-average margin of dumping for the exporter is

determined to be zero or *de minimis*, no antidumping duties will be assessed."¹⁸

For entries of subject merchandise during the POR produced by NSC or Tokyo Steel for which the producer did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.¹⁹

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

For the companies for which this review is being rescinded, in part, Commerce will instruct CBP to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit rate for estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). With respect to the rescission of this review, in part, Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this

review, the cash deposit will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the underlying investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.58 percent, the all-others rate established in the less-than-fair-value investigation.²⁰ These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Rescission of Administrative Review, in Part
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

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¹⁸ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

¹⁹ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

²⁰ See *Order*.

¹⁷ See section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

DEPARTMENT OF COMMERCE**International Trade Administration****[A–580–919]****Certain Epoxy Resins From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination, Postponement of Final Determination, and Extension of Provisional Measures**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain epoxy resins (epoxy resins) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2023, through March 31, 2024. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or Laura Delgado, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1168 or (202) 482–1468, respectively.

SUPPLEMENTARY INFORMATION:**Background**

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 29, 2024.¹ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.² On August 12, 2024, Commerce postponed the preliminary determination of this investigation until November 6, 2024.³

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary

Decision Memorandum.⁴ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The products covered by this investigation are epoxy resins from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*, as well as additional language proposed by Commerce. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.⁷ Commerce is not preliminarily modifying the scope language as stated it appeared in the *Initiation Notice*. *See* the scope in Appendix I to this notice. Pursuant to 19 CFR 351.309(c)(2), interested parties may submit additional comments on the scope of this investigation in scope case briefs, which may be submitted no later than 30 days after the issuance of the Preliminary Scope Decision Memorandum.⁸

⁴ *See* Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Epoxy Resins from India" dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ *See* Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁶ *See* Initiation Notice, 89 FR at 33324–25.

⁷ *See* Memorandum, "Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Preliminary Scope Decision Memorandum," dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

⁸ *Id.*

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices and constructed export prices in accordance with sections 772(a) and (b) of the Act, respectively. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206(c), Commerce preliminarily finds that critical circumstances do not exist with respect to imports of epoxy resins from Korea for Kukdo Chemical Co., Ltd. and Kukdo Finechem (collectively Kukdo/Finechem),⁹ Kumho P&B Chemicals Inc. (Kumho P&B), and all other exporters or producers not individually examined. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis*, or determined entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated weighted-average dumping margins for Kukdo/Finechem and Kumho P&B that are not zero, *de minimis*, or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.¹⁰

⁹ Commerce preliminarily determines that these companies are a single entity. *See* Preliminary Decision Memorandum; *see also* Memorandum, "Preliminary Affiliation and Collapsing Memorandum," dated concurrently with this notice.

¹⁰ With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping

Continued

¹ *See* Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Initiation of Less-Than-Fair Value Investigations, 89 FR 33324 (April 29, 2024) (*Initiation Notice*).

² *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

³ *See* Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 89 FR 65583 (August 12, 2024).

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent) ¹¹	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Kukdo/Finechem	24.65	Not Applicable.
Kumho P&B Chemicals, Inc	16.02	Not Applicable.
All Others	21.56	Not Applicable.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a company identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to

margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662

interested parties in this preliminary determination within five days of any 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). Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹² Interested

(September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. As complete publicly ranged sales data were available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* the All-Others Rate Calculation Memorandum.

¹¹ Commerce will normally adjust cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding. However, because Commerce made a preliminary negative finding in the companion CVD proceeding, no such adjustment is warranted. *See Certain Epoxy Resins from the Republic of Korea: Preliminary Negative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination and*

parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹³ As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁴ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁵ Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date

Alignment of Final Determination with Final Antidumping Duty Determination, 89 FR 74912, (September 13, 2024), and accompanying Preliminary Decision Memorandum at 6–7.

¹² *See* 19 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹³ *See* 19 351.309(c)(2) and (d)(2).

¹⁴ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁵ *See APO and Service Final Rule.*

of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants and whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 19, 2024, pursuant to 19 CFR 351.210(b)(2)(i), the U.S. Epoxy Resin Producers Ad Hoc Coalition (the petitioner) requested that, if the preliminary determination was negative, that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹⁶ On October 15, 2024, pursuant to 19 CFR 351.210(e)(2), Kumho P&B and Kukdo Chemical requested that Commerce fully postpone the final determination, if the preliminary determination is affirmative and that provisional measures be extended to a period not to exceed six months.¹⁷ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final

determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: November 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary, for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation are fully or partially uncured epoxy resins, also known as epoxide resins, polyepoxides, oxirane resins, ethoxylane resins, diglycidyl ether of bisphenol, (chloromethyl) oxirane, or aromatic diglycidyl, which are polymers or prepolymers containing epoxy groups (*i.e.*, three-membered ring structures comprised of two carbon atoms and one oxygen atom). Epoxy resins range in physical form from low viscosity liquids to solids. All epoxy resins are covered by the scope of this investigation irrespective of physical form, viscosity, grade, purity, molecular weight, or molecular structure, and packaging.

Epoxy resins may contain modifiers or additives, such as hardeners, curatives, colorants, pigments, diluents, solvents, thickeners, fillers, plasticizers, softeners, flame retardants, toughening agents, catalysts, Bisphenol F, and ultraviolet light inhibitors, so long as the modifier or additive has not chemically reacted so as to cure the epoxy resin or convert it into a different product no longer containing epoxy groups. Such epoxy resins with modifiers or additives are included in the scope where the epoxy resin component comprises no less than 30 percent of the total weight of the product. The scope also includes blends of epoxy resins with different types of epoxy resins, with or without the inclusion of modifiers and additives, so long as the combined epoxy resin component comprises

at least 30 percent of the total weight of the blend.

Epoxy resins that enter as part of a system or kit with separately packaged co-reactants, such as hardeners or curing agents, are within the scope. The scope does not include any separately packaged co-reactants that would not fall within the scope if entered on their own.

The scope includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, introducing, or removing modifiers or additives, or performing any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the subject country.

The scope also includes epoxy resin that is commingled or blended with epoxy resin from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the scope are phenoxy resins, which are polymers with a weight greater than 11,000 Daltons, a Melt Flow Index (MFI) at 200 °C (392 °F) no less than 4 grams and no greater than 70 grams per 10 min, Glass-Transition Temperatures (Tg) no less than 80 °C (176 °F) and no greater than 100 °C (212 °F), and which contain no epoxy groups other than at the terminal ends of the molecule.

Excluded from the scope are certain paint and coating products, which are blends, mixtures, or other formulations of epoxy resin, curing agent, and pigment, in any form, packaged in one or more containers, wherein (1) the pigment represents a minimum of 10 percent of the total weight of the product, (2) the epoxy resin represents a maximum of 80 percent of the total weight of the product, and (3) the curing agent represents 5 to 40 percent of the total weight of the product.

Excluded from the scope are preimpregnated fabrics or fibers, often referred to as "pre-pregs," which are composite materials consisting of fabrics or fibers (typically carbon or glass) impregnated with epoxy resin.

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3907.30.0000. Subject merchandise may also be entered under subheadings 3907.29.0000, 3824.99.9397, 3214.10.0020, 2910.90.9100, 2910.90.9000, 2910.90.2000, and 1518.00.4000. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Affiliation and Single Entity Treatment
- V. Discussion of the Methodology
- VI. Preliminary Negative Determination of Critical Circumstances
- VII. Currency Conversion

¹⁶ See Petitioner's Letter, "Petitioner's Request for Postponement of the Final Determination," dated September 19, 2024.

¹⁷ See Kukdo's Letter, "Kukdo's Request for Postponement of Final Determination," dated October 15, 2024; see also Kumho P&B's Letter, "Request to Postpone the Deadline for the Final Determination," dated October 15, 2024.

VIII. Recommendation

[FR Doc. 2024–26257 Filed 11–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–850]

Certain Epoxy Resins From Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain epoxy resins (epoxy resins) from Thailand are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is April 1, 2023, through March 31, 2024. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Rachel Jennings or John Frye, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1110 or (202) 482–3035, respectively.

SUPPLEMENTARY INFORMATION:**Background**

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 29, 2024.¹ On August 12, 2024, Commerce postponed the preliminary determination of this investigation and the revised deadline is now November 6, 2024.² For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.³ A list of topics included in the Preliminary Decision

Memorandum is included as Appendix II to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The products covered by this investigation are epoxy resins from Thailand. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*, as well as additional language proposed by Commerce. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.⁶ Commerce is preliminarily not to modifying the scope language as it appeared in the *Initiation Notice*. *See* the scope in Appendix I to this notice. Pursuant to 19 CFR 351.309(c)(2), interested parties may submit additional comments on the scope of this investigation in scope case briefs, which may be submitted no later than 30 days after the issuance of the Preliminary Scope Decision Memorandum.⁷

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been

calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances do not exist for Aditya Birla Chemicals (Thailand) Limited (Aditya Thai), and all other exporters and producers of the subject merchandise. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis*, or determined entirely under section 776 of the Act.

In this investigation, Commerce calculated an individual estimated weighted-average dumping margin for Aditya Thai, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis*, or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Aditya Thai is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

¹ *See Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Initiation of Less-Than-Fair-Value Investigations*, 89 FR 33324 (April 29, 2024) (*Initiation Notice*).

² *See Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 89 FR 65583 (August 12, 2024).

³ *See* Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Epoxy Resins from Thailand," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁵ *See Initiation Notice*, 89 FR at 33328.

⁶ *See* Memorandum, "Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Preliminary Scope Decision Memorandum," dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

⁷ *Id.*

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Aditya Birla Chemicals (Thailand) Limited	5.59	Not Applicable.
All Others	5.59	Not Applicable.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any 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).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.⁸ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.⁹

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁰ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹¹

⁸ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

⁹ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁰ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹¹ See *APO and Service Final Rule*.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants and whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 25, 2024, pursuant to 19 CFR 351.210(e), Aditya Thai requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹² In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial

¹² See Aditya Thai's Letter, “Request for Extension of Final Determination,” dated September 25, 2024.

exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: November 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise subject to this investigation are fully or partially uncured epoxy resins, also known as epoxide resins, polyepoxides, oxirane resins, ethoxyline resins, diglycidyl ether of bisphenol, (chloromethyl)oxirane, or aromatic diglycidyl, which are polymers or prepolymers containing epoxy groups (*i.e.*, three-membered ring structures comprised of two carbon atoms and one oxygen atom). Epoxy resins range in physical form from low viscosity liquids to solids. All epoxy resins are covered by the scope of this investigation irrespective of physical form, viscosity, grade, purity, molecular weight, or molecular structure, and packaging.

Epoxy resins may contain modifiers or additives, such as hardeners, curatives, colorants, pigments, diluents, solvents, thickeners, fillers, plasticizers, softeners, flame retardants, toughening agents, catalysts, Bisphenol F, and ultraviolet light inhibitors, so long as the modifier or additive has not chemically reacted so as to cure the epoxy resin or convert it into a different product no longer containing epoxy groups. Such epoxy resins with modifiers or additives are included in the scope where the epoxy resin component comprises no less than 30 percent of the total weight of the product. The scope also includes blends of epoxy resins with different types of epoxy resins, with or without the inclusion of modifiers and additives, so long as the combined epoxy resin component comprises

at least 30 percent of the total weight of the blend.

Epoxy resins that enter as part of a system or kit with separately packaged co-reactants, such as hardeners or curing agents, are within the scope. The scope does not include any separately packaged co-reactants that would not fall within the scope if entered on their own.

The scope includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, introducing, or removing modifiers or additives, or performing any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the subject country.

The scope also includes epoxy resin that is commingled or blended with epoxy resin from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the scope are phenoxy resins, which are polymers with a weight greater than 11,000 Daltons, a Melt Flow Index (MFI) at 200 °C (392 °F) no less than 4 grams and no greater than 70 grams per 10 min, Glass-Transition Temperatures (Tg) no less than 80 °C (176 °F) and no greater than 100 °C (212 °F), and which contain no epoxy groups other than at the terminal ends of the molecule.

Excluded from the scope are certain paint and coating products, which are blends, mixtures, or other formulations of epoxy resin, curing agent, and pigment, in any form, packaged in one or more containers, wherein (1) the pigment represents a minimum of 10 percent of the total weight of the product, (2) the epoxy resin represents a maximum of 80 percent of the total weight of the product, and (3) the curing agent represents 5 to 40 percent of the total weight of the product.

Excluded from the scope are preimpregnated fabrics or fibers, often referred to as “pre-pregs,” which are composite materials consisting of fabrics or fibers (typically carbon or glass) impregnated with epoxy resin.

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3907.30.0000. Subject merchandise may also be entered under subheadings 3907.29.0000, 3824.99.9397, 3214.10.0020, 2910.90.9100, 2910.90.9000, 2910.90.2000, and 1518.00.4000. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Discussion of the Methodology
- V. Preliminary Negative Determination of Critical Circumstances
- VI. Currency Conversion
- VII. Recommendation

VIII.

[FR Doc. 2024–26259 Filed 11–12–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–884]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies were provided to producers and exporters of certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea). The period of review (POR) is January 1, 2022, through December 31, 2022. Additionally, Commerce is rescinding the review, in part, with respect to 13 companies which had no entries. We invite interested parties to comment on these preliminary results.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Kelsie Hohenberger or Nathan James, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2517 or (202) 482–5305, respectively.

SUPPLEMENTARY INFORMATION:

Background

In October 2023, Commerce received requests for an administrative review of the countervailing duty (CVD) order on hot-rolled steel from Korea.¹ On December 6, 2023, Commerce published a notice of initiation of administrative review of the *Order*.² On January 18, 2024, Commerce selected Hyundai Steel Company (Hyundai Steel) and POSCO as mandatory respondents in this administrative review.³ On June 25, 2024, Commerce extended the deadline for the preliminary results of this

¹ See *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders*, 81 FR 67960 (October 3, 2016) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 84784 (December 6, 2023) (*Initiation Notice*).

³ See Memorandum, “Respondent Selection,” dated January 18, 2024.

review.⁴ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁵ The deadline for the preliminary results is now November 6, 2024.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁶ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary 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 <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The merchandise covered by the *Order* is hot-rolled steel from Korea. For a complete description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, In Part

On October 8, 2024, Commerce notified interested parties that we intended to rescind this administrative review for 13 companies for which the record information shows no suspended entries of subject merchandise during the POR.⁷ No parties commented on the notification of intent to rescind the review, in part. Therefore, we find that there were no entries of subject merchandise during the POR by the 13 companies listed in Appendix II. As a result of our finding, we are rescinding this review, in part, pursuant to 19 CFR 351.213(d)(3), with respect to these companies. For further information regarding this determination, *see* "Rescission of Administrative Review, in Part" section in the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.⁸ For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of this review, we preliminarily determine the net countervailable subsidy rates for the period January 1, 2022, through December 31, 2022 to be:

Company	Subsidy rate (percent ad valorem)
Hyundai Steel Company ⁹	2.21
POSCO ¹⁰	1.47

Disclosure and Public Comment

Commerce intends to disclose its calculations performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs or other written comments to the Assistant Secretary for Enforcement and Compliance.¹¹ A timeline for the submission of case briefs and written comments will be established at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹² Interested parties

that submit case or rebuttal briefs in this review must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹³

As provided under 19 CFR 351.310(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁴ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁵

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce will inform parties of the scheduled date for the hearing.

Unless the deadline is extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon

88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

¹³ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁴ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁵ See *APO and Service Procedures*.

⁴ See Memorandum, "Extension of Deadline for Preliminary Results of 2022 Countervailing Duty Administrative Review," dated June 25, 2024.

⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁶ See Memorandum, "Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review; 2022: Certain Hot-Rolled Steel Flat Products from the Republic of Korea," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁷ See Memorandum, "Intent to Rescind Review, in Part," dated October 8, 2024.

⁸ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁹ As discussed in the Preliminary Decision Memorandum, Commerce has found the following company to be cross-owned with Hyundai Steel: Hyundai Green Power Co., Ltd.

¹⁰ The company is also known as POSCO Co., Ltd. Additionally, as discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with POSCO: POSCO Holdings, POSCO International Corporation, POSCO Chemical, POSCO M-Tech, Pohang Scrap Recycling Distribution Center Co., Ltd., POSCO Nippon Steel RHF Joint Venture Co., Ltd., and POSCO Mobility Solutions.

¹¹ See 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 for general filing requirements.

¹² See 19 CFR 351.309(d); *see also* *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*,

issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review.

For the companies for which this review is rescinded, we will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2022, through December 31, 2022. We intend to issue assessment instructions to CBP for these companies no earlier than 35 days after the date of publication of this rescission in the **Federal Register**.

For the companies remaining in the review, we will instruct CBP to assess countervailing duties on all appropriate entries at the subsidy rates calculated in the final results of this review. We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**.

If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: November 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Period of Review
- V. Diversification of Korea's Economy
- VI. Rescission of Administrative Review, in Part
- VII. Subsidies Valuation Information
- VIII. Benchmarks and Interest Rates
- IX. Analysis of Programs
- X. Recommendation

Appendix II

Companies for Which Commerce Is Rescinding This Review

1. DCE Inc.
2. Dong Chuel America Inc.
3. Dong Chuel Industrial Co., Ltd.
4. Dongbu Incheon Steel Co., Ltd.
5. Dongbu Steel Co., Ltd.
6. Dongkuk Industries Co., Ltd.
7. Dongkuk Steel Mill Co., Ltd.
8. Hyewon Sni Corporation (H.S.I.)
9. JFE Shoji Trade Korea Ltd.
10. POSCO Coated & Color Steel Co., Ltd.
11. POSCO Daewoo Corporation
12. Soon Hong Trading Co., Ltd.
13. Sung-A Steel Co., Ltd.

[FR Doc. 2024-26251 Filed 11-12-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-926]

Certain Epoxy Resins From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that imports of certain epoxy resins (epoxy resins) from India are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2023, through March 31, 2024. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Grossnickle, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration,

U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3818.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 29, 2024.¹ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.² On August 12, 2024, Commerce postponed the preliminary determination of this investigation until November 6, 2024.³

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.⁴ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The products covered by this investigation are epoxy resins from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product

¹ *See Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Initiation of Less-Than-Fair Value Investigations*, 89 FR 33324 (April 29, 2024) (*Initiation Notice*).

² *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

³ *See Certain Epoxy Resins from the People's Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 89 FR 65583 (August 12, 2024).

⁴ *See* Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Epoxy Resins from India" dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

coverage (*i.e.*, scope).⁶ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*, as well as additional language proposed by Commerce. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.⁷ Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*. *See* the scope in Appendix I to this notice. Pursuant to 19 CFR 351.309(c)(2), interested parties may submit additional comments on the scope of this investigation in scope case briefs, which may be submitted no later than 30 days after the issuance of the Preliminary Scope Decision Memorandum.⁸

Methodology

Commerce is conducting this investigation in accordance with section

731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences, for Champion Advanced Materials (Champion). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established

for exporters and producers individually investigated, excluding rates that are zero, *de minimis*, or determined entirely under section 776 of the Act.

In this investigation, Commerce preliminarily determined an estimated weighted-average dumping margin for Atul Limited (Atul) that is not zero, *de minimis* or based entirely on facts otherwise available. The estimated weighted-average dumping margin preliminarily determined for Champion is based on total facts available with an adverse inference. Consequently, for this preliminary determination, the estimated weighted-average dumping margin calculated for Atul is the estimated weighted-average dumping margin for all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter or producer	Weighted-average dumping margin (percent)	Adjusted cash deposit rate (percent) ⁹
Atul Limited	12.01	10.52
Champion Advanced Materials	* 15.68	* 0.00
All Others	12.01	10.52

* Rate based on facts available with adverse inferences.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin as follows and as adjusted below: (1) the cash deposit rate for the exporters listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a company identified above, but the

producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Commerce normally adjusts the cash deposit for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate countervailed export subsidy rate. Any such adjusted cash deposit rate may be found in the

“Preliminary Determination” section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days

⁶ See *Initiation Notice*, 89 FR at 33324–25.
⁷ See Memorandum, “Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Epoxy Resins from the People’s Republic of China, India, the Republic of Korea, Taiwan, and Thailand: Preliminary Scope Decision Memorandum,” dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

⁸ *Id.*
⁹ Adjusted for export subsidies of 1.49 percent (comprised of 0.77 percent for the duty drawback program and 0.72 percent for the remissions of duties and taxes on export products program) for Atul and All Others. Adjusted for 91.04 percent (all programs) for Champion. *See Certain Epoxy Resins from India: Preliminary Affirmative Countervailing*

Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination, 89 FR 74889 (September 13, 2024), and accompanying Preliminary Decision Memorandum.

of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information submitted by Atul that will be relied upon in making its final determination.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation.¹⁰ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.¹¹ Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹²

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹³ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the

comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁴

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants and whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 16 and 19, 2024, pursuant to 19 CFR 351.210(e), Atul and the U.S. Epoxy Resin Producers Ad Hoc Coalition (the petitioner), respectively, requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹⁵ In accordance with section 735(a)(2)(A) of the Act and 19

CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: November 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation is fully or partially uncured epoxy resins, also known as epoxide resins, polyepoxides, oxirane resins, ethoxyline resins, diglycidyl ether of bisphenol, (chloromethyl)oxirane, or aromatic diglycidyl, which are polymers or prepolymers containing epoxy groups (*i.e.*, three-membered ring structures comprised of two carbon atoms and one oxygen atom). Epoxy resins range in physical form from low viscosity liquids to solids. All epoxy resins are covered by the scope of this investigation irrespective of physical form, viscosity, grade, purity, molecular weight, or molecular structure, and packaging.

Epoxy resins may contain modifiers or additives, such as hardeners, curatives, colorants, pigments, diluents, solvents, thickeners, fillers, plasticizers, softeners, flame retardants, toughening agents, catalysts, Bisphenol F, and ultraviolet light inhibitors, so long as the modifier or additive has not chemically reacted so as to cure the epoxy resin or convert it into a different product no longer containing epoxy groups. Such epoxy resins with modifiers or additives are included in the scope where the

¹⁰ See 19 CFR 351.309(c)(1)(i); *see also* 19 CFR 351.303 (for general filing requirements).

¹¹ See 19 CFR 351.309(d); *see also* *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹² See 19 CFR 351.309(c)(2) and (d)(2).

¹³ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁴ See *APO and Service Final Rule*.

¹⁵ See Atul's Letter, "Request to Extend Final Determination," dated September 16, 2024; *see also* Petitioner's Letter, "Petitioner's Request For the Postponement Of The Final Determinations," dated September 19, 2024.

epoxy resin component comprises no less than 30 percent of the total weight of the product. The scope also includes blends of epoxy resins with different types of epoxy resins, with or without the inclusion of modifiers and additives, so long as the combined epoxy resin component comprises at least 30 percent of the total weight of the blend.

Epoxy resins that enter as part of a system or kit with separately packaged co-reactants, such as hardeners or curing agents, are within the scope. The scope does not include any separately packaged co-reactants that would not fall within the scope if entered on their own.

The scope includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, introducing, or removing modifiers or additives, or performing any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the subject country.

The scope also includes epoxy resin that is commingled or blended with epoxy resin from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the scope are phenoxyl resins, which are polymers with a weight greater than 11,000 Daltons, a Melt Flow Index (MFI) at 200 °C (392 °F) no less than 4 grams and no greater than 70 grams per 10 min, Glass-Transition Temperatures (Tg) no less than 80 °C (176 °F) and no greater than 100 °C (212 °F), and which contain no epoxy groups other than at the terminal ends of the molecule.

Excluded from the scope are certain paint and coating products, which are blends, mixtures, or other formulations of epoxy resin, curing agent, and pigment, in any form, packaged in one or more containers, wherein (1) the pigment represents a minimum of 10 percent of the total weight of the product, (2) the epoxy resin represents a maximum of 80 percent of the total weight of the product, and (3) the curing agent represents 5 to 40 percent of the total weight of the product. Excluded from the scope are preimpregnated fabrics or fibers, often referred to as "prepregs," which are composite materials consisting of fabrics or fibers (typically carbon or glass) impregnated with epoxy resin.

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3907.30.0000. Subject merchandise may also be entered under subheadings 3907.29.0000, 3824.99.9397, 3214.10.0020, 2910.90.9100, 2910.90.9000, 2910.90.2000, and 1518.00.4000. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation

- IV. Application of Facts Available and Use of Adverse Inferences
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Adjustments to Estimated Weighted-Average Dumping Margins for Export Subsidies in Companion Countervailing Duty Investigation
- VIII. Recommendation

[FR Doc. 2024–26256 Filed 11–12–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE396]

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Approved Monitoring Service Providers

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

ACTION: Approval of Northeast multispecies monitoring service providers for fishing year 2025.

SUMMARY: NMFS has approved nine companies to provide Northeast multispecies sector at-sea catch monitoring (ASM) and/or electronic catch monitoring (EM) services in fishing year 2025. Regulations implementing the Northeast Multispecies Fishery Management Plan require ASM and EM companies to meet service provider performance standards to be approved by NMFS to provide catch monitoring services to sectors. This action approves service providers that sectors may contract with for catch monitoring services for fishing year 2025.

DATES: Northeast multispecies at-sea and electronic monitoring service provider approvals are effective May 1, 2025, through April 30, 2026.

ADDRESSES: The list of NMFS-approved sector monitoring service providers is available at: <https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs>.

FOR FURTHER INFORMATION CONTACT: Heather Nelson, Fishery Management Specialist, (978) 281–9334, email Heather.Nelson@noaa.gov.

SUPPLEMENTARY INFORMATION: The Northeast Multispecies Fishery Management Plan includes a requirement for industry-funded monitoring of catch by sector vessels. NMFS approves independent third-

party service providers with which sectors may contract to provide ASM and/or EM services to their vessels. NMFS requires full applications for approval from ASM and EM companies that are not currently approved to be a service provider. Previously approved ASM and EM companies are not required to submit a full application to maintain their approval status if they continue to meet all service provider performance standards and submit required updated information annually. The required updated information to maintain approval includes an updated Emergency Action Plan, evidence of adequate insurance coverage, and, if applicable, any updates to staffing or operations. Regulations at 50 CFR 648.11(h) describe the criteria for approval of ASM and EM service provider applications. NMFS approves service providers based on: (1) Completeness and sufficiency of applications; and (2) determination of the applicant's ability to meet the performance requirements of a sector monitoring service provider. Once approved, service providers must meet specified performance requirements outlined in § 648.11(h)(5) and (6), including required coverage levels, in order to maintain eligibility. NMFS must notify service providers, in writing, if NMFS withdraws approval for any reason.

Approved Monitoring Service Providers

On September 3, 2024, NMFS announced an opportunity for new monitoring companies to apply for approval to provide ASM and/or EM services in fishing year 2025 and an opportunity for currently approved providers to submit updated documentation to maintain their approval status in fishing year 2025. NMFS previously approved nine companies to provide catch monitoring services to the Northeast multispecies sectors in fishing year 2024. Five of the nine approved companies provide both ASM and EM services: A.I.S., Inc.; East West Technical Services, LLC; Fathom Research, LLC; New England Marine Monitoring; and Saltwater, Inc. The other four approved companies provide EM services only: Archipelago Marine Research, Ltd.; Flywire Cameras; Satlink US, LLC; and Teem Fish Monitoring, Inc.

All currently approved ASM and EM companies continue to meet all service provider performance standards, submitted all required documentation, and are therefore approved service providers for fishing year 2025. We did not receive any new ASM or EM provider applications. Table 1 includes

the revised list of approved monitoring service providers.

NMFS has the authority to remove a service provider from its approved status in accordance with the regulations at § 648.11(h)(7). A monitoring service provider that fails to meet the requirements, conditions, and responsibilities will be notified in writing that it is subject to removal from the list of approved monitoring service providers. Withdrawing approval of a service provider will be based on an evaluation of the service providers ability to meet the third-party catch monitoring provider standards in § 648.11(h)(5) and (6). All companies provided proof of holding insurance consistent with the regulations at 50 CFR 648.11(h)(3)(vii) as a part of their application. However, companies whose insurance expires before the end of the 2025 fishing year must submit updated insurance documents at the time of their current policy’s expiration to maintain approval. NMFS will closely monitor the performance of approved service providers, and will withdraw approval during the current approval term if it determines performance standards are not being met.

NMFS did not solicit applications to provide dockside monitoring services related to the maximized retention EM program. NMFS suspended the operation of the MREM program in fishing year 2024, and we are currently considering whether we will operate the program in 2025.

TABLE 1—APPROVED PROVIDERS FOR FISHING YEAR 2025

Provider	Services	Address	Phone	Fax	Website
A.I.S., Inc	ASM/EM	540 Hawthorn St, Dartmouth, MA 02747.	508–990–9054	508–990–9055 ..	https://aisobservers.com/ .
Archipelago Marine Research, Ltd.	EM	525 Head St, Victoria, BC V9A 5S1, Canada.	250–383–4535	250–383–0103 ..	https://www.archipelago.ca/ .
East West Technical Services, LLC.	ASM/EM	91 Point Judith Rd, Suite 26 Unit 347, Narragansett, RI 02882.	860–910–4957	860–223–6005 ..	https://www.ewts.com/ .
Fathom Resources, LLC	ASM/EM	855 Aquidneck Ave., Unit 9, Middletown, RI 02842.	508–990–0997	508–858–5383 ..	https://fathomresources.com/ .
Flywire Cameras	EM	PO BOX 55048, Lexington, KY 40511	888–315–7796	502–861–6568 ..	https://www.flywirecameras.com/ .
New England Marine Monitoring.	ASM/EM	350 Commercial St, Portland, ME 04101.	508–269–8138	none	https://www.nemarinemonitoring.com/ .
Saltwater, Inc	ASM/EM	733 N St, Anchorage, AK 99501	907–276–3241	907–258–5999 ..	https://www.saltwaterinc.com/ .
Satlink US, LLC	EM	16423 Sawgrass Drive, Rehoboth Beach, DE 19971.	703–447–5287	none	https://www.satlink.es/en/ .
Teem Fish Monitoring, Inc	EM	309 2nd Ave, Suite 363, Prince Rupert, BC V8J 3T1, Canada.	778–884–2598	none	https://teem.fish/ .

Note: ASM/EM = At-sea and electronic monitoring; EM = Electronic monitoring only.

(Authority: 16 U.S.C. 1801 *et seq.*)
Dated: November 6, 2024.
Karen H. Abrams,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2024–26185 Filed 11–12–24; 8:45 am]
BILLING CODE 3510–23–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE405]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands; Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from the Fish/Fisheries Conservation Lab at the University of South Carolina. If granted, the EFP would authorize the limited

harvest of red hind during spawning events in U.S. Caribbean Federal waters around the U.S. Virgin Islands (USVI) and exempt that harvest from Federal area and seasonal closure regulations. The purpose of the EFP is to address critical gaps in red hind demographics and life history, which could help provide current, region-specific information for upcoming stock assessments for the species.

DATES: Comments must be received no later than December 9, 2024.

ADDRESSES: You may submit comments on the application, identified by NOAA–NMFS–2024–0127, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA–NMFS–2024–0127 in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Sarah Stephenson, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public

viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the EFP application may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/southeast/caribbean-exempted-fishing-permits-efps>.

FOR FURTHER INFORMATION CONTACT: Sarah Stephenson, 727–824–5305, Sarah.Stephenson@noaa.gov.

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The applicant requests authorization to harvest 60 red hind grouper (*Epinephelus guttatus*) from two managed marine areas in Federal waters off the USVI: Red Hind Spawning Aggregation Area (Lang Bank) east of St. Croix (50 CFR 622.479(a)(2)) and the Hind Bank Marine Conservation District (MCD) south of St. Thomas (50 CFR

622.514(a)(2)) for data collection. A maximum of 120 red hind would be harvested under the EFP. The applicant is seeking to gather life history information (e.g., age, growth, reproduction) that could be used in future stock assessments for red hind, which provide guidance and management recommendations specific to this species for NMFS, the Caribbean Fishery Management Council, and the U.S. Virgin Islands' Department of Fish and Wildlife.

The applicant was awarded funding through the Cooperative Research Program to complete critical gaps in red hind population demographics and life history in preparation for upcoming stock assessments in the U.S. Caribbean. In addition to collecting life history information for the species, the project aims to evaluate current Federal area and seasonal closures that protect red hind spawning aggregations through replication of previous sampling collections and analysis of temporal trends related to size-at-age, sex ratios, and size and age frequency distributions for red hind during spawning events. By targeting red hind spawning aggregations, the applicant will be better able to collect data that currently is not readily available on larger sized fish. Data collected from this project would be made available for use in future stock assessments for red hind in St. Croix and St. Thomas and St. John, which are tentatively scheduled for late 2025 and 2026.

Red hind would be collected by researchers and commercial fishermen aboard contracted commercial fishing vessels. If granted, the EFP would exempt project participants from area and seasonal closure regulations codified at 50 CFR 622.479(a)(2) (St. Croix) and 50 CFR 622.514(a)(2) (St. Thomas and St. John), as identified and described below. Pending issuance, the EFP would be expected to be effective from December 1, 2024, through March 1, 2025. The EFP would only apply to the captains and vessels that are selected to be a part of the project. Therefore, Fish/Fisheries Conservation Lab at the University of South Carolina would be able to account for and provide NMFS with a list of participants (e.g., state license, registration of each vessel and vessel name during designated fishing trips, name of participants and contact information, etc.) to be covered under the EFP before the project begins.

Activities under the EFP would consist of harvesting 60 red hind from the Lang Bank site east of St. Croix during the 4 days around the full moon for the months of January 2025 and

February 2025, and 60 red hind from the MCD site south of St. Thomas during the 4 days around the full moon for the months of December 2024 and January 2025. During each sampling event (i.e., fishing day), commercial fishermen would use a maximum of four fishing rods, each with up to three hooks. All activities (a maximum of 16 fishing days) would occur in Federal waters, from depths of 82 to 246 feet (25 to 75 meters), while adrift (i.e., no anchoring would occur). Once the 60 red hind are obtained from each site, fishing activities would end.

The applicant would only target red hind. All other catch would be returned to the water using a descending device, if necessary, to ensure minimum harm. A total of 120 red hind would be retained under the EFP. Samples would be stored on ice and transported to a field lab. For each sample, the applicants would record standard length, fork length, and total length (to the nearest millimeter) and weight (to the nearest gram). Otoliths would be removed, rinsed, and stored for further processing. Gonads would be removed, weighed, and preserved. Eyes, muscle, stomachs, and fin clips would be collected and archived for future research on trophic ecology and population genomics.

Under the EFP, the applicant would be exempt from the closure regulations and allowed to fish for and harvest red hind in or from the (1) red hind spawning aggregation area east of St. Croix during the closure from December 1 through last day of February (50 CFR 622.479(a)(2)) and (2) Hind Bank Marine Conservation District closed area (50 CFR 622.514(a)(2)). A maximum of 8 fishing trips would occur in each site, 16 total during the project.

NMFS finds this application warrants further consideration based on a preliminary review. Possible conditions the agency may impose on the EFP, if granted, include but are not limited to, a prohibition on fishing within marine protected areas, marine sanctuaries, or special management zones without additional authorization, and requiring compliance with best practices in the event of interactions with any protected species.

A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with appropriate fishery management agencies of the affected states, the Council, and the U.S. Coast Guard, and a determination that the activities to be taken under the EFP are consistent with all other applicable laws.

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

Dated: November 6, 2024.

Karen H. Abrams,

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

[FR Doc. 2024-26184 Filed 11-12-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE455]

Permits; Foreign Fishing

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

ACTION: Notice of application for transshipment permit; request for comments.

SUMMARY: NMFS publishes for public review and comment information regarding a permit application for transshipment of farmed salmon from aquaculture operations in Maine waters to processing plants in Canada by Canadian flagged vessels. The application for a transshipment permit is submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is necessary for NMFS to make a determination on whether to approve the permit application.

DATES: Written comments must be received by November 27, 2024.

ADDRESSES: Written comments on this action, identified by RTID 0648-XE455 should be sent to Jasmine Prat in the NMFS Office of International Affairs, Trade, and Commerce by email at jasmine.prat@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Jasmine Prat by email at jasmine.prat@noaa.gov, or by phone at 301-956-5472.

SUPPLEMENTARY INFORMATION:

Background

Section 1824(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) authorizes the Secretary of Commerce (Secretary) to issue a transshipment permit for a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the United States Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States.

Section 1824(d)(3)(D) of the Magnuson-Stevens Act provides that an

application to transship from U.S. waters to another country using non-U.S. vessels may not be approved until the Secretary determines that no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated an interest in performing the transportation at fair and reasonable rates. NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below.

Summary of Application

NMFS received an application from True North Salmon Limited Partnership, Kelly Cove Salmon Limited, and 697002 NB, Inc., requesting authorization to transfer salmon from U.S. farm pens in Maine waters to 5 Canadian vessels for the purpose of transporting the salmon to Blacks Harbour, Canada for processing. The transshipment operations will occur within the boundaries of the State of Maine, and within 12 nautical miles from Maine's seaward boundary. NMFS issued permits for the same vessels for use in calendar year 2024. Those permits expire December 31, 2024.

Dated: November 7, 2024.

Alexa Cole,

*Director, Office of International Affairs,
Trade, and Commerce, National Marine
Fisheries Service.*

[FR Doc. 2024-26293 Filed 11-12-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Establishment of the Ocean Acidification Advisory Board and Solicitation of Nominations for Membership

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of establishment of the Ocean Acidification Advisory Board and solicitation of nominations for membership.

SUMMARY: Pursuant to section 10644(6) of the 2022 CHIPS and Science Act and in accordance with the Federal Advisory Committee Act (FACA), as amended, the Administrator of NOAA and the Subcommittee on Ocean Science and Technology (SOST) announce the establishment of the Ocean Acidification Advisory Board (OAAB). The OAAB shall provide

independent advice and recommendations to the Interagency Working Group on Ocean Acidification (IWG-OA) and the SOST on matters related to Federal activities on ocean and coastal acidification, including understanding impacts and developing mitigation techniques for ecosystems and human communities. This notice also requests nominations for membership on the OAAB.

DATES: Nominations should be sent to the web address specified below and must be received no more than 120 days after publication of this notice on March 18th, 2025. This solicitation notice shall remain open for two years; NOAA will continue to accept applications after 120 days past the publication of this notice in case there are vacancies.

ADDRESSES: Nominations and applications should be submitted electronically to the Designated Federal Officer (DFO), OAAB, NOAA, at dwright.gledhill@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dwight Gledhill, DFO, OAAB, NOAA, at 301-734-1288 or dwright.gledhill@noaa.gov in the Ocean Acidification Program Office, Oceanic and Atmospheric Research.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Establishment of the OAAB implements a statutory requirement of the 2022 CHIPS and Science Act, Public Law 117-167, sec. 10644(6), 33 U.S.C. 3703(c). The OAAB is governed by the FACA, which sets forth standards for the formation and use of advisory committees. The OAAB's responsibilities include the following: (1) Advise the SOST and IWG-OA on Federal research, monitoring, and outreach activities related to ocean and coastal acidification, and on efforts to coordinate these activities among agencies; (2) Review and make recommendations to the SOST on the IWG-OA's biennial reports, strategic research plan, and ocean chemistry coastal community vulnerability assessments; (3) Advise the SOST and IWG-OA on the best practices for data management and archiving standards for ocean and coastal acidification data; and (4) Maintain mechanisms for engagement and coordination with Tribal governments. The OAAB Chair shall brief the SOST and IWG-OA on the progress of the OAAB as necessary or at the request of the SOST.

II. Structure

The OAAB shall consist of 25 members appointed by the Co-Chairs of the SOST, as follows per the statute's

requirements: (A) Two representatives of the shellfish, lobster, or crab industry; (B) One representative of the finfish industry; (C) One representative of seafood processors; (D) Three representatives from academia, including both natural and social sciences; (E) One representative of recreational fishing; (F) One representative of a relevant nongovernmental organization; (G) Six representatives from relevant State and local governments with policy or regulatory authorities related to ocean acidification and coastal acidification; (H) One representative from the Alaska Ocean Acidification Network or a subsequent entity that represents the same geographical region and has a similar purpose; (I) One representative from the California Current Acidification Network or a subsequent entity that represents the same geographical region and has a similar purpose; (J) One representative from the Northeast Coastal Acidification Network or a subsequent entity that represents the same geographical region and has a similar purpose; (K) One representative from the Southeast Coastal Acidification Network or a subsequent entity that represents the same geographical region and has a similar purpose; (L) One representative from the Gulf of Mexico Coastal Acidification Network or a subsequent entity that represents the same geographical region and has a similar purpose; (M) One representative from the Mid-Atlantic Coastal Acidification Network or a subsequent entity that represents the same geographical region and has a similar purpose; (N) One representative from the Pacific Islands Ocean Observing System or a subsequent entity that represents the island territories and possessions of the United States in the Pacific Ocean, and the State of Hawaii and has a similar purpose; (O) One representative from the Caribbean Regional Association for Coastal Ocean Observing or a subsequent entity that represents Puerto Rico and the United States Virgin Islands and has a similar purpose; (P) One representative from the National Oceanic and Atmospheric Administration Olympic Coast Ocean Acidification Sentinel Site or a subsequent entity that represents the same geographical representation; (Q) One representative from the National Oceanic and Atmospheric Administration shall serve as an ex-officio member of the Advisory Board without a vote.

Other than the NOAA ex-officio member, who will serve in the capacity as a Regular Government Employee

(RGE), members shall serve in a Representative capacity; they are, therefore, not Special Government Employees. As such, Representative members are not subject to the ethics rules applicable to Government employees, except that they must not misuse Government resources or their affiliation with the Committee for personal purposes. All members of the OAAB will be appointed by the Co-Chairs of the SOST for a five-year term per the statute's requirement; members may not serve on the OAAB for more than two terms, which may or may not be consecutive. OAAB members serve at the SOST Co-Chairs' discretion. The SOST Co-Chairs will appoint one member to serve as the Chair and will determine the term of service for the Chair, which shall not exceed the member's appointed term of service. The OAAB will meet at least once per calendar year, with a preference for virtual meetings, at such times and places as may be designated by the OAAB Chair in consultation with the SOST Co-Chairs and IWG-OA Chair. If meetings are held in person, members, upon request, will be reimbursed for actual and reasonable travel and other per diem expenses incurred in performing such duties as authorized by 5 U.S.C. 5701 *et seq.* but will not be compensated for their time. As a Federal advisory committee, the OAAB's membership is required to be balanced in terms of viewpoints represented and the functions to be performed. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, or cultural, religious, or socioeconomic status. The SOST Co-Chairs shall ensure that an appropriate balance of scientific, industry, Tribal, State, and local resource managers, and geographical interests are represented by the members of the OAAB.

III. Nominations

Interested persons may nominate themselves or third parties. An application is required to be considered for OAAB membership, regardless of whether a person is nominated by a third party or self-nominated. The application package should include the individual's name and organizational affiliation, a brief description of the nominee's qualifications and interest in serving on the OAAB, which seat(s) they are qualified to represent from the list above, and a resume. Each submission should also provide the nominee's home address, business address, phone number(s), and email address. All nomination information should be provided in a single, complete package,

and should be sent to the Designated Federal Officer of the ORAP at the electronic address provided above.

Privacy Act Statement:

Authority. The collection of information concerning nominations to the OAAB is authorized under section 10644(6) of the 2022 CHIPS and Science Act, 33 U.S.C. 3703(c), and the FACA and its implementing regulations, 41 CFR part 102–3, and in accordance with the Privacy Act of 1974, as amended, (Privacy Act) 5 U.S.C. 552a.

Purpose. The collection of names, contact information, resumes, professional information, and qualifications is required in order for the Co-Chairs to appoint members to the OAAB.

Routine Uses. NOAA will use the nomination information for the purpose set forth above. The Privacy Act of 1974 authorizes disclosure of the information collected to NOAA staff for work-related purposes and for other purposes only as set forth in the Privacy Act and for routine uses published in the Privacy Act System of Records Notice COMMERCE/DEPT–11, Candidates for Membership, Members, and Former Members of Department of Commerce Advisory Committees, available at <https://www.commerce.gov/opog/privacy/SORN/SORN-DEPT-11>, and the System of Records Notice COMMERCE/DEPT–18, Employees Personnel Files Not Covered by Notices of Other Agencies, available at <https://www.commerce.gov/opog/privacy/SORN/SORN-DEPT-18>. By submitting an application, the applicant consents to having this information shared with the SOST co-chairs. NOAA will obtain the written permission of the potential NOAA ex-officio member to have their information shared with the SOST co-chairs.

Disclosure. Furnishing the nomination information is voluntary; however, if the information is not provided, the individual would not be considered for appointment as a member of the OAAB.

David Holst,

Chief Financial Officer/CAO, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–26246 Filed 11–12–24; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Ocean Research Advisory Panel (ORAP)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Ocean Research Advisory Panel (ORAP). The members will discuss issues outlined in the section on Matters to be considered.

DATES: The meeting is scheduled for December 3, 2024 from 9 a.m. to 4:30 p.m. eastern standard time (EST) and December 4, 2024 from 8:30 a.m. to 10:30 a.m. EST. These times and the agenda topics described below are subject to change.

For the latest agenda please refer to the ORAP website: <https://www.noaa.gov/ocean-research-advisory-panel/orap-public-meetings>.

ADDRESSES: The December 3–4, 2024 meeting will be at the AGU Conference Center, 2000 Florida Ave. NW, Washington, DC 20009. The link for the webinar registration will be posted, when available, on the ORAP website: <https://www.noaa.gov/ocean-research-advisory-panel/orap-public-meetings>.

FOR FURTHER INFORMATION CONTACT: Viviane Silva, ORAP Designated Federal Officer (DFO), SSMC3, Room 11320, 1315 East-West Hwy., Silver Spring, MD 20910; Phone Number: 240–624–0656; Email: DFO.orap@noaa.gov; or visit the ORAP website at <https://www.noaa.gov/ocean-research-advisory-panel/orap-public-meetings>.

SUPPLEMENTARY INFORMATION: The Ocean Research Advisory Panel (ORAP) advises the Ocean Policy Committee (OPC) and provides independent recommendations to the Federal Government on matters of ocean policy.

Congress directed the establishment of the ORAP in section 1055(c) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283), 10 U.S.C. 8933.

ORAP's responsibilities are (1) to advise the OPC on policies and procedures to implement the National Oceanographic Partnership Program; (2) to advise the OPC on matters relating to national oceanographic science, engineering, facilities, or resource requirements; (3) to advise the OPC on improving diversity, equity, and inclusion in the ocean sciences and

related fields; (4) to advise the OPC on national ocean research priorities; and (5) any additional responsibilities that the OPC considers appropriate.

Status: The December 3, 2024 meeting will be open to public participation with a 30-minute public comment period at 3:15 p.m. EST. The ORAP expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three minutes. Written comments for the December 3–4, 2024 meeting should be received by November 20, 2024 by the ORAP DFO (DFO.orap@noaa.gov) to provide sufficient time for ORAP review. Written comments received by the ORAP DFO after this date will be distributed to the ORAP, but may not be reviewed prior to the meeting date.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to the ORAP DFO no later than 12 p.m. EST on November 20, 2024.

Matters to be Considered: During the ORAP meeting on Dec. 13–14, 2023, the Ocean Policy Committee (OPC) requested that the ORAP advise on areas of opportunity for partnership (such as through the National Oceanic Partnership Program) on the topic of emerging technology (which could include Artificial Intelligence/Machine Learning, eDNA, and similar technology) with ocean industry and other sectors over the next 5–10 years. The OPC also requested that ORAP self-select another topic to address. The ORAP members agreed that the topic of accessible, inter-operable, interdisciplinary, and trusted ocean data to meet research and user needs is critical and deserves ORAP immediate attention. At this meeting on December 3–4, 2024, ORAP members will examine barriers, challenges, and potential mechanisms that expand opportunities for public-private partnerships by engaging external input from Government and Industry.

Meeting materials, including work products, will be made available on the ORAP website: <https://www.noaa.gov/ocean-research-advisory-panel/orap-public-meetings>.

Dated: October 23, 2024.

David Holst,

Director Chief Financial Officer/CAO, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–26245 Filed 11–12–24; 8:45 am]

BILLING CODE 3510-KD-P

COMMISSION OF FINE ARTS

Notice of Meeting

Per 45 CFR 2102.3, the next meeting of the U.S. Commission of Fine Arts is scheduled for November 21, 2024, at 9 a.m. and will be held via online videoconference. Items of discussion may include buildings, infrastructure, parks, memorials, and public art.

Draft agendas, the link to register for the online public meeting, and additional information regarding the Commission are available on our website: www.cfa.gov. Inquiries regarding the agenda, as well as any public testimony, should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing cfastaff@cfa.gov; or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated November 4, 2024 in Washington, DC.

Zakiya N. Walters,

Administrative Officer.

[FR Doc. 2024–26248 Filed 11–12–24; 8:45 am]

BILLING CODE 6330–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meetings

The Board of Directors of the Corporation for National and Community Service (operating as AmeriCorps) gives notice of the following meeting:

TIME AND DATE: Wednesday, November 20, 2024, 1:00 p.m.–2:00 p.m. (ET).

PLACE: AmeriCorps, 250 E Street SW, Washington, DC 20525. For health and safety reasons, this will be a virtual meeting.

• To register for the meeting, please use this link: https://americorps.zoomgov.com/webinar/register/WN_2g06wm-NSzOcWzFTDdMWaA.

• **Webinar ID:** 161 300 7199.

• **Passcode:** 625067.

• To participate by phone, call toll free: 833 568 8864.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

- I. Opening Remarks by the Chair
- II. CEO Report
- III. OGA Committee Report Out
- IV. Spotlight: AmeriCorps will share details from its new Volunteering and Civic Life in America research, a comprehensive look at how Americans make a difference in

their communities and promote the common good.

V. Chair's Closing Remarks and Adjournment

Members of the public who would like to comment on the business of the Board may do so in writing or virtually. Submit written comments to board@americorps.gov with the subject line: "Comments for November 20, 2024, AmeriCorps Board Meeting" no later than 5:00 p.m. (ET) November 13, 2024. Individuals who would like to comment during the meeting will be given instructions for signing up when they join the meeting. Comments are requested to be limited to two minutes.

AmeriCorps provides reasonable accommodation to individuals with disabilities, where needed.

CONTACT PERSON FOR MORE INFORMATION:

Meliha Tokay by telephone: 202–914–6854 or by email: board@americorps.gov.

Andrea Grill,

Acting General Counsel.

[FR Doc. 2024–26385 Filed 11–8–24; 11:15 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2024–0036; OMB Control Number 0704–0231]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS) Part 237, Service Contracting, and Related Clauses and Forms

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces a proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD'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 the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704–0231 through March 31, 2025. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by January 13, 2025.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0231, using either of the following methods:

o *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

o *Email:* osd.dfars@mail.mil. Include OMB Control Number 0704–0231 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Saleemah McMillan, at 202–308–5383.

SUPPLEMENTARY INFORMATION: *Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 237, Service Contracting, associated DFARS Clauses at DFARS 252.237, DD Form 2062, and DD Form 2063; OMB Control Number 0704–0231.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 7,018.

Responses Per Respondent: 3.8.

Annual Responses: 26,564.

Average Burden Per Response: 1.01 hours.

Annual Burden Hours: 26,738.

Needs and Uses: This information collection is used for the following purposes—

a. The information collected pursuant to paragraph (c) of the solicitation provision at DFARS 252.237–7000, Notice of Special Standards of Responsibility, is used to verify that the offeror is properly licensed in the state or other political jurisdiction in which the offeror operates its professional practice.

b. The contract clause at DFARS 252.237–7011, Preparation History; the DD Form 2062, Record of Preparation and Disposition of Remains (Outside CONUS); and the DD Form 2063, Record of Preparation and Disposition of Remains (Within CONUS) are used to verify that the deceased's remains have been properly cared for by the mortuary contractor.

c. The written plan required by the solicitation provision at DFARS 252.237–7024, Notice of Continuation of Essential Contractor Services, submitted by offerors concurrently with the proposal or offer, allows the contracting officer to assess the offeror's capability to continue providing contractually required services to support the DoD component's mission-essential functions during periods of crisis.

d. The information collected pursuant to the contract clause at DFARS 252.237–7023, Continuation of Essential Contractor Services, allows the contracting officer to provide approval of updates to the contractor's plan provided under the provision at DFARS 252.237–7024, to ensure that the contractor can continue to provide services in support of the DoD component's required mission-essential functions during crisis situations.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2024–26234 Filed 11–12–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0118]

Personnel Demonstration Project at the Defense Health Agency, Research and Development Science and Technology Reinvention Laboratory (STRL)

AGENCY: Under Secretary of Defense for Research and Engineering (USD(R&E)), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: This serves as notice of the proposed adoption of an STRL personnel demonstration project plan and additional flexibilities by the Defense Health Agency, Research and Development (DHA R&D), a DoD STRL. DHA R&D is an STRL comprised of medical research organizations that were formerly components of Military Department organizations, including the U.S. Army Medical Research and Development Command (USAMRDC), a successor to the U.S. Army Medical Research and Material Command (USAMRMC). The DHA R&D proposes to adopt the personnel demonstration project plan of the USAMRDC at the **Federal Register** issue of March 3, 1998. In addition, DHA R&D proposes to adopt certain personnel flexibilities available to all DoD STRLs.

DATES: This proposal may not be implemented until a 30-day comment period is provided, comments addressed, and a final **Federal Register** notice published. To be considered, written comments must be submitted on or before December 13, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

• *DHA R&D STRL:* Linda Krout, 301–619–7276, linda.j.krout.civ@health.mil.

• *Office of Under Secretary of Defense (Research and Engineering), DoD Laboratories, Defense Research Enterprise:* Julia Parakkat, 703–625–5768, julia.b.parakkat.civ@mail.mil.

SUPPLEMENTARY INFORMATION: Pursuant to section 4121 of title 10, United States Code (U.S.C.), the Secretary of Defense is authorized to conduct personnel demonstration projects at laboratories designated as DoD STRLs. DoD STRLs must have an approved personnel demonstration project plan published in an FRN and fulfill any collective bargaining obligations before implementing the demonstration project or adopting the flexibilities available to other DoD STRL demonstration projects. In implementing this plan, DHA R&D will establish internal operating procedures as appropriate.

1. Background

A personnel demonstration project was implemented at the USAMRMC in accordance with the plan at 63 FR 10440 (March 3, 1998). In 2019, the USAMRMC was redesignated as the USAMRDC and the personnel demonstration project notice at 63 FR 10440 was updated through a minor modification on August 30, 2019, to reflect this change. On May 5, 2024,

following the transfer of USAMRDC components to DHA R&D, the Deputy Assistant Secretary of Defense for Science and Technology Foundations designated DHA R&D as a DoD STRL. DHA R&D has implemented the USAMRDC personnel demonstration project authorities for the DHA R&D components that were formerly subordinate components of USAMRDC. This notice proposes to implement the personnel demonstration project for all DHA R&D components by adopting the USAMRDC personnel demonstration project plan and other flexibilities available to all DoD STRLs.

The purpose of the demonstration project is to demonstrate that the effectiveness of DoD organizations can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expand the opportunities available to employees through a more responsive and flexible personnel system.

2. DHA R&D Personnel Demonstration Project Plan

The demonstration project will cover approximately 1,224 DHA R&D positions. Approximately 59 percent of covered positions are at the following DHA R&D organizations located at Fort Detrick, Maryland: Medical Research and Development, Telemedicine and Advanced Technology Research, Medical Research Institute of Infectious Disease, Medical Research Acquisition Activity, and Medical Materiel Development Activity. The remaining positions are at the following sites: Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, Maryland; Walter Reed Institute of Research, Forest Glen, Silver Spring, Maryland; Institute of Surgical Research and the Burn Center Directorate, Joint Base San Antonio, Texas. The majority of these positions transferred to DHA R&D from USAMRDC. DHA R&D has successfully implemented the USAMRDC personnel demonstration project authorities for DHA R&D components that were formerly subordinate organizations of USAMRDC. Based on experience gained and following careful consideration, DHA R&D has determined to conduct a personnel demonstration project for all DHA R&D components by adopting the USAMRDC personnel demonstration project plan and other flexibilities available to all DoD STRLs.

The DHA R&D will adopt the USAMRDC Personnel Demonstration Project plan outlined in 63 FR 10440 (March 3, 1998), including the following modifications approved pursuant to DoD Instruction 3201.05: minor

modification to administrative occupational family, DJ 03 and 04 band structure of occupational series 1102 only (February 3, 2011); minor modification to pay for performance payment timeframe (January 5, 2018); minor modification to participating occupational series (November 28, 2022). Upon implementation of this personnel demonstration project, DHA R&D will also adopt the following flexibilities that are available to all DoD STRLs:

- 89 FR 44648 (May 21, 2024)
- 88 FR 10874 (February 22, 2023)
- 87 FR 72462 (November 25, 2022)
- 87 FR 58334 (September 26, 2022)
- 87 FR 40200 (July 6, 2022)
- 85 FR 78829 (December 7, 2020)
- 85 FR 5639 (January 31, 2020)
- 82 FR 43339 (September 15, 2017)
- 82 FR 29280 (June 28, 2017)
- 79 FR 43722 (July 28, 2014)
- 78 FR 29335 (May 20, 2013)

Dated: November 7, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–26267 Filed 11–12–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No.: TC–26]

Proposed Modifications to Open Access Transmission Tariff; Public Hearing and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (Bonneville), Department of Energy (DOE).

ACTION: Notice of public hearing and opportunity to review and comment.

SUMMARY: Bonneville is initiating a proceeding pursuant to Bonneville's open access transmission tariff (Tariff) and the Federal Power Act to modify the non-rate terms and conditions for transmission, ancillary, and interconnection services in the Tariff. The proposed modifications will be effective on October 1, 2025. Bonneville has designated this proceeding Docket No. TC–26.

DATES:

Prehearing Conference: The prehearing conference in the TC–26 proceeding will be held on November 15, 2024, at 2:00 p.m. The **ADDRESSES** section of this notice provides details on participating in the prehearing conference.

Intervention: Petitions to intervene in the TC–26 proceeding must be filed on

Bonneville's secure website no later than 4:30 p.m. on December 3, 2024. Part III of this notice, "Public Participation in TC–26," provides details on requesting access to the secure website and filing a petition to intervene.

Participant Comments: Written comments by non-party participants must be received by December 5, 2024, to be considered in the Hearing Officer's recommended decision and the Administrator's Record of Decision (ROD). See Part III of this notice for more information about submitting participant comments.

ADDRESSES:

Prehearing Conference: The prehearing conference in the TC–26 proceeding will be held in the Bonneville Rates Hearing Room, 1201 NE Lloyd Boulevard, Suite 200, Portland, Oregon 97232. Interested parties may attend in person or participate virtually via WebEx. The WebEx information will be available on Bonneville's TC–26 tariff proceeding web page at <https://www.bpa.gov/tc26> or from the Hearing Clerk at TC26clerk@gmail.com.

Intervention: Anyone intending to become a party to the TC–26 tariff proceeding must file a petition to intervene on Bonneville's secure website. Petitions to intervene may be filed beginning on the date of publication of this notice and are due no later than 4:30 p.m. on December 3, 2024. Part III of this notice, "Public Participation in TC–26," provides details on requesting access to the secure website and filing a petition to intervene.

Participant Comments: Written comments by non-party participants may be submitted through Bonneville's website at www.bpa.gov/comment or by hard copy to: BPA Public Involvement, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293. Part III of this notice, "Public Participation in TC–26," provides details on submitting participant comments.

FOR FURTHER INFORMATION CONTACT:

Elissa Haley, DKS–7, BPA Communications, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293; by phone toll-free at 1–800–622–4519; or by email to enhaley@bpa.gov.

The Hearing Clerk for this proceeding can be reached via email at TC26clerk@gmail.com or via telephone at (503) 479–8506.

Please direct questions regarding Bonneville's secure website to the Hearing Coordinator via email at cwgriffen@bpa.gov or, if the question is

time-sensitive, via telephone at (503) 230-5107.

Responsible Official: Brian McConnell, Manager of Transmission Tariff, Rates, and Regulatory Activities, is the official responsible for the development of Bonneville's open access transmission tariff.

SUPPLEMENTARY INFORMATION:

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Part I—Introduction and Procedural Matters
Part II—Scope of TC-26 Tariff Proceeding
Part III—Public Participation in TC-26
Part IV—Summary of Proposed Modifications to Bonneville's Tariff
Part V—Proposed Tariff

Part I—Introduction and Procedural Matters

A. Introduction and Procedural Background

The Bonneville Project Act of 1937, as reaffirmed in the Pacific Northwest Electric Power Planning and Conservation Act, grants the Bonneville Administrator broad authority to enter into contracts upon such terms and conditions and in such manner as the Bonneville Administrator may deem necessary. Bonneville's Tariff provides the generally applicable terms and conditions for transmission and interconnection service across the Federal Columbia River Transmission System (FCRTS). Section 9 of the Tariff provides that the Bonneville Administrator may use the procedures set forth in section 212(i)(2)(A) of the Federal Power Act to establish and modify non-rate terms and conditions of the Tariff. The section 212(i)(2)(A) procedures include giving notice in the **Federal Register** and conducting a hearing that adheres to the procedural requirements of paragraphs (1) through (3) of section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i) (the same procedures Bonneville uses to set rates). In accordance with these procedures, the Hearing Officer conducts one or more hearings as expeditiously as practicable to develop a full and complete record. Unless the Hearing Officer becomes unavailable to Bonneville, upon conclusion of the hearing, the Hearing Officer shall make a recommended decision to the Bonneville Administrator, and the Bonneville Administrator then makes a separate and final determination to establish or modify the Tariff terms and conditions (discussed further in Part III, Section C of this notice).

Bonneville's Rules of Procedure govern the TC-26 tariff proceeding. The rules are posted on Bonneville's website at <https://www.bpa.gov/energy-and->

[services/rate-and-tariff-proceedings/rules-of-procedure-revision-process](https://www.bpa.gov/energy-and-services/rate-and-tariff-proceedings/rules-of-procedure-revision-process).

B. Proposed Settlement for Modifications to the Tariff

Starting in late August, Bonneville engaged its transmission and interconnection customers and stakeholders in an attempt to reach settlement of the modifications to the Tariff for the TC-26 tariff proceeding. These discussions have resulted in the TC-26 Settlement Agreement, which includes the proposed Tariff modifications Bonneville is proposing to adopt in the TC-26 tariff proceeding, and a BP-26 Partial Rates Settlement Agreement, which includes the terms of the Generator Interconnection Withdrawal Charge that Bonneville is proposing to adopt in the separate Power and Transmission Rate Adjustment hearing (BP-26 proceeding).

On October 1, 2024, Bonneville posted the TC-26 Settlement Agreement and the BP-26 Partial Rates Settlement Agreement on Bonneville's website and set a deadline of October 15, 2024, for customers and stakeholders to inform Bonneville of any objections to the settlement agreements. Bonneville did not receive any objections by the deadline. A summary of Bonneville's proposed Tariff modifications is provided in Part IV of this notice. A link to the TC-26 Settlement Agreement and proposed Tariff are provided in Part V.

The TC-26 Settlement Agreement calls for Bonneville to file a motion with the Hearing Officer to establish a deadline for parties to either object to the proposed settlement or waive the right to contest the settlement. If no parties object to the settlement by the deadline set by the Hearing Officer, Bonneville's motion would request the Hearing Officer to issue a decision recommending the Bonneville Administrator adopt the TC-26 Settlement Agreement. Bonneville intends to file its motion soon after the TC-26 prehearing conference.

If a party objects to the TC-26 Settlement Agreement or objects to the BP-26 Partial Rates Settlement Agreement in the BP-26 proceeding, Bonneville will notify all parties and decide how to proceed.

C. Proposed Procedural Schedule

A proposed schedule for the proceeding is provided below. The proposed schedule assumes there are no objections to the proposed settlement in the TC-26 tariff proceeding. The official schedule will be established by the Hearing Officer and may be amended by the Hearing Officer as needed during the proceeding.

Prehearing Conference—November 15, 2024

BPA Files Initial Proposal—November 22, 2024

Deadline for Petitions to Intervene—December 3, 2024

Deadline for Objections to Settlement Agreement—December 5, 2024

Close of Participant Comments—December 5, 2024

Hearing Officer's Recommended Decision Issued—January 10, 2025

Final ROD—February 26, 2025

D. Ex Parte Communications

Section 1010.5 of the Rules of Procedure prohibits *ex parte* communications. *Ex parte* communications include any oral or written communication (1) relevant to the merits of any issue in the proceeding; (2) that is not on the record; and (3) with respect to which reasonable prior notice has not been given. The *ex parte* rule applies to communications with all Bonneville and DOE employees and contractors, the Hearing Officer, and the Hearing Clerk during the proceeding. Except as provided, any communications with persons covered by the rule regarding the merits of any issue in the proceeding by other Executive Branch agencies, Congress, existing or potential Bonneville customers, nonprofit or public interest groups, or any other non-DOE parties are prohibited. The rule explicitly excludes and does not prohibit communications (1) relating to matters of procedure; (2) otherwise authorized by law or the Rules of Procedure; (3) from or to the Federal Energy Regulatory Commission (Commission); (4) that all litigants agree may be made on an *ex parte* basis; (5) in the ordinary course of business, about information required to be exchanged under contracts, or in information responding to a Freedom of Information Act request; (6) between the Hearing Officer and Hearing Clerk; (7) in meetings for which prior notice has been given; or (8) otherwise specified in section 1010.5(b) of the Rules of Procedure. The *ex parte* rule is effective upon publication of this FRN and remains in effect until the Bonneville Administrator's Final ROD is issued.

Part II—Scope of the TC-26 Tariff Proceeding

The TC-26 tariff proceeding involves the proposed modifications to Bonneville's Tariff described in Part IV. This section provides guidance to the Hearing Officer regarding the specific issues that are outside the scope of the TC-26 tariff proceeding. In addition to the issues specifically listed below, any other issue that is not a Tariff term or

condition issue is outside the scope of this proceeding.

Bonneville may revise the scope of the proceeding to include new issues that arise as a result of circumstances or events occurring outside the proceeding that are substantially related to the Tariff terms and conditions under consideration in the proceeding. *See* Rules of Procedure section 1010.4(b)(8)(iii), (iv). If Bonneville revises the scope of the proceeding to include new issues, Bonneville will provide public notice on its website, present testimony or other information regarding such issues, and provide a reasonable opportunity to intervene and respond to Bonneville's testimony or other information. *Id.*

A. Business Practices

Bonneville's business practices provide implementation details for the Tariff and are outside the scope of the TC-26 tariff proceeding. Bonneville's decisions regarding business practices are determined in other forums and follow the procedures in Bonneville's Business Practice Process. If business practices are developed for the proposed terms and conditions in this proceeding, such development will occur outside the terms and conditions proceeding. Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Bonneville Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that proposes or challenges Bonneville's current and future business practices.

B. Customer-Specific Contracts and Disputes

Contracts and contract disputes between Bonneville and its customers are outside the scope of the TC-26 tariff proceeding. Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Bonneville Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence related to contracts and contract disputes of Bonneville customers.

C. Oversupply Management Protocol

The Oversupply Management Protocol (Tariff Attachment P) includes the Tariff requirements and procedures used to moderate total dissolved gas levels in the Columbia River to protect endangered fish and other aquatic species. Bonneville does not propose to modify the terms of the Oversupply Management Protocol in the TC-26 tariff proceeding. Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Bonneville Administrator directs the Hearing Officer to exclude from the

record all argument, testimony, or other evidence related to the terms of the Oversupply Management Protocol (Tariff Attachment P), including whether the Oversupply Management Protocol complies with orders of the Commission; whether Bonneville took all actions to avoid using the Oversupply Management Protocol, including the payment of negative prices to generators outside of Bonneville's balancing authority area; and issues concerning the rates for recovering the costs of the Oversupply Management Protocol.

D. Program Cost Estimates

Bonneville's projections of its program costs and spending levels are not determined in terms and conditions proceedings and are outside the scope of the TC-26 tariff proceeding. These projections are determined by Bonneville in other forums, such as the Integrated Program Review public process, with input from stakeholders. Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Bonneville Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that challenges the appropriateness or reasonableness of the Bonneville Administrator's decisions on costs and spending levels.

E. Rates

Pursuant to Bonneville's statutes, it must set rates to recover costs associated with providing power and transmission services. In addition to and concurrent with this proceeding, Bonneville is holding a separate BP-26 proceeding regarding the proposed fiscal year 2026–2028 power and transmission, ancillary, and control area services rates. Bonneville's decisions regarding rates are outside the scope of the TC-26 tariff proceeding. Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Bonneville Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence related to rates, or that challenges the appropriateness or reasonableness of the Bonneville Administrator's decisions on rates or seeks in any way to propose revisions to the rates, including rate schedules, rate schedule provisions, rate designs, rate methodologies, rate forecasts, interest expense and credit, Treasury repayment schedules, non-Federal debt repayment schedules, revenue financing, calculation of depreciation and amortization expense, forecasts of system replacements used in repayment studies, transmission acquisition expenses incurred by Power Services,

generation acquisition expenses, minimum required net revenue, increase in, or the use of, financial reserves, and the costs of risk mitigation actions resulting from the expense and revenue uncertainties included in the risk analysis.

In this proceeding, Bonneville is proposing to modify the Tariff terms and conditions to include a "Withdrawal Charge" as discussed in Part IV below. In order to implement the "Withdrawal Charge," Bonneville is proposing to adopt a general rate schedule provision that establishes the amount of the proposed "Generator Interconnection Withdrawal Charge" and other details about the applicability of the charge in the BP-26 proceeding.

The exclusion in this section does not extend to limited testimony or evidence acknowledging that Bonneville has proposed adoption of "Generator Interconnection Withdrawal Charge" in the BP-26 proceeding.

Part III—Public Participation in TC-26

A. Interventions

Any entity or person intending to become a party in the TC-26 tariff proceeding must file a petition to intervene through Bonneville's secure website, <https://proceedings.bpa.gov/>. Because Bonneville is introducing a new secure website interface, all prospective users must create a new user account to submit an intervention. The secure website contains a link to the user guide, which provides step-by-step instructions for creating user accounts, submitting filings, and uploading interventions. Please contact the Hearing Coordinator via email at cwgriffen@bpa.gov or, if the question is time-sensitive, via telephone at (503) 230-5107, with any questions regarding the registration and submission process.

All petitions to intervene must be submitted through Bonneville's secure website by the deadline in the procedural schedule adopted by the Hearing Officer. Late interventions are strongly disfavored. Petitions to intervene must conform to the format and content requirements in sections 1010.6 and 1010.11 of Bonneville's Rules of Procedure. Petitions must state the name and address of the entity or person requesting party status and the entity or person's interest in the hearing.

The Hearing Officer will rule on all petitions to intervene. Bonneville customers and affiliated customer groups will be granted intervention based on petitions filed in conformance with the Rules of Procedure. Other petitioners must explain their interests in sufficient detail to permit the Hearing

Officer to determine whether the petitioners have a relevant interest in the hearing.

Bonneville or any party may oppose a petition to intervene. The deadline for opposing a timely petition to intervene is two business days after the deadline for filing the petition. Opposition to an untimely petition to intervene must be filed within two business days after service of the petition.

B. Participant Comments

Bonneville distinguishes between “participants in” and “parties to” the TC-26 tariff proceeding. Separate from the formal hearing process, Bonneville will accept written comments, views, opinions, and information from participants who have not intervened in the TC-26 proceeding and been granted “party” status by the Hearing Officer. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties’ witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. Bonneville customers that will receive transmission or interconnection service under the terms and conditions of the Tariff, or their affiliated customer groups, may not submit participant comments. Members or employees of organizations that have intervened in the proceeding may submit participant comments as private individuals (that is, not speaking for their organizations), but may not use the comment procedures to address specific issues raised by their intervener organizations.

Written comments by participants must be received by December 5, 2024, to be considered by the Hearing Officer and the Bonneville Administrator. Participants should submit comments through Bonneville’s website at www.bpa.gov/comment or in hard copy to: BPA Public Involvement, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293. All comments should contain the designation “TC-26” in the subject line.

C. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written evidence and arguments entered into the record by Bonneville and the parties, written comments from participants, and other material accepted into the record by the Hearing Officer. Upon conclusion of the hearing, the Hearing Officer will develop a recommended decision for the Bonneville Administrator. The Hearing Officer’s recommended decision must be based on the record

and include the Hearing Officer’s findings and conclusions, including the reasons or bases thereof, on all material issues of fact, law, or discretion raised by the parties in their initial briefs. The Hearing Officer will review and certify the record to the Bonneville Administrator for final decision.

The Bonneville Administrator will make a final determination establishing or modifying Tariff terms and conditions based on the record, the Hearing Officer’s recommended decision, and such other materials and information as may have been submitted to or developed by the Bonneville Administrator. The Final ROD will be made available to all parties.

Part IV—Summary of Proposed Modifications to Bonneville’s Tariff

In this proceeding, Bonneville proposes to adopt, effective October 1, 2025, modifications to the non-rate Tariff terms and conditions consistent with the Tariff attached to the TC-26 Settlement Agreement. The TC-26 Settlement Agreement includes (1) changes to section 2 to allow existing firm service transmission customers that requested a term of five years or more to have the right to continue taking transmission service from BPA when the customer’s contract expires, rolls over or is renewed; (2) clarifications in section 4 to align with the current Attachment C, Methodology to Assess Available Transfer Capability, in regard to how Bonneville calculates Available Transfer Capability (ATC) and the Total Transfer Capability (TTC) for ATC paths; (3) modifications to Schedule 9E, Generator Imbalance Service, to allow for the recovery of Non-EIM Balancing Costs; (4) updates to the Summer and Non-Summer loss factor percentages in the Network Loss Factors table in Schedule 11; (5) changes to Attachment A, Form of Service Agreement for Firm Point-to-Point Service, to update references to exhibits for consistency within the attachment and to add Exhibit F, Specifications for Conditional Firm Point-to-Point Transmission Service; (6) modifications to Attachment L, Standard Large Generator Interconnection Procedures (LGIP) to establish that interconnection customers may be subject to a Withdrawal Charge if the customer’s interconnection request is withdrawn or deemed withdrawn at certain stages of the interconnection process, and to add Appendix 5, Standard Large Generator Interconnection Agreement; (7) modifications to Attachment R, Large Generator Interconnection Transition Process to specify the applicability of Withdrawal Charges to interconnection

customers participating in the Transmission Process; (8) the addition of new Attachment S, Transmission Line Ratings; and (9) ministerial edits to Attachments L and R. In addition, separate and apart from this proceeding, Bonneville is proposing adoption of a rate schedule for the Generator Interconnection Withdrawal Charge in the BP-26 proceeding, consistent with both the BP-26 Partial Rates Settlement Agreement and the TC-26 Settlement Agreement. As described previously, the specific Tariff modifications at issue are reflected in the TC-26 Settlement Agreement that was developed in discussions with customers and other stakeholders earlier this year. The proposed Tariff assumes the TC-26 settlement is successful. In the event the TC-26 settlement is unsuccessful, Bonneville will publish a revised Tariff proposal consistent with the procedural schedule established and amended by the Hearing Officer.

Part V—Proposed Tariff

Bonneville’s proposed Tariff and the TC-26 Settlement Agreement are part of this notice and available to view and download on Bonneville’s website at <https://www.bpa.gov/tc26>.

Signing Authority

This document of the Department of Energy was signed on October 31, 2024, by John L. Hairston, Administrator and Chief Executive Officer of the Bonneville Power Administration, pursuant to delegated authority from the Secretary of Energy. This document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 7, 2024.

Treena V. Garrett,

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

[FR Doc. 2024-26242 Filed 11-12-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Bonneville Power Administration****[BPA File No.: BP-26]****Fiscal Year (FY) 2026–2028 Proposed Power and Transmission Rate Adjustments; Public Hearing and Opportunities for Public Review and Comment****AGENCY:** Bonneville Power Administration (Bonneville or BPA), Department of Energy (DOE).**ACTION:** Notice of FY 2026–2028 proposed power and transmission rate adjustments.

SUMMARY: Bonneville is initiating a rate proceeding under the Northwest Power Planning and Conservation Act (Northwest Power Act) to establish power, transmission, and ancillary and control area services rates for the period from October 1, 2025, through September 30, 2028. Bonneville has designated this proceeding Docket No. BP-26.

DATES:

Prehearing Conference: The prehearing conference in the BP-26 proceeding will be held on November 15, 2024, immediately following the conclusion of the prehearing conference for Bonneville's TC-26 tariff proceeding, which begins at 2:00 p.m. The **ADDRESSES** section of this notice provides details on participating in the prehearing conference.

Intervention: Petitions to intervene in the BP-26 proceeding must be filed on Bonneville's secure website no later than 4:30 p.m. on December 3, 2024. Part III of this notice, "Public Participation in BP-26," provides details on requesting access to the secure website and filing a petition to intervene.

Participant Comments: Written comments by non-party participants must be received by February 7, 2025, to be considered in the Administrator's Record of Decision (ROD). Part III of this notice, "Public Participation in BP-26," provides details on submitting participant comments.

ADDRESSES:

Prehearing Conference: The prehearing conference in the BP-26 proceeding will be held in the Bonneville Rates Hearing Room, 1201 NE Lloyd Boulevard, Suite 200, Portland, Oregon 97232. Interested parties may attend in person or participate virtually via WebEx. The WebEx information will be available on Bonneville's BP-26 web page at <http://bpa.gov/bp26> or from the Hearing Clerk at BP26clerk@gmail.com.

Intervention: Anyone intending to become a party to the BP-26 proceeding must file a petition to intervene on Bonneville's secure website. Petitions to intervene may be filed beginning on the date of publication of this Notice and are due no later than 4:30 p.m. on December 3, 2024. Part III of this notice, "Public Participation in BP-26," provides details on requesting access to the secure website and filing a petition to intervene.

Participant Comments: Written comments by non-party participants may be submitted through Bonneville's website at www.bpa.gov/comment or by hard copy to: BPA Public Involvement, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293. Part III of this notice, "Public Participation in BP-26," provides details on submitting participant comments.

FOR FURTHER INFORMATION CONTACT: Ms. Elissa Haley, DKS-7, BPA Communications, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293; by phone toll-free at 1-800-622-4519; or by email to enhaley@bpa.gov.

The Hearing Clerk for this proceeding can be reached via email at BP26clerk@gmail.com or via telephone at (503) 479-8506.

Please direct questions regarding Bonneville's secure website to the Hearing Coordinator via email at cwgriffen@bpa.gov or, if the question is time-sensitive, via telephone at (503) 230-5107.

Responsible Officials: Mr. Daniel H. Fisher, Power Rates Manager, is the official responsible for the development of Bonneville's power rates, and Mr. Brian McConnell, Manager of Transmission Tariff, Rates, and Regulatory Activities, is the official responsible for the development of Bonneville's transmission, ancillary, and control area services rates.

SUPPLEMENTARY INFORMATION:**Table of Contents**

Part I Introduction and Procedural Matters
Part II Scope of BP-26 Rate Proceeding
Part III Public Participation in BP-26
Part IV Summary of Rate Proposals
Part V Proposed BP-26 Rate Schedules

Part I—Introduction and Procedural Matters**A. Introduction**

The Northwest Power Act provides that Bonneville must establish, and periodically review and revise, its power and transmission rates so that they recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and

transmission of electric power, including amortization of the Federal investment in the Federal Columbia River Power System (FCRPS) over a reasonable number of years, and Bonneville's other costs and expenses. Section 7(i) of the Northwest Power Act requires that Bonneville's rates be established according to certain procedures. Among other things, the procedures include publication of notice of the proposed rates in the **Federal Register** and one or more hearings conducted as expeditiously as practicable by a Hearing Officer to develop a full and complete record for a final decision by the Administrator. Bonneville is conducting the BP-26 proceeding to establish rates for FY 2026–2028.

Bonneville's Rules of Procedure will govern the BP-26 proceeding. The rules are posted on Bonneville's website at <https://www.bpa.gov/energy-and-services/rate-and-tariff-proceedings/rules-of-procedure-revision-process>.

B. BP-26 Integrated Program Review

Bonneville's Integrated Program Review (IPR) process is designed to allow the public an opportunity to review and comment on Bonneville's expense and capital cost forecasts before the forecast costs are used to set rates. Bonneville's BP-26 IPR process, which addressed the expense and capital program level cost forecasts for FY 2026–2028, began on June 25, 2024, with the publication of the BP-26 IPR Initial Publication. The process concluded on October 24, 2024, with the issuance of the BP-26 IPR Close-Out Report. Comments regarding any new information or changed circumstances arising after the date of this notice that affect BPA's cost projections should be directed to finance@bpa.gov and be submitted no later than March 3, 2025. At the discretion of the Administrator, Bonneville may hold additional processes to review these forecasts outside of the BP-26 rate proceeding. If Bonneville decides to update any cost information, such updates will be reflected in the final proposed rates.

C. Proposed Settlement of the Generator Interconnection Withdrawal Charge

As part of a workshop process that preceded the BP-26 proceeding, Bonneville engaged in discussions with customers and other stakeholders about a proposal for a charge in the Transmission rate schedules that would apply to the withdrawal of a request for interconnection services under the Standard Large Generator Interconnection Procedures in Attachment L to Bonneville's open

access transmission tariff. These discussions have resulted in the BP-26 Partial Rates Settlement Agreement, which includes the terms of the “Generator Interconnection Withdrawal Charge” that Bonneville is proposing to adopt in the BP-26 proceeding. A description of the proposed charge is provided in Part IV of this notice. A link to the BP-26 Partial Rates Settlement Agreement is provided in Part V. The proposed settlement addresses the Generator Interconnection Withdrawal Charge only and no other issues in this proceeding.

The proposed settlement calls for Bonneville to file a motion with the BP-26 Hearing Officer to establish a deadline for parties in the BP-26 proceeding to either object to the proposed settlement or waive the right to contest the settlement. Bonneville intends to file its motion soon after the BP-26 prehearing conference. If no party in the BP-26 proceeding objects to the proposed settlement, Bonneville staff will continue moving forward with the proposal to adopt the settlement. If a party objects, staff will notify all parties and decide how to proceed.

D. Proposed Procedural Schedule

A proposed schedule for the BP-26 proceeding is provided below. The proposed schedule assumes there are no objections to the proposal to adopt the BP-26 Partial Rates Settlement Agreement. The official schedule will be established by the Hearing Officer and may be amended by the Hearing Officer as needed during the proceeding.

Prehearing Conference—November 15, 2024
 BPA Files Initial Proposal—November 22, 2024
 Deadline for Petitions to Intervene—December 3, 2024
 Clarification—December 10, 2024
 Motions to Strike Due—December 17, 2024
 Data Request Deadline for BPA’s Initial Proposal—December 17, 2024
 Parties File Direct Cases—January 23, 2025
 Clarification—January 30, 2025
 Motions to Strike Due—February 6, 2025
 Data Request Deadline for Parties’ Direct Cases—February 6, 2025
 Close of Participant Comments—February 7, 2025
 Litigants File Rebuttal Cases—March 5, 2025
 Clarification—March 12, 2025
 Motions to Strike Due—March 14, 2025
 Data Request Deadline for Litigants’ Rebuttal—March 14, 2025
 Parties Give Notice of Intent to Cross-Examine—March 26, 2025

Cross-Examination—April 9–10, 2025
 Initial Briefs Filed—April 25, 2025
 Oral Argument—May 7, 2025
 Draft Record of Decision Issued—June 6, 2025
 Briefs on Exceptions Filed—June 20, 2025
 Final Record of Decision and Final Studies Issued—July 24, 2025

E. Ex Parte Communications

Section 1010.5 of Bonneville’s Rules of Procedure prohibits *ex parte* communications. *Ex parte* communications include any oral or written communication (1) relevant to the merits of any issue in the proceeding; (2) that is not on the record; and (3) with respect to which reasonable prior notice has not been given. The *ex parte* rule applies to communications with all Bonneville and DOE employees and contractors, the Hearing Officer, and the Hearing Clerk during the proceeding. Except as provided, any communications with persons covered by the rule regarding the merits of any issue in the proceeding by other executive branch agencies, Congress, existing or potential Bonneville customers, nonprofit or public interest groups, or any other non-DOE parties are prohibited. The rule explicitly excludes and does not prohibit communications (1) relating to matters of procedure; (2) otherwise authorized by law or the Rules of Procedure; (3) from or to the Federal Energy Regulatory Commission (Commission); (4) that all litigants agree may be made on an *ex parte* basis; (5) in the ordinary course of business, about information required to be exchanged under contracts, or in information responding to a Freedom of Information Act request; (6) between the Hearing Officer and Hearing Clerk; (7) in meetings for which prior notice has been given; or (8) as otherwise specified in section 1010.5(b) of Bonneville’s Rules of Procedure. The *ex parte* rule is effective upon publication of this FRN and remains in effect until the Administrator’s Final ROD is issued.

Part II—Scope of BP-26 Rate Proceeding

A. Joint Rate Proceeding

The BP-26 proceeding is a joint proceeding for the adoption of both power and transmission rates for FY 2026–2028 (see Parts IV and V). This section provides guidance to the Hearing Officer regarding the scope of the rate proceeding and identifies specific issues that are outside the scope. In addition to the issues specifically listed below, any other issue that is not a ratemaking issue is outside the scope of this proceeding.

Bonneville may revise the scope of the proceeding to include new issues that arise as a result of circumstances or events occurring outside the proceeding that are substantially related to the rates under consideration in the proceeding. See Rules of Procedure, section 1010.4(b)(8)(iii), (iv). If Bonneville revises the scope of the proceeding to include new issues, Bonneville will provide public notice on its website, present testimony or other information regarding such issues, and provide a reasonable opportunity to intervene and respond to Bonneville’s testimony or other information. *Id.*

1. Expense and Capital Cost Forecasts

Bonneville’s forecasts of its expense and capital costs are not determined in rate proceedings. Bonneville develops these forecasts in other processes, such as the IPR process described previously, with input from stakeholders. These forecasts are used in Bonneville’s ratemaking, but do not establish Bonneville’s budgets or spending levels for any program. Adjustments to, and selection of, projects for Bonneville’s actual spending levels for its programmatic spending, including fish and wildlife spending, occur through the yearly budgetary review process, which includes submission of Bonneville’s budget to Congress.

Bonneville also depreciates the capital spending on the Federal power and transmission systems over the service lives of the associated assets. Power’s investments are depreciated over fixed periods. Transmission’s depreciation is based on a depreciation study calculated consistent with industry standards. The service lives of power and transmission assets, as well as the depreciation study and resulting depreciation rates, are not determined in rate proceedings.

Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seek to raise issues with or challenge the appropriateness or reasonableness of: (1) the Administrator’s forecasts of cost and spending levels, (2) the identification of projects used in Bonneville’s cost forecasts, or (3) any decisions on the depreciation rates that are used to calculate depreciation expense. Comments regarding new information or changed circumstances arising after the date of this FRN that affect BPA’s cost projections should be submitted pursuant to section I.B of this notice.

The exclusion does not extend to those portions of the revenue requirement related to the following: (1)

interest rate forecasts, (2) interest expense and credit, (3) Treasury repayment schedules, (4) calculation of depreciation and amortization expense, (5) forecasts of system replacements used in repayment studies, (6) purchased power expenses, (7) transmission cost incurred by Power Services, (8) generation cost incurred by Transmission Services, (9) minimum required net revenue, and (10) the costs of risk mitigation actions resulting from the expense and revenue uncertainties included in the risk analysis.

2. Federal and Non-Federal Debt Service and Debt Management

During the 2026 IPR process and in other forums, Bonneville provided the public with background information on Bonneville's internal Federal and non-Federal debt management policies and practices. While these policies and practices are not decided in the IPR process, these discussions were intended to inform interested parties about these matters so the parties would better understand Bonneville's debt structure. Bonneville's debt management policies and practices remain outside the scope of the rate proceeding.

Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the appropriateness or reasonableness of Bonneville's debt management policies and practices. This exclusion does not encompass how debt management actions are reflected in ratemaking.

3. Financial and Accounting Policies and Practices

Bonneville's Financial Plan outlines objectives to sustain the agency's financial strength and resiliency. The Financial Plan focuses on four main areas: cost management; debt utilization; debt capacity; and liquidity. Bonneville has adopted certain financial policies to help further its financial objectives. Bonneville's Financial Reserves Policy establishes lower and upper thresholds for agency and business line financial reserves and parameters for actions to be taken when financial reserves are above or below the thresholds. The Sustainable Capital Financing Policy guides Bonneville's use of debt and revenue financing to finance capital investments. The terms of Bonneville's Financial Plan and Policies, along with Bonneville's internal financial and accounting policies and practices, are outside the scope of the BP-26 proceeding.

Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to visit or revisit the terms of Bonneville's Financial Plan, Financial Reserves Policy, Sustainable Capital Financing Policy, internal financial and accounting policies and practices, and previous decisions regarding the adoption and implementation of the Financial Plan and Policies.

4. Tiered Rate Methodology (TRM)

The TRM restricts Bonneville and its customers with Contract High Water Mark (CHWM) contracts from proposing changes to the TRM's ratemaking guidelines unless certain procedures have been successfully concluded. No proposed changes have been subjected to the required procedures.

Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to propose revisions to the TRM made by Bonneville, customers with CHWM contracts, or their representatives. This exclusion does not extend to a party or customer that does not have a CHWM contract.

5. Rate Period High Water Mark (RHWM) Process

The RHWM Process preceded the start of the BP-26 proceeding. In that process, as directed by the TRM, Bonneville established FY 2026–2028 RHWMs for Public customers that signed contracts for firm requirements power service providing for tiered rates, referred to as CHWM contracts. Bonneville established the maximum planned amount of power a customer is eligible to purchase at Tier 1 rates during the rate period, the Above-RHWM Loads for each customer, the System Shaped Load for each customer, the Tier 1 System Firm Critical Output, RHWM Augmentation, the Rate Period Tier 1 System Capability (RT1SC), and the monthly/diurnal shape of RT1SC. The RHWM Process provided customers an opportunity to review, comment on, and challenge Bonneville's RHWM determinations.

Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to visit or revisit Bonneville's determination of a customer's FY 2026–2028 RHWM or other RHWM Process determinations.

6. 2008 Average System Cost Methodology (2008 ASCM) and Average System Cost Determinations

Section 5(c) of the Northwest Power Act established the Residential Exchange Program, which provides benefits to residential and farm consumers of Pacific Northwest utilities based, in part, on a utility's "average system cost" (ASC) of resources. The 2008 ASCM is not subject to challenge or review in a section 7(i) proceeding. Determinations of the ASCs of participating utilities are made in separate processes conducted pursuant to the ASCM. Those processes began with ASC filings on July 1, 2024, and will conclude in July 2025, with the publication of the Final ASC Reports.

Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to visit or revisit the appropriateness or reasonableness of the 2008 ASCM or of any of the ongoing ASC determinations.

7. 2012 Residential Exchange Program Settlement Agreement (2012 REP Settlement)

On July 26, 2011, the Administrator executed the 2012 REP Settlement, which resolved longstanding litigation over Bonneville's implementation of the Residential Exchange Program (REP) under section 5(c) of the Northwest Power Act, 16 U.S.C. 839c(c). The Administrator's findings regarding the legal, factual, and policy challenges to the 2012 REP Settlement are explained in the REP-12 Record of Decision (REP-12 ROD). The Administrator's decisions regarding the 2012 REP Settlement and REP-12 ROD were upheld by the U.S. Court of Appeals for the Ninth Circuit in *Ass'n of Pub. Agency Customers v. Bonneville Power Admin.*, 733 F.3d 939 (9th Cir. 2013). Challenges to Bonneville's decision to adopt the 2012 REP Settlement and implement its terms in Bonneville's rate proceedings are not within the scope of this proceeding.

Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to visit or revisit in this rate proceeding Bonneville's determination to adopt the 2012 REP Settlement or its terms.

8. Service to the Direct Service Industries (DSIs)

Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony,

or other evidence that seeks in any way to revisit the appropriateness or reasonableness of Bonneville's decisions regarding service to the DSIs, including Bonneville's decision to offer contracts to the DSIs and the method, level of service, or other terms embodied in the existing DSI contracts.

9. Operation and Maintenance of the Power and Transmission Systems

Bonneville operates and maintains the Federal Columbia River Transmission System and, in coordination with other Federal entities, the FCRPS in accordance with good utility practice and with applicable reliability standards and operating requirements. Bonneville's power and transmission systems operation and maintenance practices and protocols, such as dispatcher standing orders, operating instructions, reliability of the system, compliance programs, and other operating requirements are non-rate matters.

Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address issues regarding operation and maintenance practices and protocols.

10. Terms and Conditions of Transmission Service

Bonneville offers and provides transmission services, including interconnection service and ancillary and control area services, in accordance with the terms and conditions specified in its open access transmission tariff (Tariff), business practices, and applicable contracts. In addition to and concurrent with this rate proceeding, Bonneville is initiating the TC-26 proceeding to modify the terms and conditions of the Tariff. Bonneville's business practices provide implementation details for the Tariff. Bonneville's decisions regarding the business practices are determined in other forums and follow the procedures in Bonneville's Business Practice Process posted on its website. The Tariff terms and conditions, business practices, and the contracts and contract disputes between Bonneville and its customers are outside the scope of the BP-26 rate proceeding.

Pursuant to section 1010.4(b)(8) of the Rules of Procedure, and except as otherwise provided in this section II.A.10, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address issues regarding terms and

conditions of transmission service, including interconnection service, and ancillary and control area services. This includes, but is not limited to, argument, testimony, or other evidence regarding Bonneville's decisions whether to offer particular transmission services, the terms and conditions for participating in the Western Energy Imbalance Market (EIM), the procedures and standards for modifications to Bonneville's Tariff or business practices, and whether to include certain terms and conditions in the Tariff or in business practices.

Bonneville is proposing to adopt a Generator Interconnection Withdrawal Charge in this proceeding in order to implement certain modifications to the Standard Large Generator Interconnection Procedures in the Tariff proposed in the TC-26 proceeding. The exclusion in this section does not extend to testimony or other evidence related to Tariff terms and conditions that may be necessary to provide context for the proposed adoption of the general rate schedule provision for the Generator Interconnection Withdrawal Charge in the BP-26 proceeding.

11. Oversupply Management Protocol

The proposed OS-26 Oversupply rate is a formula rate designed to recover Bonneville's actual oversupply costs incurred during the BP-26 rate period. Bonneville incurs oversupply costs pursuant to the Oversupply Management Protocol, Attachment P of Bonneville's Tariff.

Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the terms of the Oversupply Management Protocol; whether the Oversupply Management Protocol complies with orders of the Commission; and whether Bonneville took all actions to avoid using the Oversupply Management Protocol, including the payment of negative prices to generators outside of Bonneville's balancing authority area. This exclusion does not extend to issues concerning the rates for recovering the costs of the Oversupply Management Protocol.

12. Market Initiatives and Regional Carbon Policies

Bonneville is engaged in a number of market initiatives that are outside of the scope of this proceeding. These include (1) the Western EIM, which is an extension of the California Independent System Operator's (CAISO) real-time market; (2) the Western Resource

Adequacy Program (WRAP); (3) regional cap-and-trade policies, and (4) consideration of CAISO's extended day-ahead market proposal and Southwest Power Pool's Markets+ proposal.

Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to raise or revisit Bonneville's decision to join the EIM or the WRAP, or review or address Bonneville's position on regional cap-and-trade policies or Bonneville's consideration of CAISO's extended day-ahead market proposal or Southwest Power Pool's Markets+ proposal. This exclusion does not extend to issues concerning rate incentives and the recovery or distribution of EIM-related, carbon-related, and WRAP-related costs or credits, which are within the scope of the BP-26 proceeding.

13. Potential Environmental Impacts, Biological Constraints, and Related Operations

Environmental impacts are addressed in a National Environmental Policy Act (NEPA) process Bonneville conducts concurrent with the rate proceeding. See section II.B of this notice. In addition, biological constraints on hydropower operations are determined outside of the rate case through processes such as intra-agency consultations under the Endangered Species Act, 16 U.S.C. 1536(a)(2). Finally, implementation of the decision regarding operations, maintenance and configuration (management) of the Columbia River System evaluated in the Columbia River System Operations Environmental Impact Statement (CRSO EIS) and associated joint ROD with the U.S. Army Corps of Engineers and Bureau of Reclamation, and associated biological opinions, court orders, and other agreements, are also not issues to be addressed in this proceeding.

Pursuant to section 1010.4(a)(8) of Bonneville's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the potential environmental impacts of the rates being developed in this rate proceeding, potential biological effects of operations modeled in the proceeding, the appropriate hydroelectric constraints defined in these environmental compliance processes, or the operations, maintenance, configuration, (management) assumptions, studies, decisions, or matters addressed in the CRSO EIS or CRSO EIS joint ROD and

associated biological opinions, court orders, and other agreements.

14. 2029 Public Rate Design Methodology

The 2029 Public Rate Design Methodology is a rate methodology that will apply to the establishment of the Priority Firm Power (PFp) rate beginning in FY 2029 (October 1, 2028). The PRDM will replace the TRM upon the TRM's expiration. Concurrent with the BP-26 rate proceeding, BPA is conducting a section 7(i) process (PRDM-26) to establish the terms and provisions of the PRDM. Arguments, evidence, or issues related to the PRDM are not within the scope of this proceeding.

Pursuant to section 1010.4(a)(8) of Bonneville's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the PRDM.

15. Provider of Choice Contract Policy, Policy Record of Decision, and Contract Negotiations

Under section 5(b) of the Northwest Power Act, Bonneville is required to offer a contract for the sale of firm power to meet the net requirements of eligible customers requesting such a contract. The current form of that agreement, colloquially called the Regional Dialogue Contract, expires on September 30, 2028, which occurs at the end of the BP-26 rate period. For the better part of two years, BPA, its customers, and other interested parties have been discussing the terms, conditions, products, and policies that will form the basis of the follow-on section 5(b) power sales contract, known colloquially as the Provider of Choice Contract. The Provider of Choice Contract will apply to the section 5(b) power sales from Bonneville for the period of October 1, 2028–September 30, 2044. To support the development of the Provider of Choice Contract, on March 21, 2024, Bonneville issued a Policy (Provider of Choice Policy) and Record of Decision (Provider of Choice ROD). The Provider of Choice Policy and ROD describe the policies, primary elements, and key provisions of the new section 5(b) Provider of Choice Contract. Following the publication of the Provider of Choice Policy and ROD, in April 2024, Bonneville commenced a series of public workshops to discuss and negotiate the draft terms and provisions of the Provider of Choice Contract. Those workshops are ongoing.

The Provider of Choice Policy, ROD, contract, and negotiations, and any

issue pertaining to those matters, are outside of the scope of the BP-26 rate proceeding. Pursuant to section 1010.4(a)(8) of Bonneville's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the Provider of Choice Policy, ROD, contract, and negotiations, as well as any issue or argument pertaining to those matters.

16. Capacity for Ancillary and Control Area Services

Bonneville is forecasting a significant increase in balancing reserve capacity needs to provide certain Ancillary and Control Area Services. These capacity needs are expected to exceed the capability of the FCRPS during the BP-26 rate period. Bonneville is still exploring methods for filling the balancing reserve capacity shortfall outside of the BP-26 rate proceeding.

Pursuant to section 1010.4(a)(8) of Bonneville's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to specify the method or operation Bonneville should adopt in order to address the balancing reserve shortfall, or that seeks to determine the operation or capability of the FCRPS to provide additional balancing reserve capacity.

B. The National Environmental Policy Act

Bonneville is in the process of assessing the potential environmental effects of its proposed power and transmission rate adjustments, consistent with NEPA. The NEPA process is conducted separately from the rate proceeding. As discussed above, all evidence and argument addressing potential environmental impacts of the rate adjustments being developed in the BP-26 rate proceeding are excluded from the rate proceeding record. Instead, comments on environmental effects should be directed to the NEPA process.

Based on its most current assessment of the proposed power and transmission rate adjustments, Bonneville believes this proposal may be the type of action typically excluded from further NEPA review pursuant to U.S. DOE NEPA regulations, which apply to Bonneville. More specifically, the proposal appears to solely involve changes to Bonneville's rates and other cost recovery and management mechanisms to ensure that there are sufficient revenues to meet Bonneville's financial obligations and other costs and expenses, while using existing

generation sources operating within normal limits. As such, it appears this rate proposal falls within Categorical Exclusion B4.3, found at 10 CFR part 1021, subpart D, app. B4.3, which provides for the categorical exclusion from further NEPA review of "[r]ate changes for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements if the operations of generation projects would remain within normal operating limits."

Nonetheless, Bonneville is still assessing the proposal, and, depending upon the ongoing environmental review, Bonneville may instead issue another appropriate NEPA document. Comments regarding the potential environmental effects of the proposal may be submitted to Katey Grange, NEPA Compliance Officer, EC-4, Bonneville Power Administration, 905 NE 11th Avenue, Portland, Oregon 97232, and to kcgrange@bpa.gov. Any such comments received by the comment deadline for Participant Comments identified in section III.A of this notice will be considered by Bonneville's NEPA compliance staff in the NEPA process that is being conducted for this proposal.

Part III—Public Participation in BP-26

A. Interventions

Any entity or person intending to become a party in the BP-26 proceeding must file a petition to intervene through Bonneville's secure website, <https://proceedings.bpa.gov/>. Because Bonneville is introducing a new secure website interface, all prospective users must create a new user account to submit an intervention. The secure website contains a link to the user guide, which provides step-by-step instructions for creating user accounts, submitting filings, and uploading interventions. Please contact the Hearing Coordinator via email at cwgriffen@bpa.gov or, if the question is time-sensitive, via telephone at (503) 230-5107, with any questions regarding the registration and submission process.

All petitions to intervene must be submitted through Bonneville's secure website by the deadline in the procedural schedule adopted by the Hearing Officer. Late interventions are strongly disfavored. Petitions to intervene must conform to the format and content requirements in sections 1010.6 and 1010.11 of Bonneville's Rules of Procedure. Petitions must state the name and address of the entity or person requesting party status and the entity or person's interest in the hearing.

The Hearing Officer will rule on all petitions to intervene. Bonneville customers and affiliated customer groups will be granted intervention based on petitions filed in conformance with the Rules of Procedure. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether the petitioners have a relevant interest in the hearing.

Bonneville or any party may oppose a petition to intervene. The deadline for opposing a timely petition to intervene is two business days after the deadline for filing the petition. Opposition to an untimely petition to intervene must be filed within two business days after service of the petition.

B. Participant Comments

Bonneville distinguishes between “participants in” and “parties to” the BP-26 proceeding. Separate from the formal hearing process, Bonneville will accept written comments, views, opinions, and information from participants who have not intervened in the BP-26 proceeding and been granted “party” status by the Hearing Officer. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties’ witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. Bonneville customers whose rates are subject to this proceeding, or their affiliated customer groups, may not submit participant comments. Members or employees of organizations that have intervened in the proceeding may submit participant comments as private individuals (that is, not speaking for their organizations) but may not use the comment procedures to address specific issues raised by their intervener organizations.

Written comments by participants must be received by February 7, 2025, to be included in the record and considered by the Administrator. Participants should submit comments through Bonneville’s website at www.bpa.gov/comment or by hard copy to: BPA Public Involvement, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293. All comments should contain the designation “BP-26” in the subject line.

C. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written evidence and argument entered into the record by Bonneville and the parties, written comments from participants, and other material accepted into the record by the

Hearing Officer. The Hearing Officer will review and certify the record to the Administrator for final decision.

The Administrator will develop final rates based on the record and such other materials and information as may have been submitted to or developed by the Administrator. The Final ROD will be made available to all parties. Bonneville will file its rates with the Commission for confirmation and approval after issuance of the Final ROD.

Part IV—Summary of Rate Proposals

A. Summary of the Power Rate Proposal

Bonneville is proposing four primary rates for Federal power sales and services, along with general rate schedule provisions to implement such rates.

1. Priority Firm Power Rate (PF-26)

The PF rate schedule applies to sales of firm power to public body, cooperative, and Federal agency customers to meet their “general requirements” pursuant to section 7(b) of the Northwest Power Act. The PF Public rate applies to the general requirements portion of a customer’s Firm Requirements Power under CHWM contracts with customers taking Load Following, Block, or Slice/Block service. Consistent with the TRM, Tier 1 rates include three charges: (1) customer charges, (2) a demand charge, and (3) a load shaping charge. In addition, two Tier 2 Short-Term rates are proposed, the Short-Term and Load Growth rates. These rates would be applicable to customers that have elected to purchase power from Bonneville for service to their Above-RHWM Load.

The proposed average Tier 1 non-Slice product rate impact, which represents the majority of Bonneville’s power sales, is 9.8 percent higher than its BP-24 equivalent rate. Customer-specific results will vary around this average impact, with some customers experiencing higher rate impacts and some lower rate impacts, based on the specific situation of a particular customer. A customer’s overall rate impact—the rate impact that includes the power it purchases from Bonneville at Tier 1 and Tier 2 rates—will also vary based on the specific situation of the particular customer, the amount of Above-RHWM Load the customer has, and how much of that Above-RHWM Load the customer elected Bonneville to serve at Tier 2 rates. With regard to BPA’s Tier 2 rates, Bonneville is proposing new electable Tier 2 rate options—a fixed rate option and a formula rate option.

The Base PF Exchange rate and its associated surcharges apply to sales pursuant to Residential Purchase and Sale Agreements and Residential Exchange Program Settlement Implementation Agreements with regional utilities that participate in the REP established under section 5(c) of the Northwest Power Act, 16 U.S.C. 839c(c). The Base PF Exchange rate establishes the threshold for participation in the REP; only utilities with ASCs above the appropriate Base PF Exchange rate may receive REP benefits. If a utility meets the threshold, a utility-specific PF Exchange rate will be established in this proceeding for each eligible utility. The utility-specific PF Exchange rate is used in calculating the REP benefits each REP participant will receive during FY 2026–2028.

The proposed PF-26 rate schedule also includes resource support services rates for customers with non-Federal resources, and a melded PF rate for Public customers that would have been applicable to customers had any elected power sales contracts other than CHWM contracts for firm requirements service. No PF Public customer has its general requirements power served at anything other than a CHWM contract.

2. New Resource Firm Power Rate (NR-26)

The NR-26 rate applies to firm power sales to investor-owned utilities (IOUs) to meet their net requirements pursuant to section 5(b) of the Northwest Power Act. The NR-26 rate is also applied to sales of firm power to the portion of a Public customer’s Firm Requirements Power that is used to serve new large single loads. In addition, the NR rate schedule includes rates for services to support Public customers serving new large single loads with non-Federal resources. In the BP-26 Initial Proposal, Bonneville is forecasting 18 aMW per year of power sales to one PF Public customer at the NR rate. One of the services Bonneville provides to support Public customers with serving new large single loads with non-Federal resources is the NR Energy Shaping Service (NR ESS). Bonneville provided this service in past rate periods but is proposing to revise this service for the BP-26 rate period. BPA is also proposing to remove the NR Flattening Service from the rate schedule.

3. Industrial Firm Power Rate (IP-26)

The IP rate is applicable to firm power sales to DSI customers authorized by section 5(d)(1)(A) of the Northwest Power Act, 16 U.S.C. 839c(d)(1)(A). In the BP-26 Initial Proposal, Bonneville is

forecasting 11 aMW per year of power sales to one DSI customer at the IP rate.

4. Firm Power and Surplus Products and Services Rate (FPS-26)

The FPS rate schedule is applicable to sales of various surplus power products and surplus transmission capacity for use inside and outside the Pacific Northwest. The rates for these products are negotiated between Bonneville and the purchasers. The FPS-26 rate schedule also includes rates for customers with non-Federal resources; the Unanticipated Load Service rate; rates for other capacity, energy, and scheduling products and services; rates for reserve services for use outside the Bonneville balancing authority area; and real power losses rates for customers that elect financial settlement of real power losses.

5. Power General Rate Schedule Provisions (GRSPs)

The Power GRSPs include general rate schedule terms and conditions applicable to Bonneville's power rates. In addition, the Power GRSPs contain special rate adjustments, charges, credits, and pass-through mechanisms for specific events and customer circumstances. Among other matters covered by the Power GRSPs are provisions related to calculating rates, resource support services, charges associated with transfer service, risk adjustments, Slice True-up, the Residential Exchange Program, conservation, payment options, and other charges. Of particular note for BP-26 is Bonneville's proposal to rework the Unauthorized Increase Charge and proposing to remove the Transfer Service Delivery Charge.

B. Summary of the Transmission Rate Proposal

Bonneville is proposing separate transmission rates for its network segment, intertie segments, ancillary and control area services, and for various specific purposes.

1. Network Rates

The Network Integration Transmission Rate (NT-26) applies to customers taking network integration service, which allows customers to flexibly serve retail load.

The Point-to-Point Rate (PTP-26) is a contract demand rate that applies to customers taking Point-to-Point service on Bonneville's network. Point-to-Point service provides customers with service from identified points of receipt to identified points of delivery. There are separate rates for long-term firm service

and various increments of firm and non-firm short-term service.

2. Intertie Rates

The Southern Intertie Rate (IS-26) is a contract demand rate that applies to customers taking Point-to-Point service on the Southern Intertie.

The Montana Intertie Rate (IM-26) applies to customers taking Point-to-Point service on the Eastern Intertie and that are not parties to the Montana Intertie Agreement.

The Townsend-Garrison Transmission Rate (TGT-26) applies to parties to the Montana Intertie Agreement taking firm service over Bonneville's section of the Montana Intertie.

The Eastern Intertie Rate (IE-26) applies to parties to the Montana Intertie Agreement taking non-firm service on the portion of the Eastern Intertie capacity that exceeds Bonneville's firm transmission rights.

3. Other Transmission Rates and General Rate Schedule Provisions

The Use-of-Facilities Rate (UFT-26) establishes a formula rate for the use of a specific facility based on the annual cost of that facility.

The Advance Funding Rate (AF-26) allows Bonneville to collect the capital and related costs of specific facilities through an advance-funding mechanism.

The Regional Compliance Enforcement and Regional Coordinator rate (RC-26) recovers costs assessed to Bonneville for regional reliability compliance monitoring, enforcement, and reliability coordination services.

The Oversupply Rate (OS-26) recovers the costs Bonneville incurs to displace generation under the Oversupply Management Protocol, Attachment P to Bonneville's Tariff.

Other proposed transmission rates and charges include: a Reservation Fee for customers that postpone the service commencement date of transmission service; incremental cost rates for transmission service requests that require new facilities; a penalty charge for failure to comply with dispatch, curtailment, redispatch, or load shedding orders; an Unauthorized Increase Charge for use of the transmission system in excess of contracted-for demand; and rate adjustment mechanisms consistent with Bonneville's Financial Policies.

Bonneville proposes a new GRSP for a "Generator Interconnection Withdrawal Charge" that applies to the removal of interconnection requests at certain stages of the Large Generator Interconnection Procedures in the Tariff.

Bonneville also proposes to discontinue certain transmission rates and charges in the current (BP-24) rate schedules. The FPT-24.1 rate applies to a "legacy" transmission service agreement that will no longer be in effect in the BP-26 rate period. The FPT rate will no longer be necessary once the FPT agreement expires. The Utility Delivery Charge applies to deliveries over low-voltage facilities on Bonneville's system that have been segmented to the Utility Delivery segment. BPA proposes elimination of the Utility Delivery Charge in conjunction with the proposal to segment the low voltage facilities to the network segment.

4. Ancillary Service and Control Area Service Rates

The BP-26 Transmission Rates Proposal includes rates for Bonneville's Ancillary and Control Area Services, along with certain updates to those rates and new rates. Bonneville is proposing two new rates related to Western EIM participation and modifications to three existing rates.

Bonneville proposes a new rate to account for balancing costs that are not settled by the EIM. At times, there is a discrepancy between the schedules used by the EIM for settlement and schedules submitted to Bonneville. If the schedules do not match, there is an additional use of balancing reserves that the EIM does not account for. The proposed new rate is intended to account for this use of balancing reserves. In addition, Bonneville is proposing a new rate to recover costs related to Bid Cost Recovery charges in the EIM that Bonneville did not previously allocate to customers.

Bonneville also proposes modifications to the Variable Energy Resource Balancing Service (VERBS) rate to allow for the recovery of costs related to balancing reserve purchases. Bonneville is projecting a shortage of the capacity needed to provide VERBS throughout the rate period, as Bonneville is projecting a significant increase in interconnections of Variable Energy Resources during the rate period. As a result, Bonneville will need to obtain capacity to fill the balancing reserve shortfall. As the method for filling the balancing reserves shortfall is currently unknown, Bonneville is proposing a formula rate intended to allow for the recovery of costs related to whatever method by which Bonneville is able to fill the shortfall.

Additionally, Bonneville proposes modifications to the Persistent Deviation Penalty Charge to clarify rate language and to the New Technology

Pilot to expand the scope of the pilot to include additional new technologies.

C. Risk Mitigation Tools

Bonneville is proposing three rate adjustment mechanisms for BP-26 power and transmission rates to mitigate the risk that actual costs and revenues will differ from forecast over the rate period and to protect the agency's solvency and strong credit rating. These mechanisms implement Bonneville's Financial Reserves Policy (FRP) and provide for adjustments to a business line's rates or other action in the event the business line's Financial Reserves fall below or exceed certain thresholds.

The Cost Recovery Adjustment Clause (CRAC) will adjust rates upward to generate additional revenue within the rate period if business line Financial Reserves fall below a defined lower threshold.

The Financial Reserves Policy Surcharge (FRP Surcharge) will also adjust rates upward to generate additional revenue within the rate period if business line Financial Reserves fall below a defined lower threshold.

Finally, the Reserves Distribution Clause (RDC) will trigger if Financial Reserves exceed upper thresholds for the business line and the agency as a whole. If the RDC triggers, Bonneville will consider the amount of Financial Reserves above the threshold for rate relief or investment in high-value, business line-specific purposes such as debt retirement. The process for determining the RDC amounts (which is described in the power and transmission General Rate Schedule Provisions) is also being revised.

Bonneville is proposing to maintain risk-related provisions and proposes to include additional Planned Net Revenues for Risk (PNRR) in power rates if the average effective PF Public Non-Slice Tier 1 rate is no greater than 38.85 mills/kWh. First, for FY 2026, the three Power risk adjustment clauses will not be applicable to the portion of a customer's service at PF Tier 1 rates that has been converted from a Slice product to a non-Slice product beginning October 1, 2025. However, the three risk adjustment clauses will apply to such customer's entire service at PF Tier 1 rates for FY 2026 and 2027. Second, any FY 2026, 2027 or 2028 Power RDC will automatically provide a dividend distribution in an amount equal to the lesser of the RDC amount and the amount of PNRR included in the BP-26 power rates. And third, the caps on the Power and Transmission RDCs are removed for the BP-26 rate period.

Part V—Proposed BP-26 Power Rate Schedules and BP-26 Transmission Rates Schedules

Bonneville's proposed BP-26 Power Rate Schedules and BP-26 Transmission Rate Schedules, which includes Transmission, Ancillary, and Control Area Services Rate Schedules, are a part of this notice and are available on Bonneville's website at <https://www.bpa.gov/BP26>. The BP-26 Partial Rates Settlement Agreement is also posted at this website.

Signing Authority

This document of the Department of Energy was signed on October 31, 2024, by John L. Hairston, Administrator and Chief Executive Officer of the Bonneville Power Administration, pursuant to delegated authority from the Secretary of Energy. This document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 7, 2024.

Treena V. Garrett,

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

[FR Doc. 2024-26244 Filed 11-12-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No.: PRDM-26]

Fiscal Year (FY) 2029 Public Rate Design Methodology; Public Hearing and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (Bonneville or BPA), Department of Energy (DOE).

ACTION: Notice of FY 2029 public rate design methodology proceeding.

SUMMARY: BPA is proposing to adopt a new tiered rate design for setting its Priority Firm Power (PFp) rates for the period beginning October 1, 2028. The primary feature of the Public Rate Design Methodology (PRDM) is the establishment of two tiers of rates: one rate tier (Tier 1) will be based on

generation output and costs attributed to BPA's current system resources and a second rate tier (Tier 2) will be based on the generation and costs associated with newly acquired resources.

DATES:

Prehearing Conference: The prehearing conference in the PRDM-26 proceeding will be held on November 15, 2024, immediately following the conclusion of the prehearing conferences for Bonneville's TC-26 tariff proceeding and BP-26 rate proceeding, which begin at 2:00 p.m. The **ADDRESSES** section of this notice provides details on participating in the prehearing conference.

Intervention: Petitions to intervene in the PRDM-26 proceeding must be filed on Bonneville's secure website no later than 4:30 p.m. on November 19, 2024. Part III of this notice, "Public Participation in PRDM-26," provides details on requesting access to the secure website and filing a petition to intervene.

Participant Comments: Written comments by non-party participants must be received by January 30, 2025, to be considered in the Administrator's Record of Decision (ROD). Part III of this notice, "Public Participation in PRDM-26," provides details on submitting participant comments.

ADDRESSES:

Prehearing Conference: The prehearing conference in the PRDM-26 proceeding will be held in the Bonneville Rates Hearing Room, 1201 NE Lloyd Boulevard, Suite 200, Portland, Oregon 97232. Interested parties may attend in person or participate virtually via WebEx. The WebEx information will be available on Bonneville's PRDM web page at <https://www.bpa.gov/prdm2029> or from the Hearing Clerk at PRDM29clerk@gmail.com.

Intervention: Anyone intending to become a party to the PRDM-26 proceeding must file a petition to intervene on BPA's secure website. Petitions to intervene may be filed beginning on the date of publication of this Notice and are due no later than 4:30 p.m. on November 19, 2024. Part III of this notice, "Public Participation in PRDM-26," provides details on requesting access to the secure website and filing a petition to intervene.

Participant Comments: Written comments by non-party participants may be submitted through Bonneville's website at www.bpa.gov/comment or by hard copy to: BPA Public Involvement, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293. Part III of this notice, "Public Participation

in PRDM–26,” provides details on submitting participant comments.

FOR FURTHER INFORMATION CONTACT: Ms. Amanda Gobbele, DKS–7, BPA Communications, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293; by phone toll-free at 1–800–622–4519; or by email to amgoode@bpa.gov.

The Hearing Clerk for this proceeding can be reached via email at PRDM29clerk@gmail.com or via telephone at (503) 479–8506.

Please direct questions regarding BPA’s secure website to the Hearing Coordinator via email at cwgriffen@bpa.gov or, if the question is time-sensitive, via telephone at (503) 230–5107.

Responsible Officials: Mr. Daniel H. Fisher, Power Rates Manager, is the official responsible for the development of the PRDM.

SUPPLEMENTARY INFORMATION:

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Part I—Introduction and Procedural Matters
Part II—Scope of PRDM Proceeding
Part III—Public Participation in PRDM–26
Part IV—The Public Rate Design Methodology

Part I—Introduction and Procedural Matters

A. Background and Statutory Context

BPA is a power marketing administration within the Department of Energy (DOE). BPA markets the output of 31 federal dams and one nuclear power plant located in the Pacific Northwest. Among other statutory duties, BPA is required to sell firm power to meet the net requirements of utilities within the Pacific Northwest region. Section 5(b) of the Northwest Power Act (NWP Act) establishes BPA’s power supply obligation to these customers. Power supplied under section 5(b) is sold at rates established by section 7.

Under section 7(b) of the NWP Act, BPA is required to set power rates for the “general requirements” of its public body and cooperative customers pursuant to certain statutory directives. The section 7(b) rate that BPA charges its public body and cooperative customers is called the Priority Firm Power (PFP) rate. BPA establishes the PFP rate in a formal hearing conducted in accordance with section 7(i) of the NWP Act.

Historically, BPA designed the PFP rate in each section 7(i) rate proceeding. This approach meant the types of resource costs and credits included in the PFP rate, and the method for assessing the resulting rate, could

change within each section 7(i) rate proceeding. In 2009, BPA adopted a standalone rate design for the PFP rate, known as the Tiered Rates Methodology (TRM). The TRM is not a rate, but a rate design that established the methods and allocations for developing the PFP rate in future section 7(i) proceedings. In effect, through the TRM, BPA agreed to establish the PFP rate in future section 7(i) proceedings consistent with the TRM’s terms. The TRM was established in a section 7(i) proceeding and was designed to operate in conjunction with the terms of the then-applicable section 5(b) power contract (known colloquially as the Regional Dialogue Contract). The Regional Dialogue Contract commenced on October 1, 2011, and expires on September 30, 2028. The TRM also expires on September 30, 2028.

The purpose of the PRDM–26 proceeding is to develop the rate design methodology for the period following the expiration of the TRM (*i.e.*, beginning October 1, 2028). This rate methodology is called the Public Rate Design Methodology (PRDM). Concurrent with the PRDM–26 proceeding, BPA is also negotiating the section 5(b) contract for the supply of firm power for BPA’s customers’ requirements for the period covering October 1, 2028–September 30, 2044. The new section 5(b) contract is colloquially referred to as the “Provider of Choice” contract. The Provider of Choice contract and the PRDM are designed to work in tandem. Customers that elect to purchase their section 5(b) power under a Provider of Choice contract will also agree to have their PFP power rate set pursuant to the PRDM.

B. Procedural Context

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), sets forth the rules and procedures for the establishment of BPA’s rates. The Public Rate Design Methodology (PRDM) is a rate methodology that will apply to customers that execute a Provider of Choice contract. No rates are being established through the PRDM–26 proceeding. Instead, this proceeding will develop the terms of the PRDM, which will become effective in the section 7(i) proceeding that establishes the PFP rate for the period beginning October 1, 2028. Because the PRDM will affect future power rates, BPA is using the procedural rules of section 7(i) to establish this methodology. The procedures applicable to this proceeding include, among other things: Publication of a notice of the proposed rates in the **Federal Register**; one or more hearings conducted as

expeditiously as practicable by a Hearing Officer; public opportunity to provide both oral and written views related to the proposed rates; opportunity to offer refutation or rebuttal of submitted material; and a decision by the Administrator based on the record. BPA’s Rules of Procedure will govern the PRDM–26 proceeding. Those procedural rules are posted on BPA’s website at <https://www.bpa.gov/energy-and-services/rate-and-tariff-proceedings/rules-of-procedure-revision-process>.

C. Proposed Procedural Schedule

A proposed schedule for the PRDM–26 proceeding is provided below. The official schedule will be established by the Hearing Officer and may be amended by the Hearing Officer as needed during the proceeding.

Prehearing Conference—November 15, 2024
BPA Initial Proposal—November 15, 2024
Petition to Intervene Deadline—November 19, 2024
Clarification of BPA’s Initial Proposal—November 22, 2024
Notice of Objections Due—December 6, 2024
Motions to Strike Due—December 12, 2024
Data Request Deadline for BPA’s Initial Proposal—December 12, 2024
Parties File Direct Cases (Prehearing Brief Optional)—January 15, 2025
Clarification of Parties’ Direct Cases—January 22, 2025
Motions to Strike Due—January 29, 2025
Data Request Deadline for Parties’ Direct Cases—January 29, 2025
Close of Participant Comments—January 30, 2025
Litigants File Rebuttal Cases—February 14, 2025
Clarification of Litigants’ Rebuttal Cases—February 18, 2025
Motions to Strike Due—February 18, 2025
Data Request Deadline for Litigants’ Rebuttal—February 19, 2025
Parties Give Notice of Intent to Cross Examine—February 21, 2025
Cross-Examination—February 26, 2025
Initial Briefs Filed—March 1, 2025
Parties Give Notice of Intent to Present Oral Argument—March 5, 2025
Oral Argument—March 12, 2025
Draft Record of Decision—April 9, 2025
Briefs on Exceptions—April 23, 2025
Deadline for Parties to Adopt the Position of Another Party—May 2, 2025
Final ROD and Studies—May 21, 2025

D. *Ex Parte* Communications

Section 1010.5 of BPA's Rules of Procedure prohibits *ex parte* communications. *Ex parte* communications include any oral or written communication (1) relevant to the merits of any issue in the proceeding; (2) that is not on the record; and (3) with respect to which reasonable prior notice has not been given. The *ex parte* rule applies to communications with all BPA and DOE employees and contractors, the Hearing Officer, and the Hearing Clerk during the proceeding. Except as provided, any communications with persons covered by the rule regarding the merits of any issue in the proceeding by other executive branch agencies, Congress, existing or potential BPA customers, nonprofit or public interest groups, or any other non-DOE parties are prohibited. The rule explicitly excludes and does not prohibit communications (1) relating to matters of procedure; (2) otherwise authorized by law or the Rules of Procedure; (3) from or to the Federal Energy Regulatory Commission (Commission); (4) that all litigants agree may be made on an *ex parte* basis; (5) in the ordinary course of business, about information required to be exchanged under contracts, or in information responding to a Freedom of Information Act request; (6) between the Hearing Officer and Hearing Clerk; (7) in meetings for which prior notice has been given; or (8) as otherwise specified in section 1010.5(b) of BPA's Rules of Procedure. The *ex parte* rule is effective upon publication of this FRN and remains in effect until the Administrator's Final ROD is issued.

Part II—Scope of PRDM-26

A. *Issues Within and Outside the Scope of PRDM-26*

This section provides guidance to the Hearing Officer regarding the scope of the PRDM proceeding and identifies specific issues that are outside the scope. In addition to the issues specifically listed below, any other issue that is not a matter relevant to the PRDM is outside the scope of this proceeding.

BPA may revise the scope of the proceeding to include new issues that arise as a result of circumstances or events occurring outside the proceeding that are substantially related to the rates under consideration in the proceeding. See Rules of Procedure, section 1010.4(b)(8)(iii), (iv). If BPA revises the scope of the proceeding to include new issues, BPA will provide public notice on its website, present testimony or other information regarding such issues,

and provide a reasonable opportunity to intervene and respond to BPA's testimony or other information. *Id.*

1. Matters Within the Scope of the PRDM-26 Proceeding

The scope of PRDM-26 is limited to issues and evidence regarding the terms of the PRDM. As noted above, the PRDM describes the cost allocation and rate design treatment of the PFp rate for the period beginning October 1, 2028, for customers that elect to purchase section 5(b) power under a Provider of Choice contract. The terms of the PRDM are available on Bonneville's PRDM web page <https://www.bpa.gov/prdm2029>.

2. Matters Not Within the Scope of the PRDM-26 Proceeding

The PRDM-26 proceeding is focused on the development of the PRDM. No rates are being established through this proceeding. Parties that seek to raise arguments and or present evidence that address matters unrelated to the PRDM are outside the scope of this proceeding. Pursuant to section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address matters unrelated to the terms of the PRDM. This exclusion includes, but is not limited to, the following areas: (a) matters within the scope of the BP-26 rate case, (b) BPA program and cost projections, (c) statutory issues unrelated to the PRDM, (d) matters that have been, or will be addressed in, the Provider of Choice Policy, Policy Record of Decision, or related contract negotiation processes, (e) matters related to the Residential Exchange Program, (f) matters related to any other rate set pursuant to section 7 of the Northwest Power Act, and (g) matters related to the environmental impacts of the PRDM.

B. *The National Environmental Policy Act*

BPA is in the process of assessing the potential environmental effects of its proposed rate design methodology, consistent with NEPA. The NEPA process is conducted separately from this proceeding. As discussed above, all evidence and argument addressing potential environmental impacts of the PRDM are excluded from the proceeding record. Instead, comments on environmental effects should be directed to the NEPA process.

Based on its most current assessment of the PRDM, BPA believes this proposal may be the type of action typically excluded from further NEPA review pursuant to U.S. DOE NEPA

regulations, which apply to BPA. More specifically, the proposal appears to solely involve changes to BPA's rates and other cost recovery and management mechanisms to ensure that there are sufficient revenues to meet BPA's financial obligations and other costs and expenses, while using existing generation sources operating within normal limits. As such, it appears the PRDM falls within Categorical Exclusion B4.3, found at 10 CFR part 1021, subpart D, app. B4.3, which provides for the categorical exclusion from further NEPA review of "[r]ate changes for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements if the operations of generation projects would remain within normal operating limits."

Nonetheless, BPA is still assessing the proposal, and, depending upon the ongoing environmental review, BPA may instead issue another appropriate NEPA document. Comments regarding the potential environmental effects of the proposal may be submitted to Katey Grange, NEPA Compliance Officer, EC-4, Bonneville Power Administration, 905 NE 11th Avenue, Portland, Oregon 97232, and to kcgrange@bpa.gov. Any such comments received by the comment deadline for Participant Comments identified in section III.A of this notice will be considered by BPA's NEPA compliance staff in the NEPA process that is being conducted for this proposal.

Part III—Public Participation in PRDM-26

A. *Interventions*

Any entity or person intending to become a party in the PRDM proceeding must file a petition to intervene through BPA's secure website (<https://proceedings.bpa.gov/>). Because Bonneville is introducing a new secure website interface, all prospective users must create a new user account to submit an intervention. The secure website contains a link to the user guide, which provides step-by-step instructions for creating user accounts, submitting filings, and uploading interventions. Please contact the Hearing Coordinator via email at cwgriffen@bpa.gov or, if the question is time-sensitive, via telephone at (503) 230-5107, with any questions regarding the registration and submission process.

All petitions to intervene must be submitted through BPA's secure website by the deadline in the procedural schedule adopted by the Hearing Officer. Late interventions are strongly

disfavored. Petitions to intervene must conform to the format and content requirements in sections 1010.6 and 1010.11 of BPA's Rules of Procedure. Petitions must state the name and address of the entity or person requesting party status and the entity or person's interest in the hearing.

The Hearing Officer will rule on all petitions to intervene. BPA customers and affiliated customer groups will be granted intervention based on petitions filed in conformance with the Rules of Procedure. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether the petitioners have a relevant interest in the hearing.

BPA or any party may oppose a petition to intervene. The deadline for opposing a timely petition to intervene is two business days after the deadline for filing the petition. Opposition to an untimely petition to intervene must be filed within two business days after service of the petition.

B. Participant Comments

BPA distinguishes between "participants in" and "parties to" the PRDM proceeding. Separate from the formal hearing process, BPA will accept written comments, views, opinions, and information from participants who have not intervened in the PRDM proceeding and been granted "party" status by the Hearing Officer. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. Entities who intervene in this proceeding may not submit participant comments. Members or employees of organizations that have intervened in the proceeding may submit participant comments as private individuals (that is, not speaking for their organizations) but may not use the comment procedures to address specific issues raised by their intervener organizations.

Written comments by participants must be received by January 30, 2025, to be included in the record and considered by the Administrator. Participants should submit comments through BPA's website at www.bpa.gov/comment or by hard copy to: BPA Public Involvement, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293. All comments should contain the designation "PRDM-26" in the subject line.

C. Developing the Record

The hearing record will include, among other things, the transcripts of

the hearing, written evidence and argument entered into the record by BPA and the parties, written comments from participants, and other material accepted into the record by the Hearing Officer. The Hearing Officer will review and certify the record to the Administrator for final decision.

Part IV—Public Rate Design Methodology

The PRDM establishes a predictable and durable means by which to tier and calculate BPA's Priority Firm (PFp) power rate. Specific determinations of rate levels will be made in each general rate case in a manner consistent with the PRDM in the respective section 7(i) proceedings applicable during the term of this PRDM. Tiered PFp rates consistent with the PRDM will be implemented beginning in FY 2029 (October 1, 2028) when power deliveries under the Provider of Choice contracts commence.

The PRDM provides for a two-tiered PFp rate design that will be applicable to the general requirements portion of BPA's customer's firm power service. The "general requirements" of BPA's customers are defined by section 7(b)(4) of the Act, and exclude service to a customer's New Large Single Load, as defined by section 3(13)(A)–(B) of the Act. Section 7(b) establishes the power "rate or rates" applicable to a customer's general requirements. That rate is called the PFp rate. The PRDM operates within the section 7(b) rate statutory construct by developing multiple PFp rates for service to a customer's general requirements. The PRDM uses a "tiered" rate design to establish two primary PFp rates. The first tier, Tier 1, recovers the costs of service associated with BPA's existing power system up to a specified amount. The second tier, Tier 2, recovers the costs associated with additional amounts of power needed to serve any remaining portion of the customers' general requirements (*i.e.*, the portion not otherwise served by Tier 1). The PRDM specifies how the Tier 1 and Tier 2 rates will be developed and charged.

The PRDM addresses: (1) how the cost pools for the Tier 1 and Tier 2 PFp rates will be established and what costs, or category of costs, will be included in those pools; (2) how the resource costs for the existing power system will be differentiated from the cost of new resources; (3) how the costs described in the above categories will be allocated to the Tier 1 and Tier 2 cost pools; (4) how rates for Tier 1 and Tier 2 sales will be designed; (5) how rates for resource support services will be designed; (6) how the PRDM interacts with other

services and credits; and (7) how changes and disputes regarding the PRDM are addressed. The full terms of the proposed PRDM is available on Bonneville's PRDM webpage at <https://www.bpa.gov/prdm2029>.

The cost allocation and rate design methods will be implemented in each BPA power rate case during the term of the Provider of Choice contracts. Power rates will be calculated on at least a two-year cycle under the PRDM.

Signing Authority

This document of the Department of Energy was signed on October 31, 2024, by John L. Hairston, Administrator and Chief Executive Officer of the Bonneville Power Administration, pursuant to delegated authority from the Secretary of Energy. This document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 7, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–26243 Filed 11–12–24; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2022–0365 and EPA–HQ–OW–2022–0366; FRL–12358–01–OW]

Final Recommended Aquatic Life Criteria and Benchmarks for Select PFAS; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; correction.

SUMMARY: The Environmental Protection Agency (EPA) is making a correction to a notice that appeared in the **Federal Register** on October 7, 2024. The notice of availability contained an incorrect table column heading in Table 2 which is corrected below.

FOR FURTHER INFORMATION CONTACT: Kathryn Gallagher, Health and Ecological Criteria Division, Office of Water, Environmental Protection

Agency; telephone number: (202) 320 7446; email address: gallagher.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION: EPA published a notice of availability in the

Federal Register at 89 FR 81077, October 7, 2024. This document corrects an error in Table 2, third column, table heading by correcting “PFOA” to “PFOS”. This notice for correction corrects the error.

Correction

In the **Federal Register** issue of October 7, 2024, in FR Doc. 2024–23024 on page 81079, correct “Table 2” to read:

TABLE 2—ACUTE SALTWATER AQUATIC LIFE BENCHMARKS FOR PFOA AND PFOS

Chemical	PFOA	PFOS
Magnitude	7.0 mg/L	0.55 mg/L.
Duration	One hour average.	
Frequency	Not to be exceeded more than once in three years on average.	

Deborah Nagle,
*Director, Office of Science and Technology,
Office of Water.*
[FR Doc. 2024–26228 Filed 11–12–24; 8:45 am]
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION
AGENCY**

[CERCLA–04–2024–7016 et al.; FRL–12337–01–R4]

**Bennett Landfill Fire Superfund Site,
Chester, South Carolina; Proposed
Settlements**

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice of proposed settlements.

SUMMARY: Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency is proposing to enter into individual settlements with six parties concerning the Bennett Landfill Fire Site located in Chester, South Carolina. The proposed settlements address recovery of CERCLA costs for a cleanup that was performed at the Site and costs incurred by EPA.

DATES: The Agency will consider public comments on the proposed settlements until December 13, 2024. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlements if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the proposed settlements are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in this notice.

Comments may also be submitted by referencing the Site’s name through one of the following methods:

*Internet: <https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices>
Email: Painter.Paula@epa.gov*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

SUPPLEMENTARY INFORMATION: The individual proposed settlements are as follows: Upstate Environmental Services, Inc., 04–2024–7012(b); NEO Corporation, 04–2024–7013(b); CHSPSC, LLC, 04–2024–7015; Madison Acquisitions, LLC, Cherokee Plaza Partners, and Tristate SC One, LP, together under 04–2024–7016.

Maurice Horsey,
Chief, Enforcement Branch, Superfund & Emergency Management Division.
[FR Doc. 2024–26225 Filed 11–12–24; 8:45 am]
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION
AGENCY**

[FRL 11979–01–R1]

**Notice of Availability of Draft NPDES
New Hampshire Medium Wastewater
Treatment Facility General Permit**

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice of Availability of Draft NPDES General Permit NHG590000.

SUMMARY: The Director of the Water Division, U.S. Environmental Protection Agency—Region 1 (EPA), is providing a Notice of Availability for the Draft National Pollutant Discharge Elimination System (NPDES) New Hampshire Medium Wastewater Treatment Facility General Permit (NH Medium WWTF GP) for discharges to certain Class B waters of the State of New Hampshire. This Draft NPDES NH Medium WWTF GP (“Draft General Permit”) establishes effluent limitations and requirements, effluent and ambient monitoring requirements, reporting requirements, and standard conditions for 21 eligible facilities that are

currently covered by individual NPDES permits (see Attachment E of the Draft General Permit for a list of eligible WWTFs). The Draft General Permit is available on EPA Region 1’s website at <https://www.epa.gov/npdes-permits/region-1-draft-new-hampshire-medium-wastewater-treatment-facility-general-permit>. The Fact Sheet for the Draft General Permit sets forth principal facts and the significant factual, legal, methodological, and policy questions considered in the development of the Draft General Permit and is also available at this website.

DATES: Comments must be received on or before January 13, 2025.

ADDRESSES: Written comments on the Draft General Permit may be mailed to U.S. EPA Region 1, Water Division, Attn: Michael Cobb, 5 Post Office Square, Suite 100, Mail Code 06–4, Boston, Massachusetts 02109–3912, or sent via email to: Cobb.Michael@epa.gov. If comments are submitted in hard copy form, please also email a copy to the EPA contact above.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Draft General Permit may be obtained from Michael Cobb, U.S. EPA Region 1, Water Division, 5 Post Office Square, Suite 100, Mail Code 06–4, Boston, MA 02109–3912; telephone: 617–918–1369; email: Cobb.Michael@epa.gov. Any documents that are part of the administrative record can be requested from the EPA contact above.

SUPPLEMENTARY INFORMATION:

Public Comment Information:

Interested persons may submit written comments on the Draft General Permit to EPA Region 1 at the address listed above. In reaching a final decision on this Draft General Permit, the Regional Administrator will respond to all significant comments and make responses available to the public on EPA Region 1’s website. All comments must be postmarked or delivered

electronically by the close of the public comment period.

General Information: The Draft General Permit includes effluent limitations and requirements for eligible facilities based on technology and/or water quality considerations of the unique discharges from these facilities. The effluent limits established in the Draft General Permit ensure that the surface water quality standards of the receiving water(s) will be attained and/or maintained.

Obtaining Authorization: To obtain coverage under the General Permit, facilities meeting the eligibility requirements outlined in part I of this General Permit may submit a notice of intent (NOI) in accordance with part III of this General Permit and 40 CFR 122.28(b)(2)(i) and (ii). The contents of the NOI shall include at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, the receiving stream(s) and be signed by the operator in accordance with the signatory requirements of 40 CFR 122.22. Alternately, based on 40 CFR 122.28(b)(2)(vi), the Director may notify a discharger that it is covered by a general permit, even if the discharger has not submitted an NOI to be covered. EPA has determined that the facilities identified in Attachment E of the Draft General Permit all meet the eligibility requirements for coverage under the Draft General Permit and may be authorized to discharge under the General Permit by this type of notification.

Other Legal Requirements:
Endangered Species Act (ESA): In accordance with the ESA, EPA has updated the provisions and necessary actions and documentation related to potential impacts to endangered species from WWTFs seeking coverage under the Draft General Permit. Concurrently with the public notice of the Draft General Permit, EPA will initiate an informal consultation with the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) under ESA section 7, through the submission of a letter and biological assessment (BA) summarizing the results of EPA's assessment of the potential effects to endangered and threatened species and their critical habitats under NOAA Fisheries jurisdiction as a result of EPA's issuance of the Draft General Permit. In this document, EPA has made a preliminary determination that the proposed issuance of the Draft General Permit may affect, but is not likely to adversely affect the shortnose sturgeon, Atlantic

sturgeon, or designated Atlantic sturgeon critical habitat (Gulf of Maine Unit 4: Piscataqua River), as well as coastal protected sea turtles, whales, or designated North Atlantic right whale critical habitat (Northeastern U.S. Foraging Area Unit 1). EPA will request that NOAA Fisheries review this submittal and inform EPA whether it concurs with this preliminary finding.

EPA will also assess ESA threatened or endangered shore birds and terrestrial species under the jurisdiction of USFWS and a preliminary determination will be submitted to USFWS concurrently with the public notice of the Draft General Permit where appropriate. EPA has concluded that the NH Medium WWTF GP is consistent with activities analyzed in the USFWS Service's Information for Planning and Consultation (IPaC) standing analysis and Range-wide Northern Long-eared Bat Determination Key for the endangered northern long-eared bat. EPA made a similar determination regarding the proposed endangered tricolored bat.

Essential Fish Habitat (EFH): Under the 1996 Amendments (Pub. L. 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* (1998)), EPA is required to consult with NOAA Fisheries if EPA's actions or proposed actions that it funds, permits or undertakes "may adversely impact any essential fish habitat." 16 U.S.C. 1855(b). EPA has determined that the permit action may adversely affect the EFH of designated species. The Draft General Permit has been conditioned to minimize any impacts that reduce the quality and/or quantity of EFH. Additional mitigation is not warranted under section 305(b)(2) of the Magnuson-Stevens Act. Concurrent with the public notice of the Draft General Permit, EPA will initiate consultation with NOAA Fisheries by providing this determination for their review.

National Historic Preservation Act (NHPA): Facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the NHPA are not authorized to discharge under the Draft General Permit. Based on the nature and location of the discharges, EPA has determined that all facilities eligible for authorization under the Draft General Permit do not have the potential to affect a property that is either listed or eligible for listing on the National Register of Historic Places.

Coastal Zone Management Act (CZMA): The CZMA, 16 U.S.C. 1451 *et seq.*, and its implementing regulations (15 CFR part 930) require a

determination that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) is consistent with the CZMA. Concurrent with the public notice of the Draft General Permit, EPA will request that the New Hampshire Coastal Program, NHCP, provide a consistency concurrence that the proposed Draft General Permit is consistent with the NH CZMPs.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2024-26247 Filed 11-12-24; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK

[Public Notice: EIB-2025-0002]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of \$100 Million: AP089490XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public the Export-Import Bank of the United States ("EXIM") has received an application for final commitment for a long-term loan or financial guarantee in excess of \$100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before *December 9, 2024* to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *www.regulations.gov*. To submit a comment, enter EIB-2025-0002 under the heading "Enter Keyword or ID" and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB-2025-0002 on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP089490XX.

Purpose and Use:

Brief description of the purpose of the transaction: Support of the export of U.S. manufactured goods and services.

Brief non-proprietary description of the anticipated use of the items being exported: Use for natural gas separation

plant, combined cycle gas turbine power plant, and onshore and nearshore pipeline.

Parties:

Principal Supplier: Lindsayca, CH4 Systems, ExxonMobil.

Obligor: Ministry of Finance, Cooperative Republic of Guyana.

Guarantor(s): None.

Description of Items Being Exported: Equipment, engineering services, and project management services related to balance of plant, natural gas plant, and power plant.

Information on Decision: Information on the final decision for this transaction will be available in the "Summary Minutes of Meetings of Board of Directors" on <https://www.exim.gov/news/meeting-minutes>.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Authority: Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635a(c)(10)).

Deidre Hodge,

Assistant Corporate Secretary.

[FR Doc. 2024-26214 Filed 11-12-24; 8:45 am]

BILLING CODE 6690-01-P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 260101]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC or Commission or Agency) has modified an existing system of records, FCC/OGC-5, Pending Civil Cases, subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The Office of the General Counsel (OGC) uses this system to update or furnish additional data, which may include personally identifiable information, for the Department of Justice (DOJ), in those instances in

which DOJ is handling a pending civil case involving or on behalf of the FCC.

DATES: This modified system of records will become effective on November 13, 2024. Written comments on the routine uses are due by December 13, 2024. The routine uses in this action will become effective on December 13, 2024 unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Brendan McTaggart, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, or privacy@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Brendan McTaggart, (202) 418-1738, or privacy@fcc.gov.

SUPPLEMENTARY INFORMATION: This notice serves to update and modify FCC/OGC-5 as a result of various necessary changes and updates. The substantive changes and modifications to the previously published version of the FCC/OGC-5 system of records include updating and/or revising language in eight routine uses (listed by the routine use number provided in this notice): (1) Litigation and (2) Adjudication, which were formerly a single routine use; (3) Law Enforcement and Investigation; (4) Congressional Inquiries; (5) Government-wide Program Management and Oversight; (6) Breach Notification, the modification of which is required by OMB M-17-12; (7) Assistance to Federal Agencies and Entities Related to Breaches, the addition of which is required by OMB M-17-12; and (8) Nonfederal Personnel.

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage, retention, disposal and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

SYSTEM NAME AND NUMBER:

FCC/OGC-5, Pending Civil Cases.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

OGC, FCC, 45 L Street NE, Washington, DC 20554.

SYSTEM MANAGER(S):

OGC, FCC, 45 L Street NE, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 401 and 402; 31 U.S.C. 3729-3733.

PURPOSE(S) OF THE SYSTEM:

Commission attorneys use this system to update or furnish additional data for DOJ, in those instances in which DOJ is handling a pending civil case involving or on behalf of the FCC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who has filed a case involving the FCC before any District Court, Court of Appeals, or the Supreme Court, as well as any other named individuals in the complaint, filing, or appeal.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system of records may include the name and contact information of the individual(s) associated with a civil case involving the FCC, as well as letters, memoranda, pleadings, briefs, and bankruptcy papers related to the case.

RECORD SOURCE CATEGORIES:

The sources for the information in this system of records include:

(a) Individuals filing claims in civil cases;

(b) Individuals who are the subjects of, or are named in civil cases involving the FCC;

(c) Attorneys or representatives of the claimants and the subjects of the claims in civil cases;

(d) Communication between FCC organizational units (Bureaus and Offices or B/Os), the DOJ including U.S. Attorneys, other Federal agencies, and courts of competent jurisdiction; and

(e) Parties to the proceedings and the investigative materials and related documentation and decisions that involve complaints, appeals, amendments, and litigation concerning such claims in civil cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows. In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose(s) for which the records were collected:

1. Litigation—Records may be disclosed to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity;

(c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the DOJ is for a purpose that is compatible with the purpose for which the FCC collected the records.

2. Adjudication—Records may be disclosed in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

3. Law Enforcement and Investigation—When the FCC investigates any violation or potential violation of a civil or criminal law, regulation, policy, executed consent decree, order, or any other type of compulsory obligation and determines that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law, regulation, policy, consent decree, order, or other compulsory obligation, the FCC may disclose pertinent information as it deems necessary to the target of an investigation, as well as with the appropriate Federal, State, local, Tribal, international, or multinational agencies, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order.

4. Congressional Inquiries—Information may be provided to a Congressional office in response to an inquiry from that Congressional office made at the written request of the individual to whom the information pertains.

5. Government-wide Program Management and Oversight—Information may be disclosed to the DOJ to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

6. Breach Notification—Records may be disclosed to appropriate agencies, entities, and persons when: (a) the Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information system, programs, and operations), the Federal Government, or national security; and; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. Assistance to Federal Agencies and Entities Related to Breaches—Records may be disclosed to another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

8. Non-Federal Personnel—Records may be disclosed to non-Federal personnel, including contractors, other vendors (e.g., identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information in this system includes both paper and electronic records. The paper records, documents, and files are maintained in file cabinets that are located in OGC and in the B/Os of the FCC staff who provide the responses to such claims. Electronic records in this system reside on the FCC or a vendor's network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the name of the individual filing or subject of the claim.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with the FCC records

control schedule N1–173–91–001, Item 6, approved by the National Archives and Records Administration (NARA). The records are destroyed 3 years after closure of the matter or when no longer required for administrative purposes, whichever is sooner.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The file cabinets containing paper records in this system are maintained in file cabinets in “non-public” rooms in the OGC or B/O suites. The OGC and B/O file cabinets are locked at the end of the business day. Access to these offices is through key and card-coded main doors. Only authorized OGC and B/O supervisors and staff have access to these paper records.

Electronic records, files, and data are stored within FCC or a vendor's accreditation boundaries and maintained in a database housed in the FCC's or vendor's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedures below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedures below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to privacy@fcc.gov. Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to records as required under 47 CFR part 0, subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

45 FR 9738 (March 7, 2018).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–26212 Filed 11–12–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 260904]

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

DATES: The agency must receive comments on or before January 13, 2025.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Rolanda F. Smith, 202–418–2054, Rolanda-Faye.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: The Media Bureau shall provide notice in the **Federal Register** that an application to modify an AM or FM station's community of license has been filed. See 71 FR 76208, 76211 (published December 20, 2006). The following applicants filed AM or FM proposals to change the community of license: ZIMMER MIDWEST

COMMUNICATIONS, INC., KBFL–FM, FAC ID NO. 33654, FROM: BUFFALO, MO, TO: FAIR GROVE, MO, FILE NO. 0000252190; DOCKINS BROADCAST GROUP, LLC, KPWB–FM, FAC ID NO. 28121, FROM: PIEDMONT, MO, TO: MARQUAND, MO, FILE NO. 0000251701; SOUTHERN CULTURAL FOUNDATION, KVJB (FM), FAC ID NO. 762526, FROM: LAS ANIMAS, CO, TO: SWINK, CO, FILE NO. 0000253862; DELTA BROADCASTING, LLC, KYMO–FM, FAC ID NO. 69568, FROM: EAST PRAIRIE, MO, TO: BERTRAND, MO, FILE NO. 0000254766; ALLIANCE RADIO, LLC, WPNA–FM, FAC ID NO. 74177, FROM: NILES, IL, TO: EVANSTON, IL, FILE NO. 0000255099; SSR COMMUNICATIONS, INC., KCAY(FM), FAC ID NO. 203590, FROM: DAMMERON VALLEY, UT, TO: ENTERPRISE, UT, FILE NO. 0000254789; AND ELIJAH RADIO, WLJL(FM), FAC ID NO. 764082, FROM:

RIVERSIDE, AL, TO: LINCOLN, AL, FILE NO. 0000247585. The full text of these applications is available electronically via Licensing and Management System (LMS), <https://apps2int.fcc.gov/dataentry/public/tv/publicAppSearch.html>.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2024–26250 Filed 11–12–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1088; FR ID 260906]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 13, 2025. If you anticipate that you will be submitting comments but find it

difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1088.

Title: Rules and Regulations

Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05–338, FCC 06–42.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and Individuals or households.

Number of Respondents and Responses: 5,341,080 respondents; 6,050,735 responses.

Estimated Time per Response: 3 minutes (.05 hours) to 30 minutes (.50 hours).

Frequency of Response: Annual, monthly, and on occasion reporting requirements; Recordkeeping requirement; and Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The authorizing statutes for this information collection are: Telephone Consumer Protection Act of 1991, Public Law 102–243, 105 Stat. 2394 (1991); Junk Fax Prevention Act, Public Law 109–21, 119 Stat. 359 (2005).

Total Annual Burden: 3,670,540 hours.

Total Annual Cost: \$1,062,142.

Needs and Uses: On April 5, 2006, the Commission adopted a Report and Order and Third Order on Reconsideration, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005, CG Docket Nos. 02–278 and 05–338, FCC 06–42, which modified the Commission's facsimile advertising rules to implement the Junk Fax Prevention Act. The Report and Order and Third Order on Reconsideration contained information collection requirements pertaining to: (1) Opt-out Notice and Do-Not-Fax Requests Recordkeeping in which the rules require senders of unsolicited facsimile advertisements to include a notice on the first page of the facsimile that

informs the recipient of the ability and means to request that they not receive future unsolicited facsimile advertisements from the sender; (2) Established Business Relationship Recordkeeping whereas the Junk Fax Prevention Act provides that the sender, e.g., a person, business, or a nonprofit/institution, is prohibited from faxing an unsolicited advertisement to a facsimile machine unless the sender has an "established business relationship" (EBR) with the recipient; (3) Facsimile Number Recordkeeping in which the Junk Fax Prevention Act provides that an EBR alone does not entitle a sender to fax an advertisement to an individual or business. The fax number must also be provided voluntarily by the recipient; and (4) Express Invitation or Permission Recordkeeping where in the absence of an EBR, the sender must obtain the prior express invitation or permission from the consumer before sending the facsimile advertisement.

On October 14, 2008, the Commission released an Order on Reconsideration, FCC 08–239, addressing certain issues raised in petitions for reconsideration and/or clarification filed in response to the Commission's Report and Order and Third Order on Reconsideration (Junk Fax Order), FCC 06–42. In document FCC 08–239, the Commission clarified that: (1) Facsimile numbers compiled by third parties on behalf of the facsimile sender will be presumed to have been made voluntarily available for public distribution so long as they are obtained from the intended recipient's own directory, advertisement, or internet site; (2) Reasonable steps to verify that a recipient has agreed to make available a facsimile number for public distribution may include methods other than direct contact with the recipient; and (3) a description of the facsimile sender's opt-out mechanism on the first web page to which recipients are directed in the opt-out notice satisfies the requirement that such a description appear on the first page of the website.

The Commission believes these clarifications will assist senders of facsimile advertisements in complying with the Commission's rules in a manner that minimizes regulatory compliance costs while maintaining the protections afforded consumers under the Telephone Consumer Protection Act (TCPA).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–26263 Filed 11–12–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1209; FR ID 260662]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 13, 2025. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1209.

Title: Section 73.1216, Licensee-Conducted Contests.

Form Number: None. (Complaints alleging violations of the Contest Rule generally are filed on via the Commission's Consumer Complaint Portal entitled General Complaints, Obscenity or Indecency Complaints, Complaints under the Telephone Consumer Protection Act, Slamming Complaints, Requests for Dispute Assistance and Communications Accessibility Complaints which is approved under OMB control number 3060–0874).

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 21,322 respondents; 21,322 responses.

Estimated Time per Response: 0.1–9 hours.

Frequency of Response: On occasion reporting requirement: Third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 126,335 hours.

Total Annual Costs: \$6,395,700.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 1, 4 and 303 of the Communications Act of 1934, as amended.

Needs and Uses: The Commission adopted the Contest Rule in 1976 to address concerns about the manner in which broadcast stations were conducting contests over the air. The Contest Rule generally requires stations to broadcast material contest terms fully and accurately the first time the audience is told how to participate in a contest, and periodically thereafter. In addition, stations must conduct contests substantially as announced. These information collection requirements are necessary to ensure that broadcast licensees conduct contests with due regard for the public interest.

The Contest Rule permit broadcasters to meet their obligation to disclose contest material terms on an internet website in lieu of making broadcast announcements. Under the amended Contest Rule, broadcasters are required to (i) announce the relevant internet website address on air the first time the audience is told about the contest and periodically thereafter; (ii) disclose the material contest terms fully and accurately on a publicly accessible internet website, establishing a link or tab to such terms through a link or tab on the announced website's home page, and ensure that any material terms disclosed on such a website conform in all substantive respects to those

mentioned over the air; (iii) maintain contest material terms online for at least thirty days after the contest has ended; and (v) announce on air that the material terms of a contest have changed (where that is the case) within 24 hours of the change in terms on a website, and periodically thereafter, and to direct consumers to the website to review the changes.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–26264 Filed 11–12–24; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0205; Docket No. 2024–0001; Sequence No. 9]

Submission for OMB Review; General Services Administration Acquisition Regulation (GSAR); Hazardous Material Information

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, GSA invites the public to comment on a request to review and approve an extension of a previously approved information collection requirement regarding Hazardous Material Information.

DATES: Submit comments on or before: December 13, 2024.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Torberntsson, Procurement Analyst, GSA Acquisition Policy Division, via telephone at 720–475–0568, or via email at adina.torberntsson@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Hazardous Substance Act and Hazardous Material Transportation Act prescribe standards for packaging of hazardous substances. To meet the requirements of the Acts, the General Services Administration Regulation

prescribes provision 552.223–72, Hazardous Material Information, to be inserted in solicitations and contracts that provides for delivery of hazardous materials on a Free On Board (FOB) origin basis.

This information collection will be accomplished by means of the provision which requires the contractor to identify for each National Stock Number (NSN), the DOT Shipping Name, Department of Transportation (DOT) Hazards Class, and whether the item requires a DOT label. Contracting Officers and technical personnel use the information to monitor and ensure contract requirements based on law and regulation.

Properly identified and labeled items of hazardous material allows for appropriate handling of such items throughout GSA’s supply chain system. The information is used by GSA, stored in an NSN database and provided to GSA customers. Non-Collection and/or a less frequently conducted collection of the information resulting from GSAR provision 552.223–72 would prevent the Government from being properly notified. Government activities may be hindered from notifying their employees of; (1) All hazards to which they may be exposed; (2) Relative symptoms and appropriate emergency treatment; and (3) Proper conditions and precautions for safe use and exposure.

B. Annual Reporting Burden

Respondents: 563.

Responses per Respondent: 3.

Total Responses: 1689.

Hours Per Response: .5.

Total Burden Hours: 844.5.

C. Public Comments

A 60-day notice published in the **Federal Register** at 89 FR 68616 on August 27, 2024. No comments were received. *Obtaining Copies of Proposals:* 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. 3090–0205, Hazardous Material Information, in all correspondence.

Jeffrey A. Koses,

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

[FR Doc. 2024–26208 Filed 11–12–24; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve an extension of the currently approved information collection project: “Medical Expenditures Panel Survey—Insurance Component.”

DATES: Comments on this notice must be received by January 13, 2025.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at REPORTSCLEARANCEOFFICER@ahrq.hhs.gov.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at REPORTSCLEARANCEOFFICER@ahrq.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Expenditures Panel Survey—Insurance Component

AHRQ requests an extension of the Medical Expenditure Panel Survey—Insurance Component (MEPS-IC), OMB control number 0935–0110. No revisions are being made to the data collection. The current expiration date is January 31st, 2026. AHRQ requests a new expiration date, 3 years from approval.

In 2023, employer-sponsored health insurance was the source of coverage for 95.3 million workers and their family members and is a cornerstone of the U.S. health care system. The Medical Expenditure Panel Survey—Insurance Component (MEPS-IC) measures the extent, cost, and coverage of employer-sponsored health insurance on an annual basis. These statistics are produced at the National, State, and sub-State (metropolitan area) level for private industry. Statistics are also produced for State and Local governments.

This research has the following goals:

(1) to provide data for Federal policymakers evaluating the effects of National and State health care reforms.

(2) to provide descriptive data on the current employer-sponsored health insurance system and data for modeling the differential impacts of proposed health policy initiatives.

(3) to supply critical State and National estimates of health insurance spending for the National Health Accounts and Gross Domestic Product.

This study is being conducted by AHRQ through its contractor, the Bureau of the Census, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the cost and use of health care services and with respect to health statistics and surveys. 42 U.S.C. 299a(a)(3) and 42 U.S.C. 299b–2.

Method of Collection

To achieve the goals of this project the following data collections for both private sector and state and local government employers will be implemented:

(1) Prescreener Questionnaire—The purpose of the Prescreener Questionnaire, which is collected via telephone, varies depending on the insurance status of the establishment contacted (establishment is defined as a single, physical location in the private sector and a governmental unit in state and local governments.) For establishments that do not offer health insurance to their employees, the prescreener is used to collect basic information such as number of employees. Collection is completed for

these establishments through this telephone call. For establishments that do offer health insurance, contact name and address information is collected that is used for the mailout of the establishment and plan questionnaires. Obtaining this contact information helps ensure that the questionnaires are directed to the person in the establishment best equipped to complete them.

(2) Establishment Questionnaire—The purpose of the Establishment Questionnaire, which is collected via internet or mail, is to obtain general information from employers that provide health insurance to their employees. Information such as total active enrollment in health insurance, other employee benefits, demographic characteristics of employees, and retiree health insurance is collected through the establishment questionnaire.

(3) Plan Questionnaire—The purpose of the Plan Questionnaire, which is collected via internet or mail, is to collect plan-specific information on each plan (up to four plans) offered by establishments that provide health insurance to their employees. This questionnaire obtains information on total premiums, employer and employee contributions to the premium, and plan enrollment for each type of coverage offered—single, employee-plus-one, and family—within a plan. It also asks for information on deductibles, copays, and other plan characteristics.

Beginning with survey year 2009, web-based electronic collection has been used to collect MEPS–IC data, making it easier for respondents to report, and also allowing for faster data processing. This has been used

successfully for other Census Bureau surveys and has been very popular with respondents. Beginning with survey year 2020, email addresses are collected in order to email sample members with a link to respond to the survey using the internet. Since 2020, web has become the primary mode of data collection; mail mode is used as follow-up.

Computer Assisted Telephone Interviewing (CATI) technology has been an integral tool for prescreening of respondents and telephone follow-up in the MEPS–IC since the survey's inception.

A Business Help Site (BHS) was established on the internet by the Census Bureau for respondents to visit to view copies of the forms, definitions, and frequently asked questions. Secure messaging can be used by respondents through the BHS to ask reporting questions and receive quick responses.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the MEPS–IC. The Prescreener Questionnaire will be completed by 18,900 respondents and takes 5 minutes to complete. The Establishment Questionnaire will be completed by 21,900 respondents and takes 20 minutes to complete. The Prescreener and Establishment Questionnaires require 1 response per respondent. The Plan Questionnaire will be completed by 18,900 respondents and will require an average of 2.3 responses per respondent. Each Plan Questionnaire takes 11 minutes to complete. The total annualized burden hours are estimated to be 16,845 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS FOR THE 2025–2027 MEPS–IC

Form name	Number of respondents	Number of responses per respondent	Minutes per response	Total burden hours
Prescreener Questionnaire	18,900	1	5	1,575
Establishment Questionnaire	21,900	1	20	7,300
Plan Questionnaire	18,900	2.3	11	7,970
Total	59,700	n/a	n/a	16,845

* The burden estimate printed on the establishment questionnaire is 45 minutes, which includes the burden estimate for completing the establishment questionnaire and two plan questionnaires (on average, each establishment completes 2.3 plan questionnaires). The establishment and plan questionnaires are sent to the respondent as a package and are completed by the respondent at the same time.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this data collection. The annualized cost burden is estimated to be \$652,893.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN FOR THE 2025–2027 MEPS–IC

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Prescreener Questionnaire	18,900	1,575	38.76	\$61,047
Establishment Questionnaire	21,900	7,300	38.76	282,948
Plan Questionnaire	18,900	7,970	38.76	308,898
Total	59,700	16,845	n/a	652,893

*Based upon the mean hourly wage for Compensation, Benefits, and Job Analysis Specialists occupation code 13–1141, at <https://www.bls.gov/oes/current/oes131141.htm> (U.S. Department of Labor, Bureau of Labor Statistics.)

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ’s information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ’s health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ’s estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency’s subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 5, 2024.

Marquita Cullom,
Associate Director.

[FR Doc. 2024–26207 Filed 11–12–24; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Administration for Children and Families****Proposed Information Collection Activity; Objective Work Plan/On-Going Progress Report (Office of Management and Budget #0970–0452)**

AGENCY: Administration for Native Americans, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families’ (ACF) Administration for Native Americans (ANA) is requesting a 3-year extension to the Ongoing Progress Report (OPR) and the Objective Work Plan (OWP) (Office of Management and Budget #0970–0452, expiration September 30, 2026). Changes are proposed only to the report.

DATES: Comments due January 13, 2025. In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing infocollection@acf.hhs.gov. Identify all

requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The information in the OPR is collected on a semi-annual basis to monitor the performance of grantees and better gauge grantee progress.

The OPR information collection is conducted in accordance with sec. 811 [42 U.S.C. 2992] of the Native American Programs Act and will allow ANA to report quantifiable results across all program areas. It also provides grantees with parameters for reporting their progress and helps ANA better monitor and determine the effectiveness of their projects.

The OWP information collection is conducted in accordance with 42 U.S.C. of the Native American Programs Act of 1972, as amended. This collection is necessary to evaluate applications for financial assistance and determine the relative merits of the projects for which such assistance is requested, as set forth in sec. 806 [42 U.S.C. 2991–d 1](a)(1).

The report was revised based on a review by ANA and feedback from grantees, which identified some data elements that could be eliminated and areas that could be clarified.

Respondents: Federally and state recognized tribes, Native Pacific Islanders, Tribal Colleges and Universities, native non-profits, and consortia.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Objective Work Plan	300	1	3	900	300
On-Going Progress Report	200	2	1	400	133

Estimated Total Annual Burden Hours: 433.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) the quality, utility,

and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Sec. 806 [42 U.S.C. 2991d–1](a)(1) and Sec. 811 [42 U.S.C. 2992].

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–26230 Filed 11–12–24; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–5057]

Public Workshop on Optimizing the Use of Real-World Evidence in Regulatory Decision-Making for Drugs and Biological Products—Looking Forward; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a public workshop titled “Optimizing the Use of Real-World Evidence in Regulatory Decision-Making for Drugs and Biological Products—Looking Forward.” The purpose of the public workshop is to provide interested parties with an update on FDA’s current activities related to real-world evidence (RWE) and to share accomplishments, ongoing challenges, and future opportunities. The public workshop will discuss potential next steps to promote the continued evolution and consistent application of real-world data (RWD) in drug development. This public workshop will be convened and supported by a cooperative agreement between FDA and the Duke University, Duke-Margolis Institute for Health Policy.

DATES: The public workshop will be held on December 12, 2024, from 12:30 p.m. to 5 p.m., Eastern Time. Either electronic or written comments on this public workshop must be submitted by January 13, 2025. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held in-person at the Bethesda North Marriott & Conference Center, 5701 Marinelli Rd., North Bethesda, MD 20852 and virtually using the Zoom platform.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered.

The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 13, 2025.

Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2024–N–5057 for “Optimizing the Use of Real-World Evidence in Regulatory Decision-Making for Drugs and Biological Products—Looking Forward.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the

Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT:

Dianne Paraoan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–3161, Dianne.Paraoan@fda.hhs.gov or CDER-RWE@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The volume and complexity of RWD available to support drug development have increased substantially over the past several decades. This increase, combined with enhanced computing power and emerging technologies, is transforming how drugs are developed.

FDA published a “Framework for FDA’s Real-World Evidence Program” (Framework) (<https://www.fda.gov/media/120060/download?attachment>) for drugs and biological products in 2018. This Framework describes a multifaceted FDA program to evaluate the potential use of RWE in regulatory decision-making to help support the approval of a new indication for a drug already approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)) or to help support or satisfy drug post-approval study requirements. As described below, the growing reliance on RWD to assess pharmaceutical use, safety and effectiveness, and use of new technologies in these analyses will influence the generation of RWE to support regulatory decision-making.

FDA’s RWE Program for drugs and biological products involves multiple components: guidance development to assist developers interested in using RWD to develop RWE and to support Agency decisions; internal processes that involve senior leadership in the evaluation of RWE and promote shared learning and consistency in applying the Framework; demonstration projects with a focus on evaluating/improving data quality and use of RWD, advancing study design, and developing rigorous evaluation tools; and external engagement, including listening sessions, presentations, publications, and international collaborations. In addition, the seventh iteration of the Prescription Drug User Fees Act included new RWE-related provisions, including the Advancing RWE Program that enables early discussions with sponsors regarding RWE-based study proposals and greater transparency around the submission of RWE to the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research. In related work, FDA has published guidance documents and/or discussion papers on digital health technologies and the use of artificial intelligence (AI).

These activities lay a foundation for expansion of the use of RWD in evidence generation, but continued growth of these efforts requires increased coordination, knowledge management, internal support (including training), external visibility, and external engagement.

II. Topics for Discussion at the Public Workshop

FDA supports the continued evolution of using RWD to generate RWE that can support pre- and post-market regulatory decision-making at FDA for drugs and biological products.

Topics for this public workshop will focus on FDA’s current activities around RWE, ongoing accomplishments and challenges, and future opportunities.

Advancing existing priorities and activities of the RWE Program remains a focus area, including promoting consistency in review processes of submissions that contain RWE, and leveraging the full potential of RWD as well as emerging technologies to inform the effectiveness and safety of drugs and biological products.

To help facilitate the future direction of the RWE Program, FDA seeks input on the following questions.

1. Regulators, sponsors, and other interested parties are gaining experience with RWE in regulatory submissions. What are critical issues that need to be addressed to further advance the use of RWE in regulatory decision-making for drugs and biological products?

2. To advance our understanding of RWE, FDA has funded various demonstration (research) projects on topics such as RWD sources, study designs, and specific “tools.” What research priorities, including emerging technologies and AI, should CDER consider supporting?

3. FDA has published RWD/RWE guidance documents focused on data considerations, study design, and regulatory considerations. What additional topics could be prioritized for consideration?

4. FDA has utilized various mechanisms (e.g., public meetings, webinars, “listening sessions”) to engage interested parties; the Agency has also facilitated discussions with international regulators. What are optimal communication and engagement strategies to interact with the external community regarding RWE?

III. Participating in the Public Workshop

Registration: To register for this hybrid public workshop, please visit the following website: <https://duke.is/6/y7t5>. Please register for either in-person or virtual attendance and provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop in-person must register by December 6, 2024, 11:59 p.m. Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will

receive confirmation when they have been accepted.

If you need special accommodations due to a disability, please contact Luke Durocher at luke.durocher@duke.edu no later than December 6, 2024.

Streaming of the Public Workshop: This public workshop will also be available via Zoom webinar to virtual attendees who register at <https://duke.is/6/y7t5>. For more information about Zoom, please visit <https://support.zoom.us/hc/en-us/articles/206175806-Frequently-asked-questions>.

Notice of this workshop is given pursuant to 21 CFR 10.65.

Dated: November 6, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–26297 Filed 11–12–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–P–2514]

Determination That NUPLAZID (Pimavanserin Tartrate) Tablet, Equivalent 17 Milligram Base, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that NUPLAZID (pimavanserin tartrate) tablet, equivalent (EQ) 17 milligram (mg) base, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for NUPLAZID (pimavanserin tartrate) tablet, EQ 17 mg base, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT:

Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363, Stacy.Kane@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the

generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

NUPLAZID (pimavanserin tartrate) tablet, EQ 17 mg base, is the subject of NDA 207318, held by Acadia Pharmaceuticals, Inc., and initially approved on April 29, 2016. NUPLAZID is an atypical antipsychotic indicated for the treatment of hallucinations and delusions associated with Parkinson's disease psychosis.

In a letter dated January 8, 2019, Acadia Pharmaceuticals, Inc., notified FDA that NUPLAZID (pimavanserin tartrate) tablet, EQ 17 mg base, was being discontinued, and FDA moved the drug product to the "Discontinued Drug Product List" section of the Orange Book.

Zydus Pharmaceuticals (USA), Inc., submitted a citizen petition dated May 22, 2024 (Docket No. FDA-2024-P-2514), under 21 CFR 10.30, requesting that the Agency determine whether NUPLAZID (pimavanserin tartrate) tablet, EQ 17 mg base, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under

§ 314.161 that NUPLAZID (pimavanserin tartrate) tablet, EQ 17 mg base, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that NUPLAZID (pimavanserin tartrate) tablet, EQ 17 mg base, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of NUPLAZID (pimavanserin tartrate) tablet, EQ 17 mg base, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list NUPLAZID (pimavanserin tartrate) tablet, EQ 17 mg base, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to NUPLAZID (pimavanserin tartrate) oral tablet, EQ 17 mg base, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: November 6, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024-26318 Filed 11-12-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-2275]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Produce Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget

(OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by December 13, 2024.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. The title of this information collection is Produce Regulatory Program Standards. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-3794, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Produce Regulatory Program Standards

OMB Control Number 0910-NEW

This information collection helps establish and implement FDA's "Produce Regulatory Program Standards." Section 1012 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 399c) authorizes FDA to administer training and education programs for employees of State, local, Territorial, and Tribal food safety authorities relating to regulatory programs. Also, under section 205 of the FDA Safety Modernization Act (codified in 21 U.S.C. 2224), FDA, together with the Centers for Disease Control and Prevention is directed to enhance foodborne illness surveillance to improve the collection, analysis, reporting, and usefulness of data on foodborne illnesses. As part of this effort, we have initiated programs that include developing and instituting regulatory standards intended to reduce the risk of foodborne illness through coordinated efforts with our strategic partners. Regulatory program standards establish a uniform foundation for the design and management of State, local, Tribal, and Territorial programs that have the responsibility for regulating human and animal food. Partnering with other regulatory officials also helps maximize limited resources in

administering FDA regulations pertaining to the manufacturing/processing, packing, or holding of food for consumption in the United States.

The Produce Regulatory Program Standards (PRPS) are the result of external collaboration and coordination with the Association of Food and Drug Officials (AFDO), the National Association of State Departments of Agriculture (NASDA), and state produce regulatory programs. FDA, NASDA, AFDO, and states worked collaboratively to develop the content of the PRPS. A copy of the standards and accompanying worksheets and forms is available in the **Federal Register** docket for this notice. We recommend that State and Territorial produce safety regulatory programs use these program standards as the framework to design and manage their produce safety regulatory programs. The states that assisted in the development of PRPS were representative of the 43 State and Territorial programs regulatory programs enrolled currently conducting produce safety inspections via funding from a cooperative agreement grant, “The FDA’s Cooperative Agreement

Program for States and Territories to Implement a National Produce Safety Program, PAR–21–174,” (this program also includes 4 programs which do not conduct inspections). For more information on this cooperative agreement, we invite you to visit our website at: <https://www.fda.gov/federal-state-local-tribal-and-territorial-officials/grants-and-cooperative-agreements/fda-state-produce-safety-implementation-cooperative-agreement-program>.

The PRPS identifies and includes resource and training material for the following standards: regulatory foundations; training; inspection; product-specific illnesses, outbreaks and hazard response; compliance and enforcement; industry and community relations; program assessments; and product sampling and testing. We recommend using the worksheets and forms contained in the standards, however, alternate forms that are equivalent may be used. The educational worksheets and resource materials include recordkeeping and reporting activities that help FDA verify participation and successful completion

of the respective requirements. In the first year of enrollment, information is used to conduct a baseline self-assessment to determine whether the materials meet the elements of each standard. In subsequent years, we use the information to conduct a comprehensive review and evaluate program effectiveness and participation. We modify the program standards based on the ongoing assessments as well as comments and informal feedback obtained from participants.

Description of Respondents: Respondents are State Departments of Agriculture or Health regulatory officials who enroll in the PRPS (State or Territorial governments). Currently we estimate 43 respondents to the information collection based on expected participation.

In the **Federal Register** of June 28, 2024 (89 FR 54009), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received that did not pertain to the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

Respondent	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
State or Territorial Governments; Maintenance of data records consistent with the PRPS	48	11	528	85.36	45,072

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 30, 2024.
Kimberlee Trzeciak,
Deputy Commissioner for Policy, Legislation, and International Affairs.
[FR Doc. 2024–26209 Filed 11–12–24; 8:45 am]
BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Charter Renewal for the Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Department of Health and Human Services is hereby giving notice that the Advisory Committee on Heritable

Disorders in Newborns and Children (ACHDNC) charter has been renewed.

DATES: The effective date of charter renewal is November 10, 2024.

FOR FURTHER INFORMATION CONTACT: Leticia Manning, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, 18N38A, Rockville, Maryland 20857; 301–443–8335; or lmanning@hrsa.gov.

SUPPLEMENTARY INFORMATION: ACHDNC provides advice and recommendations to the Secretary of Health and Human Services (Secretary) on the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. ACHDNC reviews and reports regularly on newborn and childhood screening practices, recommends improvements in the national newborn and childhood screening programs, and fulfills requirements stated in the authorizing

legislation. In addition, ACHDNC’s recommendations regarding inclusion of conditions for screening on the Recommended Uniform Screening Panel, following adoption by the Secretary, are evidence-informed preventive health services provided for in the comprehensive guidelines supported by HRSA pursuant to section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13). Under this provision, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance are required to provide insurance coverage without cost-sharing (a co-payment, co-insurance, or deductible) for preventive services for plan years (*i.e.*, policy years) beginning on or after the date that is 1 year from the Secretary’s adoption of the condition for screening.

The charter renewal for the ACHDNC was approved on October 29, 2024. The filing date is November 10, 2024. Renewal of the ACHDNC charter

authorizes the committee to operate until November 10, 2026

A copy of the ACHDNC charter is available on the ACHDNC website at <https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html>. A copy of the charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The website address for the FACA database is <http://www.facadatabase.gov/>.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–26198 Filed 11–12–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; 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 Science Advisory Board for Biosecurity.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>).

Name of Committee: National Science Advisory Board for Biosecurity.

Date: November 21, 2024.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: The National Science Advisory Board for Biosecurity meeting will include a review of a new charge to the committee and discussion of next steps for the committee.

Address: National Institutes of Health, 6705 Rockledge Drive, Suite 630, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Meeting Access: <https://osp.od.nih.gov/policies/national-science-advisory-board-for-biosecurity-nsabb#tab3/>.

Contact Person: Cari Young, ScM, Office of Science Policy, Office of the Director, National Institutes of Health, 6705 Rockledge Drive, Suite 630, Bethesda, MD 20892, 301–496–9838, SciencePolicy@od.nih.gov.

This notice is being published less than 15 days from the meeting date due to exceptional circumstances which did not allow sufficient time to submit the notice within the typical lead time

required for publication. The National Science Advisory Board for Biosecurity meeting will include review of a new charge to the committee that, in keeping with the committee's charter, is of vital importance to biomedical research, public health, and national security. If the meeting is not held on November 21, 2024, committee members and participants with the requisite scientific, technical, public health, biodefense, and national security expertise will be unable to participate due to scheduling conflicts. Information is also available on the Institute's/Center's home page: <https://osp.od.nih.gov/policies/national-science-advisory-board-for-biosecurity-nsabb#tab3/>, where an agenda and any additional information for the meeting will be posted when available.

Dated: November 7, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–26268 Filed 11–12–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Acquired Immunodeficiency Syndrome Research Committee (AIDS) Special Emphasis Panel.

Date: December 5, 2024.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Samita S. Andreansky, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural

Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71, Rockville, MD 20892, 240–669–2915, samita.andreansky@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 6, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–26187 Filed 11–12–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Strategic Preparedness and Response

National Advisory Committee on Children and Disasters Public Meeting

AGENCY: Administration for Strategic Preparedness and Response (ASPR), U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Advisory Committee on Children and Disasters (NACCD or the Committee) will conduct a public meeting (virtual) to discuss potential recommendations to the HHS Secretary and ASPR regarding challenges, opportunities, and priorities for national public health and medical preparedness, response, and recovery specific to the needs of children and their families in disasters.

DATES: The public meeting (virtual) will be held December 4, 2024.

ADDRESSES: A more detailed agenda and meeting registration link will be available on the NACCD meeting website at <https://aspr.hhs.gov/AboutASPR/WorkingwithASPR/BoardsandCommittees/Pages/NACCD/Public-Meetings.aspx>.

FOR FURTHER INFORMATION CONTACT: Zhoowan Jackson, NACCD Designated Federal Officer, Administration for Strategic Preparedness and Response (ASPR), U.S. Department of Health and Human Services (HHS), Washington, DC; 202–205–4217, NACCD@hhs.gov.

SUPPLEMENTARY INFORMATION: The NACCD is established by section 2811A of the Public Health Service Act (42 U.S.C. 300hh-10b) as amended by the Pandemic and All Hazards Preparedness and Advancing Innovation Act and governed by the provisions of the Federal Advisory Committee Act (5 U.S.C. app.). The statute directs the

NACCD to evaluate issues and programs and provide findings, advice, and recommendations to the HHS Secretary and ASPR to support and enhance all-hazards public health and medical preparedness, response, and recovery aimed at meeting the unique needs of children and their families across the entire spectrum of their wellbeing. The HHS Secretary has formally delegated authority to operate the NACCD to ASPR.

Procedures for Public Participation: Members of the public may attend the meeting via a toll-free phone number or Zoom teleconference, which requires pre-registration. The meeting link to pre-register will be posted on the NACCD meeting website. Members of the public may provide written comments or submit questions for consideration to the NACCD at any time via email to NACCD@hhs.gov. Members of the public are also encouraged to provide comments after the meeting. The NACCD invites those who are involved in or represent a relevant industry, academia, health profession, health care consumer organization, or state, tribal, territorial, or local government to request up to four minutes to address the committee live via Zoom. Requests to provide remarks to the NACCD during the public meeting must be sent to NACCD@hhs.gov at least 10 days prior to the meeting along with a brief description of the topic. We would specifically like to request inputs from the public on the future of pediatric disaster care networks and any barriers to success as well as other challenges, opportunities, and strategic priorities for national public health and medical preparedness, response, and recovery specific to the needs of children and their families in disasters.

The Administrator and Assistant Secretary for Preparedness and Response of ASPR, Dawn O'Connell, having reviewed and approved this document, authorizes Adam DeVore, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Adam DeVore,

Federal Register Liaison, Administration for Strategic Preparedness and Response.

[FR Doc. 2024-25886 Filed 11-12-24; 8:45 am]

BILLING CODE 4150-37-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Strategic Preparedness and Response

National Advisory Committee on Individuals With Disabilities and Disasters, National Advisory Committee on Seniors and Disasters, and the National Biodefense Science Board; Call for Member Nominees

AGENCY: Administration for Strategic Preparedness and Response (ASPR), U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: ASPR, in HHS, is currently seeking applications from qualified individuals for memberships on the following national advisory committees (vacancies): The National Advisory Committee on Individuals with Disabilities and Disasters (NACIDD) (7 vacancies); the National Advisory Committee on Seniors and Disasters (NACSD) (7 vacancies); and the National Biodefense Science Board (NBSB) (7 vacancies). The HHS Secretary will appoint new voting members.

DATES: *Nomination Period:* The rolling application period is from November 12, 2024–January 11, 2025, at 11:59 p.m. eastern standard time.

FOR FURTHER INFORMATION CONTACT: Sylvia Sosa, Designated Federal Official, NACIDD, ASPR, HHS, NACIDD@hhs.gov, Office: 202-843-3876; Dr. Maxine Kellman, Designated Federal Official, NACSD, ASPR, HHS, NACSD@hhs.gov, Office: 202-260-0447; LCDR Clifford Smith, Designated Federal Official, NBSB, ASPR, HHS, NBSB@hhs.gov, Office: (202) 868-9352.

SUPPLEMENTARY INFORMATION: The National Advisory Committees (NAC) program includes a group of Federal advisory committees authorized to provide advice and recommendations to the HHS Secretary. The committees are managed by ASPR, with an additional delegation of authority that allows the Administrator and Assistant Secretary for Preparedness and Response (the ASPR) to request and receive recommendations on behalf of the Secretary.

The nationally renowned subject matter experts appointed to the HHS national advisory committees advise the HHS Secretary and the ASPR by holding working groups and public meetings throughout the year to address high priority issues and develop recommendations. These committees bring timely analysis, crucial

perspectives, and new ideas to ASPR's strategies and programs.

The committees listed below enhance public health emergency preparedness and response by coordinating federal efforts for the prevention, preparedness, response, and recovery from public health emergencies or medical disasters. They advise on strategic planning and provide expert guidance to lawmakers, the HHS Secretary, and other decision-makers. The ASPR NAC includes: The NACIDD, the NACSD, and the NBSB.

Voting members shall not be full-time or permanent part-time federal employees but shall be appointed by the HHS Secretary as Special Government Employees (5 U.S.C. 3109) in an unpaid position. A voting member of the committees shall serve for a term of three years; the HHS Secretary may also adjust the terms of appointees. A voting member may serve not more than three terms on the committees, and not more than two of such terms may be served consecutively. A member may serve after the expiration of his/her term until a successor has been appointed. Applicants to those positions may be nominated by a relevant organization or may nominate themselves based on their expertise within the following stakeholder groups: Industry, academia, health care consumer organizations, and organizations representing other appropriate stakeholders. Please visit the ASPR's website at: <https://aspr.hhs.gov/AboutASPR/WorkingwithASPR/BoardsandCommittees/Pages/default.aspx> for all application submission information, additional information regarding the qualifications expected for applicants, and application instructions.

NACIDD

Authority: The NACIDD is required by section 2811C of the Public Health Service (PHS) Act (42 U.S.C. 300hh–10d), as amended by the Pandemic and All-Hazards Preparedness and Advancing Innovation Act (PAHPAIA), Public Law 116–22.

Description of Duties: The NACIDD evaluates issues and programs and provides findings, advice, and recommendations to the HHS Secretary and the ASPR, in accordance with the Federal Advisory Committee Act (FACA), to support and enhance all-hazards public health and medical preparedness, response activities, and recovery, aimed at meeting the unique needs of individuals with disabilities across the entire spectrum of well-being. The NACIDD shall (1) provide advice and consultation with respect to activities carried out in regard to at-risk individuals pursuant to section 2814 of

the PHS Act, as applicable and appropriate; (2) evaluate and provide input with respect to the medical, public health, and accessibility needs of individuals with disabilities related to preparation for, response to, and recovery from all-hazards emergencies; and (3) provide advice and consultation with respect to State emergency preparedness and response activities, including related drills and exercises pursuant to the preparedness goals of the National Health Security Strategy authorized under section 2802(b) of the PHS Act. The NACIDD has several additional goals and activities listed in their charter, which can be found here: NACIDD Additional Goals and Activities.

Membership and Designation:

Members shall be appointed by the HHS Secretary from among the nation's preeminent scientific, public health, and medical experts in areas consistent with the purpose and functions of the advisory committee. The HHS Secretary, in consultation with such other heads of federal agencies as may be appropriate, shall appoint a maximum of 17 members to the NACIDD, ensuring that the total membership is an odd number. The NACIDD shall consist of at least seven non-federal voting members, including a Chairperson, and:

A. At least two non-federal health care professionals with expertise in disability accessibility before, during, and after disasters, medical and mass care disaster planning, preparedness, response, or recovery;

B. At least two representatives from state, local, tribal, or territorial agencies with expertise in disaster planning, preparedness, response, or recovery for individuals with disabilities; and

C. At least two individuals with a disability with expertise in disaster planning, preparedness, response, or recovery for individuals with disabilities.

The NACIDD shall also have up to 10 federal, non-voting members (ex officio), listed here: NACIDD Federal Non-Voting (Ex Officio) Members.

NACSD

Authority: The NACSD is required by section 2811B of the PHS Act (42 U.S.C. 300hh-10c), as amended by PAHPAIA, Public Law 116-22.

Description of Duties: The NACSD evaluates issues and programs and provides findings, advice, and recommendations to the HHS Secretary and the ASPR, in accordance with FACA, to support and enhance all-hazards public health and medical preparedness, response activities, and recovery aimed at meeting the unique

needs of older adults. The NACSD: (1) provides advice and consultation with respect to the activities carried out regarding at-risk individuals pursuant to section 2814 of the PHS Act, as applicable and appropriate; (2) evaluates and provides input with respect to the medical and public health needs of older adults related to preparation for, response to, and recovery from all-hazards emergencies; and (3) provides advice and consultation with respect to State emergency preparedness and response activities relating to older adults, including related drills and exercises pursuant to the preparedness goals under the National Health Security Strategy authorized under section 2802(b) of the PHS Act. The NACSD may provide advice and recommendations to the HHS Secretary and the ASPR with respect to older adults and the medical and public health grants and cooperative agreements as applicable to preparedness and response activities under Title XXVIII and Title III of the PHS Act. The NACSD has several additional goals and activities outlined in their charter, which can be found here: NACSD Additional Goals and Activities.

Membership and Designation:

Members shall be appointed by the HHS Secretary from among the nation's preeminent scientific, public health, and medical experts in areas consistent with the purpose and functions of the advisory committee. The HHS Secretary, in consultation with such other heads of federal agencies as may be appropriate, shall appoint a maximum of 17 members to the NACSD, ensuring that the total membership is an odd number.

The NACSD shall consist of at least seven non-federal voting members, including a Chairperson, and:

A. At least two non-federal health care professionals with expertise in gerontological and/or geriatric medical disaster planning, preparedness, response, or recovery; and

B. At least two representatives from state, local, tribal, or territorial agencies with expertise in geriatric disaster planning, preparedness, response, or recovery.

The NACSD shall also have up to 10 federal, non-voting members (ex officio), listed here: NACSD Federal and Non-Federal Non-Voting (Ex Officio) Members

NBSB

Authority: The NBSB is required under section 319M of the PHS Act (42 U.S.C. 247d-7g) section 404 of the

Pandemic and All Hazards Preparedness Reauthorization Act (PAHPRA).

Description of Duties: The NBSB advises the HHS Secretary or the ASPR on current and future trends, challenges, and opportunities presented by advances in biological and life sciences, biotechnology, and genetic engineering with respect to threats posed by naturally occurring infectious diseases and chemical, biological, radiological, and nuclear agents, and reviews and considers any information and findings received from the working groups established under 42 U.S.C. 247d-7g(b). At the request of the HHS Secretary, the board also provides recommendations and findings for expanded, intensified, and coordinated biodefense research and development activities. The Board also provides any recommendation, finding, or report provided to the HHS Secretary or the ASPR on these matters to the appropriate committees of Congress.

Membership and Designation: The NBSB shall consist of 13 voting members, including the Chairperson; additionally, there may be non-voting ex officio members. Members and the Chairperson shall be appointed by the HHS Secretary from among the Nation's preeminent scientific, public health, and medical experts, as follows:

A. Such federal officials as the HHS Secretary may determine are necessary to support the functions of the Board;

B. Four individuals representing the pharmaceutical, biotechnology, and device industries;

C. Four individuals representing academia;

D. Five other members as determined appropriate by the HHS Secretary, of whom:

i. One such member shall be a practicing healthcare professional;

ii. One such member shall be an individual from an organization representing healthcare consumers;

iii. One such member shall be an individual with pediatric subject matter expertise; and

iv. One such member shall be a state, tribal, territorial, or local public health official.

Nothing in the membership requirements shall preclude a member of the Board from satisfying two or more of these requirements described in subparagraph (D).

Additional details on NBSB membership requirements can be found in their charter: NBSB Additional Membership Requirements

The Administrator and Assistant Secretary for Preparedness and Response of ASPR, Dawn O'Connell, having reviewed and approved this

document, authorizes Adam DeVore, who is the Federal Register liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Adam DeVore,
Federal Register Liaison, Administration for Strategic Preparedness and Response.

[FR Doc. 2024–25885 Filed 11–12–24; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Strategic Preparedness and Response

National Advisory Committee on Individuals With Disabilities and Disasters Public Meeting

AGENCY: Administration for Strategic Preparedness and Response (ASPR), U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Advisory Committee on Individuals with Disabilities and Disasters (NACIDD) announces it will conduct a public meeting. Notice of the meeting is required under section 10(a)(2) of the Federal Advisory Committee Act (FACA).

DATES: The meeting will take place Tuesday, December 10, 2024 (1:30 p.m.–3:30 p.m. ET).

ADDRESSES: The pre-registration link and a more detailed agenda will be available on the NACIDD website at <https://aspr.hhs.gov/AboutASPR/WorkingwithASPR/BoardsandCommittees/Pages/NACIDD/NACIDD-Meetings.aspx>.

FOR FURTHER INFORMATION CONTACT:

Sylvia Sosa; NACIDD Designated Federal Official, (202) 843–3876; nacidd@hhs.gov.

SUPPLEMENTARY INFORMATION: The NACIDD is required by section 2811B of the Public Health Service Act (PHS) Act (42 U.S.C. 300hh–10d), as amended by the Pandemic and All-Hazards Preparedness and Advancing Innovation Act (PAHPAIA), Public Law 116–22, and governed by the provisions of FACA. The NACIDD evaluates issues and programs and provides findings, advice, and recommendations to support and enhance all-hazards public health and medical preparedness, response activities, and recovery related to meeting the unique needs of people with disabilities. The NACIDD also advises the HHS Secretary on actions HHS can take before, during, and after

disasters and emergencies to meet the unique needs of people with disabilities.

Procedures for Public Participation: The public and expert stakeholders are invited to observe the meeting virtually, pre-registration is required. The pre-registration link and a more detailed agenda will be available on the NACIDD website. Anyone may submit questions and comments to the NACIDD by email (NACIDD@hhs.gov) before the meeting. American Sign Language translation and Communication Access Real-Time Translation will be provided. We would like to specifically seek input from the public on: (1) Data and monitoring resources to identify the needs of at-risk individuals in an emergency, and (2) Emergency Support Functions of the National Response Framework to identify gaps in equitable incident management and disaster response for people with disabilities. Representatives from industry, academia, health professions, health care consumer organizations, non-federal government agencies, or community-based organizations may request up to five minutes to speak directly to the Committee. Requests to speak to the Committee will be approved in consultation with the Committee Chair and based on time available during the meeting. Requests to speak to the NACIDD during the public meeting must be sent to NACIDD@hhs.gov by close of business on December 5, 2024. Please provide the full name, credentials, official position(s), and relevant affiliations for the speaker and a brief description of the intended topic. Presentations that contain material with a commercial bias, advertising, marketing, or solicitations will not be allowed. A meeting summary will be available on the NACIDD website after the meeting. The Administrator and Assistant Secretary for Preparedness and Response of ASPR, Dawn O’Connell, having reviewed and approved this document, authorizes Adam DeVore, who is the Federal Register liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Adam DeVore,

Federal Register Liaison, Administration for Strategic Preparedness and Response.

[FR Doc. 2024–25887 Filed 11–12–24; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0885]

National Merchant Marine Personnel Advisory Committee; December 2024 Virtual Meeting

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee virtual meeting.

SUMMARY: The National Merchant Marine Personnel Advisory Committee (Committee) will conduct a virtual meeting to discuss issues relating to personnel in the United States Merchant Marine including the training, qualifications, certification, documentation, and fitness of mariners. The virtual meeting will be open to the public. Anyone wishing to attend should contact the individual noted in the **FOR FURTHER INFORMATION CONTACT** section.

DATES:

Meetings: The National Merchant Marine Personnel Advisory Committee is scheduled to meet on Wednesday, December 11, 2024, from 9 a.m. until 4:30 p.m. Eastern Standard Time Zone (EST). The virtual meeting may adjourn early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by Committee members before the virtual meeting, submit your written comments no later than November 27, 2024.

ADDRESSES: To join the virtual meeting or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. EST on November 27, 2024, to obtain the needed information. The number of virtual lines is limited and will be available on a first come, first served basis.

The National Merchant Marine Personnel Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email Mrs. Megan Johns Henry at megan.c.johns@uscg.mil or call at (202) 372–1255 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the virtual meeting as time permits, but if you want Committee members to review your comment before the virtual meeting, please submit your comments

no later than November 27, 2024. We are particularly interested in comments on the issues in the “Agenda” section below. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG 2024–0855 in the search box and click “Search”. Next, look for this document in the Search Results column and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number USCG–2024–0855. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. You may wish to review the Privacy and Security Notice found via a link on the homepage of <http://www.regulations.gov>.

For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website’s instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mrs. Megan Johns Henry, Alternate Designated Federal Officer of the National Merchant Marine Personnel Advisory Committee, telephone (202) 372–1255, or email megan.c.johns@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this virtual meeting is in compliance with the *Federal Advisory Committee Act* (Pub. L. 117–286, 5 U.S.C. ch. 10). The National Merchant Marine Personnel Advisory Committee is authorized by section 601 of the *Frank LoBiondo Act of 2018* and is codified in 46 U.S.C. 15103. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109. The National Merchant Marine Personnel Advisory Committee provides advice and recommendations to the Secretary of Homeland Security

through the Commandant of the United States Guard on matters relating to personnel in the United States Merchant Marine including the training, qualifications, certification, documentation, and fitness of mariners.

Agenda: The National Merchant Marine Personnel Advisory Committee will meet on Wednesday, December 11, 2024.

- (1) Introduction.
- (2) Designated Federal Officer remarks.
- (3) Roll call of Committee members.
- (4) Adoption of the agenda.
- (5) Acceptance of Minutes from Committee Meeting 8 (September 5, 2024).
- (6) Introduction of new task.
- (7) Recommendations report on TS 21–5, *Review of Merchant Mariner Rating and Officer Endorsement Job Task Analyses* from NMERPAC Meeting.
- (8) Public comment, deliberation, and voting.
- (9) U. S. Coast Guard Response on Recommendations to the U.S. Coast Guard from the National Merchant Marine Personnel Advisory Committee.
- (10) Public comment, deliberation, and voting.
- (11) Public comment period.
- (12) Closing remarks.
- (13) Adjournment of meeting.

A copy of all meeting documentation will be available at [https://homeport.uscg.mil/missions/federal-advisory-committees/national-merchant-marine-personnel-advisory-committee-\(nmerpac\)](https://homeport.uscg.mil/missions/federal-advisory-committees/national-merchant-marine-personnel-advisory-committee-(nmerpac)) by November 27, 2024. Alternatively, you may contact the individual noted in the **FOR FURTHER INFORMATION CONTACT** section above.

There will also be a public comment period during the meeting on December 11, 2024, at approximately 12:30 p.m. (EST). Public comments will be limited to 3 minutes per speaker and limited to one comment per person. Please note that the public comments period will end following the last call for comments.

Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Dated: November 6, 2024.

Jeffrey G. Lantz,
Director of Commercial Regulations and Standards.

[FR Doc. 2024–26211 Filed 11–12–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7038–N–15]

60-Day Notice of Proposed Information Collection: Owner’s Certification With Department of Housing and Urban Development (HUD) Tenant Eligibility and Rent Procedures; OMB Control Number: 2502–0182

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. Following the Paperwork Reduction Act, HUD requests comments from all interested parties on the proposed information collection. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 13, 2025.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to www.regulations.gov. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone (202) 402–3400. (this is not a toll-free number) or email at Colette.Pollard@hud.gov, for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; email Colette.Pollard@hud.gov or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Applications for Housing Assistance Payments; Special Claims Processing.

OMB Approval Number: 2502–0182.

OMB Expiration Date: December 31, 2017.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number(s):

- HUD–52670, Housing Owner’s Certification and Application for Housing Assistance Payments
- HUD–52670–A Part 1, Schedule of Tenant Assistance Payments Due
- HUD–52670–A Part 2, Special Claims Schedule
- HUD–52670–A Part 3, Adjustments to Schedule of Tenant Assistance Payments Due
- HUD–52670–A Part 4, Miscellaneous Accounting Requests for Schedule of Tenant Assistance Payments Due
- HUD–52670–A Part 5, Approved Special Claims for Schedule of Tenant Assistance Payments Due
- HUD–52670–A Part 6, Repayment Agreements and FSS Escrows for Schedule of Tenant Assistance Payments Due
- HUD–52671–A, Special Claims for Unpaid Rent/Damages
- HUD–52671–B, Exceptions to Limitations on Admission of Families
- HUD–52671–C, Special Claims for Regular Vacancies
- HUD–52671–D, Special Claims for Debt Service
- HUD–93742, Senior Preservation Rental Assistance Contract (SPRAC I)
- HUD–93742a, Senior Preservation Rental Assistance Contract (SPRAC II)

Description of the need for the information and proposed use: The Department needs to collect this information to establish an applicant’s eligibility for admittance to subsidized housing, specify which eligible applicants may be given priority over others, and prohibit racial discrimination in conjunction with the selection of tenants and unit assignments. The Department must specify tenant eligibility requirements and how tenants’ incomes, rents, and assistance must be verified and computed to prevent the Department from making improper payments to owners on behalf of assisted tenants. The Department also must provide

annual reports to Congress and the public on the race/ethnicity and gender composition of subsidy program beneficiaries. This information is essential to maintain a standard of fair practices when assigning tenants to HUD Multifamily properties.

HUD must specify tenant eligibility requirements and how tenants’ incomes, rents, and assistance must be verified and computed to prevent HUD from making improper payments to owners on behalf of assisted tenants. These information collections are essential to reduce improper payment standards in providing \$13 billion in rental assistance to low-income families in HUD Multifamily properties.

Respondents: Individuals or households, Businesses or other for-profit, Not-for-profit institutions, Federal Government, and State, Local, or Tribal Government.

Estimated Number of Respondents: 27,939.

Estimated Number of Responses: 334,960.

Frequency of Response: 1.

Average Hours per Response: 8.32.

Total Estimated Burden: 716,443.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency’s estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of collecting information on those who are to respond, including using appropriate automated collection techniques or other information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Jeffrey D. Little,

General Deputy Assistant Secretary for Housing—Federal Housing Administration.

[FR Doc. 2024–26206 Filed 11–12–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[256A2100DD/AAKC001030/A0A51010.999900]

Proclaiming Certain Lands as Reservation for Lower Elwha Tribal Community

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 61.36 acres, more or less, an addition to the reservation of the Lower Elwha Tribal Community.

DATES: This proclamation was made on November 6, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Box #44, Albuquerque, New Mexico 87104, carla.clark@bia.gov, (505) 563–3132.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 5110) for the lands described below. The land was proclaimed to be the Lower Elwha Tribal Community Reservation for Lower Elwha Clallam Tribe in Clallam County Washington.

Lower Elwha Tribal Community Reservation, Willamette Meridian, Clallam County, Washington, Legal Descriptions Containing 61.36 Acres, More or Less

125–T4877 Elwha River Property

The East half of the Southeast quarter of the Northwest quarter of Section 34, Township 31 North, Range 7 West, Willamette Meridian, Clallam County, Washington, Situate in Clallam County, State of Washington. Containing 21.4 acres, more or less.

125–T4878 Little River Property

Government Lot 2 (also known as the Northwest quarter of the Northeast quarter) in Section 4, Township 29 North, Range 6 West, Willamette Meridian, Clallam County, Washington, Situate in Clallam County, State of Washington. Containing 39.96 acres, more or less.

The above described lands contain a total of 61.36 acres, more or less, which

are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads and pipelines, or any other valid easements or rights-of-way or reservations of record.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024-26202 Filed 11-12-24; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CO_FRN_MO4500183187]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service and the BLM, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on December 13, 2024.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, P.O. Box 151029, Lakewood, CO 80215.

FOR FURTHER INFORMATION CONTACT: Sean Mullen, Acting Chief Cadastral Surveyor for Colorado, telephone: (970) 240-5410; email: smullen@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. 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 plat and field notes of the dependent resurvey and survey in Township 37 North, Range 6 East, New Mexico Principal Meridian, Colorado, were accepted on July 17, 2024.

The plat and field notes of the dependent resurvey and subdivision of

section 34 in Township 38 North, Range 6 East, New Mexico Principal Meridian, Colorado, were accepted on August 21, 2024.

The plat and field notes of the dependent resurvey and subdivision of section 12 in Township 32 North, Range 7 East, New Mexico Principal Meridian, Colorado, were accepted on September 12, 2024.

The plat and field notes of the dependent resurvey and subdivision of sections 5 and 6 in Township 48 North, Range 7 West, New Mexico Principal Meridian, Colorado, were accepted on September 30, 2024.

The plat and field notes of the dependent resurvey and survey in partially surveyed Township 10 South, Range 81 West, Sixth Principal Meridian, Colorado, were accepted on October 15, 2024.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, 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: 43 U.S.C. ch. 3)

Sean Mullen,

Acting Chief Cadastral Surveyor.

[FR Doc. 2024-26224 Filed 11-12-24; 8:45 am]

BILLING CODE 4331-16-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CA_FRN_MO4500179115]

Notice of Availability of the Record of Decision and Approved Resource Management Plan for the Redding and Arcata Field Offices Northwest California Integrated Resource Management Plan, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) for the Redding Field Office and Arcata Field Office, Northwest California Integrated RMP. The California State Director signed the ROD on September 18, 2024, which constitutes the decision of the BLM and makes the Approved RMP effective immediately.

DATES: The California State Director signed the ROD on September 18, 2024.

ADDRESSES: The ROD/Approved RMP is available online at <https://eplanning.blm.gov/eplanning-ui/project/2012803/510>. Printed copies of the ROD/Approved RMP are available for public inspection at the Arcata Field Office, 1695 Heindon Road, Arcata, California 95521-4573 and the Redding Field Office, 6640 Lockheed Drive, Redding, CA 96002-9003 or can be provided upon request by contacting Victoria Callahan, Planning and Environmental Specialist at vslaughter@blm.gov or (707) 825-2315 or by contacting Chad Endicott, Planning and Environmental Specialist at cendciott@blm.gov or (530) 224-2140.

A copy of the Protest Resolution Report is available at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports>.

FOR FURTHER INFORMATION CONTACT: Victoria Callahan, Planning and Environmental Specialist, telephone: (707) 825-2315; address: Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, California 95521-4573; email: vslaughter@blm.gov or Chad Endicott, Planning and Environmental Specialist, telephone: (530) 224-2140; address: Bureau of Land Management, Redding Field Office, 6640 Lockheed Drive, Redding, CA 96002-9003; email: cendicott@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 Ms. Callahan or Mr. Endicott. 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 Approved Northwest California Integrated RMP replaces the 1992 Arcata RMP and 1993 Redding RMP. The Northwest California planning area covers approximately 382,200 acres of public land and approximately an additional 295,100 subsurface acres of Federal mineral estate in Mendocino, Humboldt, Del Norte, Siskiyou, Trinity, Shasta, Tehama, and Butte counties. Separate management plans guide BLM management for National Monuments, National Conservation Areas, and similar designations within the planning area.

Other non-BLM-administered lands within the planning area include the Six Rivers, Shasta-Trinity, Klamath, Lassen, Plumas, and Mendocino National Forests; Lassen Volcanic and Redwoods National Parks; the Whiskeytown and Smith River National Recreation Areas; the Sacramento Castle Rock and Humboldt Bay National Wildlife Refuges; and Black Butte Lake (managed by the U.S. Army Corps of Engineers).

Tribal lands and reservations for 31 federally recognized Native American Tribes fall within the planning area and the BLM-administered lands include ancestral territories, sacred sites, gathering areas, and other places important to Tribes. The Bureau of Reclamation manages numerous land holdings and facilities within the planning area, including six hydroelectric dams and lands that are co-managed with the BLM under a memorandum of agreement with the Redding Field Office near the Shasta Dam and Keswick Reservoir. In addition to federally managed lands, there are an extensive number of State of California-managed beaches, parks, wildlife areas, and recreation areas in the planning area. The Arcata Field Office and Redding Field Office have taken these non-BLM-administered lands into account in this planning effort.

The Approved RMP balances resource use among competing human interests, land uses, and the conservation of natural and cultural resource values, while sustaining and enhancing ecological integrity across the landscape, including plant, wildlife, and fish habitat. The plan has varied landscapes with distinct management, and it incorporates a balanced level of

protection, restoration, and enhancement, as well as the use of resources and services to meet ongoing programs and land uses with an emphasis on local community visions for the future of public lands.

Through this collaborative planning effort, the Approved RMP describes the actions and management to guide future management and meet desired resource conditions. The preferred alternative for the Proposed RMP was carried forward into the Approved RMP with minor modifications. Notably, the management direction for the Sacramento River Bend Area of Critical Environmental Concern was updated, eliminating the need for BLM Authorized Officer approval for wildfire suppression actions related to life or private property. Additionally, the plan now recognizes recent changes in a community wildfire protection plan and emphasizes the importance of considering municipal plans during implementation.

The BLM provided the Proposed RMP/Final EIS for a 30-day public protest starting on June 21, 2024, and received six protest letters. The BLM Director resolved all protests. Responses to protest issues were compiled and documented in a Protest Resolution Report (see **ADDRESSES**). No changes to the Northwest California Integrated Resource Management Plan Proposed RMP/EIS were necessary as a result of protests.

The BLM provided the Proposed RMP/Final EIS to the Governor of California for a 60-day Governor's consistency review on June 21, 2024. No inconsistencies with state or local plans, policies or programs were identified during the Governor's consistency review of the Proposed RMP/Final EIS. No changes to the Northwest California Integrated Resource Management Plan Proposed RMP/EIS were necessary as a result of the Governor's consistency review.

(Authority: 40 CFR 1506.6; 43 CFR 1610.5–1)

Joseph Stout,
State Director.

[FR Doc. 2024–25789 Filed 11–12–24; 8:45 am]

BILLING CODE 4331–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Stipulated Order Under the Clean Air Act

On November 6, 2024, the Department of Justice lodged a proposed Stipulated Order with the United States District Court for the Eastern District of Missouri

in the lawsuit entitled *United States, et al. v. Ameren Missouri*, Civil Action No. 4:11–cv–00077–RWS (E.D. Missouri).

The proposed Stipulated Order would resolve all remaining claims of the United States, on behalf of the United States Environmental Protection Agency (“EPA”), and those of Plaintiff-Intervenor Sierra Club, against Ameren Missouri (“Ameren”), regarding Clean Air Act violations at the utility's Rush Island coal-fired power plant in Festus, Missouri.

Under the proposed Stipulated Order, Ameren will implement two primary mitigation projects:

(1) A project to support the distribution of stand-alone HEPA purifier devices to residential customers within Ameren's service territory located predominantly in Eastern Missouri, prioritizing distribution to low-income households, and

(2) A project to promote the transition to electric school buses for schools in the St. Louis metropolitan and surrounding areas with the charging stations necessary to support these vehicles.

In the event certain benchmarks are not met when implementing the HEPA purifier and electric school bus programs, Ameren will complete a third mitigation project—administering funds for the purpose of implementing weatherization and energy efficiency upgrades that will reduce energy consumption by residential buildings in Ameren's service area.

The publication of this notice opens a period for public comment on the Stipulated Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al. v. Ameren Missouri*, Civil Action No. 4:11–cv–00077–RWS, D.J. Ref. No. 90–5–2–1–09844 (E.D. Missouri). 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 e-mail	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 Stipulated Order may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the

proposed Stipulated Order, 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. 2024–26254 Filed 11–12–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Methylene Chloride Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 13, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The standard requires employers to monitor employee exposure to methylene chloride (MC), to provide medical consultation and examinations, to train employees about the hazards of MC in their working areas, and to establish and maintain records of employee exposure to MC. These records will be used by employers, employees, physicians and the Government to ensure that employees are not being harmed by exposure to MC. Appendix B to section 1910.1052 contains medical surveillance questionnaire forms for workers that may be exposed to methylene chloride. Based on the animal evidence and three

epidemiologic studies previously mentioned, OSHA concludes that Methylene Chloride is a suspect human carcinogen. The medical surveillance program is designed to observe exposed workers on a regular basis. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 13, 2024 (89 FR 65937).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Methylene Chloride Standard.

OMB Control Number: 1218–0179.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 89,760.

Total Estimated Number of Responses: 251,235.

Total Estimated Annual Time Burden: 65,555 hours.

Total Estimated Annual Other Costs Burden: \$22,271,728.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–26203 Filed 11–12–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NASA Document Number: 24–077; NASA Docket Number: NASA–2024–0013]

Name of Information Collection: NASA Agency Front Door

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of a new information collection.

SUMMARY: NASA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA).

DATES: Comments are due by January 13, 2025.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice at <http://www.regulations.gov> and search for NASA Docket NASA–2024–0013.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to NASA PRA Clearance Officer, Stayce Hoult, NASA Headquarters, 300 E Street SW, JC0000, Washington, DC 20546, phone 256–714–8575, or email hq-ocio-pra-program@mail.nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is committed to effectively performing the Agency’s communication function in accordance with the Space Act Section 203 (a)(3) to “provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof,” and to enhance public understanding of, and participation in, the nation’s aeronautical and space program in accordance with the NASA Strategic Plan.

The Agency Front Door (AFD) is an online/web-based tool that will serve as

a centralized digital hub to help facilitate engagement between individuals, organizations, and the workforce of NASA, providing personalized support, guidance, and efficient access to NASA's extensive programs, opportunities, resources, and expertise. The information collection will consist of general contact information, interest/intake information and when appropriate, demographic information as part of registration profile. The information will be reviewed by NASA representatives to route individuals, organizations and the workforce of NASA to relevant NASA services, opportunities, resources, and/or expertise.

II. Methods of Collection

The Agency Front Door (AFD) is an online/web-based tool built on a Salesforce platform.

III. Data

Title: Agency Front Door.

OMB Number: 2700-xxxx.

Type of review: New Collection (Request for a new OMB Control Number).

Affected Public: Individuals (e.g., eligible students, educators, and awardee principal investigators; invited guests, etc.), organizations, and the workforce of NASA interested in accessing publicly available NASA services, opportunities, resources, and/or expertise (e.g., NASA STEM engagement programs, special events, subject matter experts, opportunities, etc.).

Estimated Annual Number of Activities: 7.

Estimated Number of Respondents per Activity: 60,000.

Annual Responses: 420,000.

Estimated Time Per Response: 12 minutes.

Estimated Total Annual Burden Hours: 84,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and

included in the request for OMB approval of this information collection. They will also become a matter of public record.

Stayce Hoult,

PRA Clearance Officer, National Aeronautics and Space Administration.

[FR Doc. 2024-26188 Filed 11-12-24; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-24-0024; NARA-2025-008]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on [regulations.gov](https://www.regulations.gov) for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by December 30, 2024.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: <https://www.regulations.gov/docket/NARA-24-0024/document>. This is a direct link to the schedules posted in the docket for this notice on [regulations.gov](https://www.regulations.gov). You may submit comments by the following method:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on [regulations.gov](https://www.regulations.gov) and on submitting comments, see their FAQs at <https://www.regulations.gov/faq>.

If you are unable to comment via [regulations.gov](https://www.regulations.gov), you may email us at request.schedule@nara.gov for instructions on submitting your comment. You must cite the control number of the schedule you wish to

comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT:

Kimberly Richardson, Strategy and Performance Division, by email at regulation_comments@nara.gov or at 301-837-2902. For information about records schedules, contact Records Management Operations by email at request.schedule@nara.gov or by phone at 301-837-1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the [regulations.gov](https://www.regulations.gov) docket for this notice as "other" documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the [regulations.gov](https://www.regulations.gov) portal, you may contact request.schedule@nara.gov for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States.

After the schedule is approved, we will post on *regulations.gov* a “Consolidated Reply” summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA’s approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records’ administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government’s activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist’s consideration process.

Schedules Pending

1. Department of Defense, Defense Counterintelligence and Security

Agency, Secure Web Fingerprint Transmission (DAA–0446–2024–0003).

2. Department of Defense, Defense Information Systems Agency, Public Safety Communication Records (DAA–0371–2023–0002).

3. Department of Defense, Office of the Secretary of Defense, Communications Security (DAA–0330–2024–0001).

4. Department of Energy, Federal Energy Regulatory Commission, Conduit Determinations (DAA–0138–2024–0010).

5. Department of Health and Human Services, Office of the Secretary, Records of the Office of Audit Services of the Inspector General of Health and Human Services (DAA–0468–2024–0005).

6. Department of Homeland Security, United States Coast Guard, Incident-Activated Media Recording Records (DAA–0026–2024–0002).

7. Department of Justice, Department-wide, Weapons Records (DAA–0060–2022–0037).

8. Department of the Navy, Agency-wide, Military Personnel (DAA–NU–2024–0003).

9. Department of Transportation, Federal Aviation Administration, Geospatial Data and Aeronautical Charting (DAA–0237–2023–0008).

10. Department of Transportation, Federal Aviation Administration, Airman Knowledge Test Records (DAA–0237–2024–0001).

11. Library of Congress, Agency-wide, General Counsel 2024 updates (DAA–0297–2024–0002).

William P. Fischer,

Acting Chief Records Officer for the U.S. Government.

[FR Doc. 2024–26204 Filed 11–12–24; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Revision of Agency Information Collection of a Previously Approved Collection; Request for Comments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of submission to the Office of Management and Budget.

SUMMARY: As required by the Paperwork Reduction Act of 1995, The National Credit Union Administration (NCUA) is submitting the following extensions and revisions of currently approved collections to the Office of Management and Budget (OMB) for renewal.

DATES: Written comments should be received on or before December 13, 2024 to be assured consideration.

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:

Copies of the submission may be obtained by contacting Madeleine Humm at (703) 518–6547, emailing PRAComments@ncua.gov, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION: OMB Number: 3133–0200.

Title: Consumer Assistance Center.

Type of Review: Revision of a currently approved collection.

Abstract: NCUA has centralized the intake of consumer complaints and inquiries under the Consumer Assistance Center, via the myCreditUnion.gov. The Consumer Assistance Center assists consumer with information about federal financial consumer protection and share insurance matters and assists in resolving disputes with credit unions in resolving disputes. Consumers can make inquiries or submit a complaint electronically through the MyCreditUnion.gov website. The on-line portal offers a template for consumers to use to identify the information needed.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 13, 215.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 13,215.

Estimated Total Annual Burden Hours: 6,239.

Reason for Change: An addition of 4,030 burden hours is due to an adjustment of the burden estimate for completing the forms.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate

of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2024–26319 Filed 11–12–24; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts Meeting

AGENCY: National Endowment for the Arts.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, notice is hereby given that a meeting of the National Council on the Arts will be convened by videoconference to discuss nominations for the 2024 National Medal of Arts. This meeting will be closed to the public for reasons stated below.

DATES: This meeting will take place on December 19, 2024, from approximately 1 p.m. to 3 p.m. eastern time.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Liz Auclair, Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5744.

SUPPLEMENTARY INFORMATION: The National Council on the Arts will deliberate in closed session on nominations for the 2024 National Medal of Arts. This meeting will be closed to the public pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the March 11, 2022 determination of the Chair. Discussions concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Dated: November 7, 2024.

David Travis,

Specialist, National Endowment for the Arts.

[FR Doc. 2024–26271 Filed 11–12–24; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 29 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC, 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from David Travis, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; travisd@arts.gov, or call 202–682–5001.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chair of March 11, 2022, these sessions will be closed to the public pursuant to 5 U.S.C. 10.

The upcoming meetings are:

Our Town (review of applications): This meeting will be closed.

Date and time: December 3, 2024; 11 a.m. to 1:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: December 3, 2024; 1 p.m. to 3 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 3, 2024; 1:30 p.m. to 3:30 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: December 3, 2024; 2:30 p.m. to 4:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: December 3, 2024; 4 p.m. to 6 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: December 5, 2024; 11 a.m. to 1:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 5, 2024; 1:30 p.m. to 3:30 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: December 5, 2024; 2:30 p.m. to 4:30 p.m.

Art Education (review of applications): This meeting will be closed.

Date and time: December 6, 2024; 11:30 a.m. to 1:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 6, 2024; 2:30 p.m. to 4:30 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: December 9, 2024; 1 p.m. to 3 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 9, 2024; 3:30 p.m. to 5:30 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 10, 2024; 11:30 p.m. to 1:30 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: December 10, 2024; 1 p.m. to 3 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

Date and time: December 10, 2024; 1 p.m. to 3 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 10, 2024; 3:30 p.m. to 5:30 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 11, 2024; 11:30 p.m. to 1:30 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: December 11, 2024; 12 p.m. to 2 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

Date and time: December 11, 2024; 1 p.m. to 3 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

Date and time: December 11, 2024; 3:30 p.m. to 5:30 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 10, 2024; 3:30 p.m. to 5:30 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: December 11, 2024; 4 p.m. to 6 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: December 12, 2024; 11 a.m. to 1:30 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: December 12, 2024; 2:30 p.m. to 4:30 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: December 13, 2024; 11 a.m. to 1:30 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: December 13, 2024; 2:30 p.m. to 4:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: December 16, 2024; 2 p.m. to 4 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: December 18, 2024; 2 p.m. to 4 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: December 19, 2024; 2 p.m. to 4 p.m.

Dated: November 7, 2024.

David Travis,

Specialist, National Endowment for the Arts.

[FR Doc. 2024-26272 Filed 11-12-24; 8:45 am]

BILLING CODE 7537-01-P

OFFICE OF PERSONNEL MANAGEMENT

Extension of Suspension of Applications for Federal Long Term Care Insurance Program (FLTCIP) Coverage

AGENCY: Office of Personnel
Management.

ACTION: Notice of extension of
suspension of applications for FLTCIP
coverage.

SUMMARY: The U.S. Office of Personnel
Management (OPM) is announcing an
extension of the suspension of
applications for FLTCIP coverage that
began on December 19, 2022.

DATES: The extension will begin on
December 19, 2024. The suspension

period will remain in effect for 24
months from this date.

FOR FURTHER INFORMATION CONTACT: You
may call 1-800-LTC-FEDS (1-800-
582-3337) (TTY: 1-800-843-3557) or
visit <https://www.ltcfeds.com>. For
purposes of this **Federal Register** notice
only, the contact at OPM is Cameron
Stokes, Senior Policy Analyst, at
cameron.stokes@opm.gov or (202) 936-
2847.

SUPPLEMENTARY INFORMATION: OPM is
extending the current suspension of
applications for coverage in FLTCIP in
light of ongoing volatility in long term
care costs and a diminished insurance
market. The original notice was
published at 87 FR 69345 (November
18, 2022) and suspended FLTCIP
applications for 24 months, as
authorized by 5 CFR 875.110. This
extension complies with the
requirements of § 875.110(d), which
requires OPM to issue a **Federal
Register** notice at least 30 days before
the end of the suspension period in
order to effectuate another suspension
not to exceed 24 additional months. As
with the current suspension period, no
applications for FLTCIP coverage will
be accepted during the extension
period, and current enrollees may not
apply to increase their coverage. The
enrollment status or benefit eligibility of
current enrollees will not change due to
the suspension. For those in a claim
status, there is no change to coverage
and the claims reimbursement process.

OPM has determined that extending
the period of suspension of applications
for FLTCIP coverage is in the best
interest of the Program. There is ongoing
volatility in long term care costs and a
diminished insurance market that are
undermining the ability to establish
benefit offerings with premium rates
that reasonably and equitably reflect the
cost of the benefits provided, as
required under 5 U.S.C. 9003(b)(2).

Authority: 5 U.S.C. 9008; Public Law
116-92, 133 Stat. 1198 (5 U.S.C. 8956
note); 5 CFR 875.110.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024-25943 Filed 11-12-24; 8:45 am]

BILLING CODE 6325-64-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives
notice of filing a request with the Postal
Regulatory Commission to add a
domestic shipping services contract to
the list of Negotiated Service
Agreements in the Mail Classification
Schedule's Competitive Products List.

DATES: *Date of required notice:*
November 13, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The
United States Postal Service® hereby
gives notice that, pursuant to 39 U.S.C.
3642 and 3632(b)(3), on October 28,
2024, it filed with the Postal Regulatory
Commission a *USPS Request to Add
Priority Mail Express, Priority Mail &
USPS Ground Advantage® Contract 553
to Competitive Product List*. Documents
are available at www.prc.gov, Docket
Nos. MC2025-178, K2025-176.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024-26283 Filed 11-12-24; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives
notice of filing a request with the Postal
Regulatory Commission to add a Priority
Mail Express International, Priority Mail
International & First-Class Package
International Service contract to the list
of Negotiated Service Agreements in the
Competitive Product List in the Mail
Classification Schedule.

DATES: *Date of notice:* November 13,
2024.

FOR FURTHER INFORMATION CONTACT:
Christopher C. Meyerson, (202) 268-
7820.

SUPPLEMENTARY INFORMATION: The
United States Postal Service® hereby
gives notice that, pursuant to 39 U.S.C.
3642 and 3632(b)(3), on November 5,
2024, it filed with the Postal Regulatory
Commission a *USPS Request to Add
Priority Mail Express International,
Priority Mail International & First-Class
Package International Service Contract
50 to Competitive Product List*.
Documents are available at

www.prc.gov, Docket Nos. MC2025–288 and K2025–286.

Colleen Hibbert-Kapler,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2024–26265 Filed 11–12–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 573 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–204, K2025–202.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26314 Filed 11–12–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 545 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–170, K2025–168.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26275 Filed 11–12–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 569 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–196, K2025–194.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26310 Filed 11–12–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 557 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–184, K2025–182.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26287 Filed 11–12–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 544 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–169, K2025–167.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26274 Filed 11–12–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 543 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–168, K2025–166.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26273 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 567 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–194, K2025–192.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26308 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 560 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–187, K2025–185.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26290 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 562 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–189, K2025–187.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26303 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 576 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–207, K2025–205.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26317 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 552 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-177, K2025-175.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26282 Filed 11-12-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 570 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-197, K2025-195.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26311 Filed 11-12-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 547 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-172, K2025-170.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26277 Filed 11-12-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 572 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025-199, K2025-197.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26313 Filed 11-12-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 416 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-203, K2025-201.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26301 Filed 11-12-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 574 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–205, K2025–203.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26315 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 550 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–175, K2025–173.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26280 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 575 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–206, K2025–204.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26316 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 411 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–180, K2025–178.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26291 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 548 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–173, K2025–171.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26278 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 568 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–195, K2025–193.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26309 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 571 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–198, K2025–196.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26312 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 546 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–171, K2025–169.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26276 Filed 11–12–24; 8:45 am]

BILLING CODE 7710–12–P**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 549 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–174, K2025–172.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26279 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 554 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–179, K2025–177.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26284 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 564 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–191, K2025–189.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26305 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 551 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-176, K2025-174.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26281 Filed 11-12-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 563 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-190, K2025-188.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26304 Filed 11-12-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 559 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-185, K2025-183.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26289 Filed 11-12-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 414 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025-201, K2025-199.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26299 Filed 11-12-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 565 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-192, K2025-190.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26306 Filed 11-12-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 556 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–183, K2025–181.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26286 Filed 11–12–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 415 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–202, K2025–200.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26300 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to

the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 566 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–193, K2025–191.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26307 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 555 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–182, K2025–180.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26285 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 558 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–185, K2025–183.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26288 Filed 11–12–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 13, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 561 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–188, K2025–186.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26302 Filed 11–12–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*

November 13, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 412 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–181, K2025–179.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26292 Filed 11–12–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*

November 13, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C.

3642 and 3632(b)(3), on October 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 413 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–200, K2025–198.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26298 Filed 11–12–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101526; File No. SR–CboeEDGX–2024–072]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related to Physical Port Fees

November 6, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 25, 2024, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX Options”) proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule relating to physical connectivity fees.³

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabit (“Gb”) circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeEDGX–2023–045). On September 1, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–058. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the “OIP”) in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR–CboeEDGX–2023–063). On October 13, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–064. On December 12, 2023, the Exchange withdrew that filing and submitted SR–CboeEDGX–2023–080. On February 12, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–014. On April 9, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–021. On June 7, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–036. On August 29, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–057. On October 25, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc., (“Affiliate Exchanges”).⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹⁰ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its

facilities. This belief is based on various factors as described below.

First, the Exchange believes its proposal is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports and its offering, even as amended, continues to be more affordable as compared to analogous physical connectivity offerings at competitor exchanges.¹¹

The Exchange also believes the current fee does not properly reflect the quality of the service and product, as fees for 10 Gb physical ports have been static in nominal terms since 2018, and therefore falling in real terms due to inflation. As a general matter, the Producer Price Index (“PPI”) is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI), that measure price change from the purchaser’s perspective.¹² About 10,000 PPIs for individual products and groups of products are tracked and released each month.¹³ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector’s output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI (“Data PPI”), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (BLS) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as

NAICS—518210 in the North American Industry Classification System.¹⁴ According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers’ transactions and data. Companies that offer processing services collect, organize, and store a customer’s transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”¹⁵

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule change to modify the 10 Gb physical port fee because the Exchange uses its “own computer systems” and “proprietary software,” i.e., its own data center and proprietary matching engine software, respectively, to collect, organize, store, report and receive orders on the Exchange’s proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. For example, the average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a

is analogous to the Exchange’s 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange’s 10 Gb physical port) are assessed \$22,000 per month, per port.

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR-MIAx-2024-016).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange’s 10 Gbps physical port) are assessed \$22,000 per month, per port.

¹² See <https://www.bls.gov/ppi/overview.htm>.

¹³ *Id.*

¹⁴ NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

¹⁵ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-services-industry-naics-518210.htm>.

cumulative increase of over 73% over the same period.¹⁶

As noted above, the current 10 Gb physical port fee remained unchanged for six years, particularly since June 2018.¹⁷ Since its last increase over 6 years ago however, there has been notable inflation, including under the industry-specific PPI, which as described above is a tailored measure of inflation.¹⁸ Particularly, the Data PPI had a starting value of 107 in June 2018 (the month the Exchange started assessing the current fee) and an ending value of 116.22 in August 2024, representing an 8.6% increase.¹⁹ This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 8.6% during this period.

The Exchange also believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2018. The impact of this inflationary effect is also independent of any change in the Exchange's costs in providing its goods and services. The Exchange therefore believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. Additionally, the Exchange historically does not increase fees every year notwithstanding inflation. Other exchanges have also filed for increases in certain fees, based in part on comparisons to inflation.²⁰ Accordingly, based on the above-described percentage change, and in conjunction with the rationale further described above and below, the Exchange believes the proposed fee increase is reasonable.

Next, the Exchange believes significant investments into, and enhanced performance of, the Exchange, in the years following the last 10 Gb physical port fee increase support the reasonableness of the proposed fee increase. These investments enhanced the quality of its services, as measured

by, among other things, increased throughput and faster processing speeds. Customers have therefore greatly benefitted from these investments, while the Exchange's ability to recoup its investments has been hampered.

For example, the Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center ("NY6")), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions,

enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other options markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 18 registered options markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition as well as the interests of market participants and investors.

Finally, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical

¹⁶ See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>.

¹⁷ See Securities and Exchange Release No. 83430 (June 14, 2018), 83 FR 28697 (June 20, 2018) (SR CboeEDGX-2018-017).

¹⁸ See <https://fred.stlouisfed.org/series/PCU51825182#0>.

¹⁹ *Id.*

²⁰ See, e.g., Securities Exchange Act Release Nos. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79) and 34-100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR-BOX-2024-16).

ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (e.g., ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

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 proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (i.e., all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the

network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pay the most.

The proposed fee change also does not impose a burden on competition or on other Self-Regulatory Organizations that is not necessary or appropriate. As described above, the Exchange evaluated its proposed fee change using objective and stable metric with limited volatility. Utilizing Data Processing PPI over a specified period of time is a reasonable means of recouping a portion of the Exchange's investment in maintaining and enhancing the connectivity service identified above. The Exchange believes utilizing Data Processing PPI, a tailored measure of inflation, to increase certain connectivity fees to recoup the Exchange's investment in maintaining and enhancing its services and products would not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²¹ and paragraph (f) of Rule 19b-4²² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f).

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2024-072 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeEDGX-2024-072. 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-CboeEDGX-2024-072 and should be submitted on or before December 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-26196 Filed 11-12-24; 8:45 am]

BILLING CODE 8011-01-P

²³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101525; File No. SR–CboeEDGX–2024–070]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

November 6, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on October 23, 2024, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX Options”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (“EDGX Options”) relating to logical connectivity fees.³

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange’s System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. The Exchange currently assesses, among other things, the following logical port connectivity fees on a monthly basis: \$500 per port for Logical Ports;⁴ \$500 per port for Multicast PITCH Spin Server Ports (“Spin Ports”) and GRP Ports;⁵ and \$600 per port for Ports with Bulk Quoting Capabilities⁶ (“Bulk Ports”). The Exchange proposes to increase the monthly fees for the forgoing ports to the following rates: \$750 per port for Logical Ports, Spin Ports and GRP Ports and \$1,000 per port for Bulk Ports. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services. Additionally, the proposed fee amounts for Logical Ports, Spin Ports and GRP Ports are the same as the fees assessed on two of the Exchange’s affiliated options exchanges for the same corresponding logical connectivity and the proposed fee amount for Bulk Ports is even lower than the fees assessed by the same affiliated options exchanges for the same corresponding Bulk Port connectivity.⁷ The proposed

fees are also in line with amounts assessed by other exchanges for similar connections, including the Exchange’s affiliated options exchanges.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹² of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes the proposed fees are reasonable as they are the same, or even lower than, the amounts assessed by affiliated options exchanges for the same functionality (and which

³ The Exchange initially filed the proposed fee change on January 2, 2024 (SR–CboeEDGX–2024–006). On March 1, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–017. On April 30, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–023. On June 28, 2024, the Exchange will be withdrawing that filing and submitting SR–CboeEDGX–2024–040. On August 26, 2024, the Exchange withdrew that filing and submitted SR–CboeEDGX–2024–055. On October 23, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁵ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange’s Multicast PITCH data feeds.

⁶ Bulk Quoting Capabilities Ports provide users with the ability to submit and update multiple bids and offers in one message through logical ports enabled for bulk-quoting.

⁷ See Cboe Options Exchange Fee Schedule, Logical Connectivity Fees, which assesses a monthly fee between \$750–\$800 per port for Logical Ports, Spin Ports, \$750 per port for GRP Ports and between \$1,500–\$3,000 per port for Bulk Ports and

see Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees and Cboe Exchange Fees Schedule, Logical Connectivity Fees, which assesses a monthly fee of \$750 per port for Logical Ports, Spin Ports and GRP Ports and between \$1,500–\$2,500 per port for Bulk Ports.

⁸ See, e.g., The Nasdaq Stock Market Options Pricing Schedule, Section 3 Nasdaq Options Market—Ports and Other Services, which assesses a monthly fee of \$650 per port for FIX Ports, which is analogous to the Exchange’s Logical Ports, up to \$1,500 per port for SQF Ports which are similar functionality as the Exchange’s Bulk Ports. See also BOX Exchange LLC (“BOX”) Fee Schedule, Section III, B. (Technology Fees), which assesses up to \$500 per port per month for FIX Ports which are analogous to the Exchange’s Logical Ports and \$1,000 for Market Making SOLA Access Information Language (“SAIL”) Ports which are analogous to the Exchange’s Bulk Ports.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ *Id.*

¹² 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

were similarly adopted via the rule filing process and filed with the Commission). The proposed fees are also in line with fees assessed by other exchanges, for analogous connections.¹³ Further, the Exchange notes that an affiliated options exchange and other exchanges that offer similar pricing for similar or the same connections have a comparable, or even lower, market share as the Exchange.¹⁴

Additionally, the Exchange believes the proposed fee increase is reasonable in light of recent and anticipated connectivity-related upgrades and changes. The Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements, including for its U.S. options markets, to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes. For example, the Exchange is currently performing order handler and matching engine hardware upgrades across its markets to advance this goal. The Exchange anticipates that upgrades to its matching engines may result in a latency reduction up to 40% to 50% on the Exchange and that upgrades to its order handlers may offer lower variability in the processing of message, which can reduce the time a message takes to get to the matching engine. The Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other options markets. The Exchange also notes that neither it—nor its options exchange affiliates—have passed through or offset current or projected costs associated with these upgrades. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the options space which currently has 18 options markets and potential new entrants. The Exchange also notes market participants may continue to choose the method of connectivity

based on their specific needs, and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange. There is also no regulatory requirement that any market participant connect to any one particular exchange. Market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, the Exchange is but one choice. Additionally, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange. Moreover, direct connectivity is not a requirement to participate on the Exchange. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges to which a market participant may connect in lieu of the Exchange and/or trading of any options product, such as within the Over-the-Counter (OTC) markets, which do not require connectivity to the Exchange. Indeed, there are currently 18 registered options exchanges that trade options (14 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.¹⁵ Based on publicly available information, no single options exchange has more than approximately 19% of the market share and currently the Exchange represents only approximately 7% of the market share.¹⁶ Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, there are 5 exchanges that have been added in the U.S. options markets in the last 5 years (*i.e.*, Nasdaq MRX, LLC, MIAX Pearl, LLC, MIAX Emerald LLC, MEMX LLC and most recently MIAX Sapphire LLC).

As for market participants that determine to continue to maintain membership or to join the Exchange for business purposes, those business reasons presumably result in revenue capable of covering the proposed fee. Further, for such market participants that choose to connect to the Exchange, the Exchange believes the proposed fees continue to provide flexibility with respect to how to connect to the Exchange based on each market

participants' respective business needs. For example, the amount and type of logical ports are determined by factors relevant and specific to each market participant, including its business model, costs of connectivity, how its business is segmented and allocated and volume of messages sent to the Exchange. Moreover, the Exchange notes that it does not have unlimited system capacity and the proposed fees are also designed to encourage market participants to be efficient with their respective logical port usage and discourage the purchasing of large amounts of superfluous ports. There is also no requirement that any market participant maintain a specific number of logical ports and a market participant may choose to maintain as many or as few of such ports as each deems appropriate. Further, market participants may reduce or discontinue use of these ports in response to the proposed fees. Indeed, when the Exchange last increased pricing for logical ports in 2018, the Exchange observed within the first two months that market participants did in fact reduce the number of logical ports they maintained. Particularly, Logical Port quantities were reduced by approximately 20%. The Exchange similarly saw a decline in logical port quantities after the current proposed rate change in January 2024. Specifically, as of May 2024, Logical Port quantities have been reduced by approximately 8% since the announcement of the proposed fee change. This demonstrates that market participants can and do choose to disconnect, or reduce, their connectivity from the Exchange, including in response to fee increases. The Exchange also does not assess any termination fee for a market participant to drop its connectivity or membership, nor is the Exchange aware of any other costs that would be incurred by a market participant to do so.

As noted above, there is no regulatory requirement that any market participant connect to any one options exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer. By way of example, while the Exchange has 51 members that trade options, Cboe BZX has 61 members that trade options, and

¹³ *Supra* notes 7 and 8.

¹⁴ See Cboe Global Markets U.S. Options Market Volume Summary (August 20, 2024), available at https://markets.cboe.com/us/options/market_statistics/. For example, the Exchange's affiliate Cboe BZX Options Exchange represents approximately 4% of the market share, BOX Options has a market share of approximately 6% and Nasdaq Options Market has a market share of approximately 5% compared to the Exchange's approximate 7% market share.

¹⁵ *Supra* note 7 and 8. See also NYSE American Options Fee Schedule, Section V (Technology and System Access Fees), which has a similar market share of 6% and offers lower fees for analogous Logical Ports than proposed by the Exchange.

¹⁶ See Cboe Global Markets U.S. Options Market Volume Summary (August 20, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

Cboe C2 has 52 Trading Permit Holders (“TPHs”) (i.e., members). There is also no firm that is a Member of EDGX Options only. Further, based on previously publicly available information regarding a sample of the Exchange’s competitors, NYSE American Options has 71 members,¹⁷ and NYSE Arca Options has 69 members,¹⁸ MIAX Options has 46 members¹⁹ and MIAX Pearl Options has 40 members.²⁰ Accordingly, excessive fees would simply serve to reduce demand for these products, which market participants are under no regulatory obligation to utilize.

The Exchange lastly notes that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals. Moreover, Congress’s intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices. The principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities. Congress intended that this “national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.”²¹ Other provisions of the Act confirm that intent. For example, the Act provides that an exchange must design its rules “to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.”²² Likewise, the Act grants the Commission authority to amend or repeal “[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.”²³ In short, the promotion of free and open competition was a core congressional objective in creating the national market system.²⁴ Indeed, the Commission has

historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system. Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure. The Exchange also believes that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically. Indeed, the Exchange believes that classification of costs could likely not be done without ongoing debate over formulas for allocation,²⁵ continual auditing, and considerable expense. The Exchange also believes cost-based analysis could create disincentives to reduce costs through efficient operation or innovation. Moreover, the industry could experience frequent rate increases based on escalating expense levels. The Exchange lastly cautions that as disputes arise regarding the appropriate measure and calculation of relevant costs and allocation of common costs, the Commission could find itself engaging in the kind of rigid ratemaking not contemplated by Section 11A of the Exchange Act and which the Commission has historically sought to avoid.

history strongly support the Commission’s reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.”).

²⁵ See, e.g., letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (“SIG”), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023, letters from Gerald D. O’Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023, May 24, 2023, July 24, 2023 and September 18, 2023, and letters from John C. Pickford, SIG, to Vanessa Countryman, Secretary, Commission, dated January 4, 2024, and March 1, 2024 and letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (“Virtu”), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024. See also Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR–IEX–2021–14) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Its Fee Schedule for Market Data Fees) and Securities Exchange Act Release No. 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18) (Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the respective logical ports. All Members have the option to select any connectivity option, and there is no differentiation among Members with regard to the fees charged for the services offered by the Exchange.

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 believes the proposed fee change will not impact intramarket competition because it will apply to all similarly situated market participants equally (i.e., all market participants that choose to purchase the relevant logical ports).

The Exchange believes the proposed fees will not impact intermarket competition because they are also in line with, or even lower than some fees for similar connectivity on other exchanges, and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in usage of these ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative venues that they may participate on and direct their order flow, including 13 (soon to be 14) non-Cboe affiliated options markets, as well as off-exchange venues, where competitive products are available for trading. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to

¹⁷ See <https://www.nyse.com/markets/american-options/membership#directory>.

¹⁸ See <https://www.nyse.com/markets/arca-options/membership#directory>.

¹⁹ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_April_2023_04282023.pdf.

²⁰ See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Exchange_Members_01172023_0.pdf.

²¹ See H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added).

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78f(8).

²⁴ See also 15 U.S.C. 78k-1(a)(1)(C)(ii) (purposes of Exchange Act include to promote “fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets”); Order, 73 FR 74781 (“The Exchange Act and its legislative

investors and listed companies.”²⁶ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’. . . .”²⁷ Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁸ and paragraph (f) of Rule 19b-4²⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ChoeEDGX-2024-070 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-ChoeEDGX-2024-070. 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-ChoeEDGX-2024-070 and should be submitted on or before December 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101520; File No. SR-NASDAQ-2024-064]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange’s Anti-Internalization Functionality in Equity 4, Rule 4757

November 6, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 25, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s anti-internalization functionality in Equity 4, Rule 4757.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Equity 4, Rule 4757(a)(4) to offer increased functionality as it relates to

²⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁷ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f).

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

anti-internalization. Specifically, the Exchange proposes to (i) allow participants that directly submit orders to the System as Members on the Exchange and submit orders to the System through Sponsored Access³ as a Sponsored Participant, to direct that quotes/orders entered into the System directly as a Member not execute against quotes/orders submitted as a Sponsored Participant; (ii) specify when anti-internalization will activate; (iii) introduce an anti-internalization strategy that uses the strategy of the removing order; and (v) make other clarifying changes.

Affiliate Anti-Internalization

Currently, Equity 4, Rule 4757(a)(4) provides that market participants may direct that quotes/orders entered into the System not execute against either quotes/orders entered under the same MPID ("MPID Level AIQ") or quotes/orders entered across MPIDs under Common Ownership ("Organization Level AIQ").⁴ In addition, market participants using the OUCH order entry protocol may assign to orders entered through a specific order entry port a unique group identification modifier that will prevent quotes/orders with such modifier from executing against each other. Anti-internalization or self-match prevention functionality assists participants in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm.

The Exchange proposes to enhance its current self-match prevention functionality to allow participants that demonstrate (i) membership on the Exchange through which they directly submit orders to the System and (ii) participation as a Sponsored Participant whereby they submit orders to the System through Sponsored Access, to direct that quotes/orders entered into the System directly as a Member not execute against quotes/orders submitted as a Sponsored Participant ("Affiliate Level AIQ").⁵ The proposed enhancement would be in addition to

the other levels of self-match prevention offered today. Under the proposed rule change, the anti-internalization functionality would continue to be an optional feature. If a firm chooses to take advantage of self-match prevention, the firm would need to opt-in to the self-match prevention functionality, as is the case today.

The purpose of this proposed change is to extend self-match prevention functionality to prevent transactions between a firm's orders submitted directly to the System and through Sponsored Access. There are situations where an individual firm would choose to submit orders to the Exchange through different mechanisms. For instance, a firm may employ different trading strategies across different trading desks and choose to send orders for one strategy to the Exchange through a direct connection while the other strategy is sent through Sponsored Access. The proposed functionality would serve as an additional tool that participants may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as wash sales⁶ and self-trades.⁷ Additionally, the proposed functionality would provide firms an additional solution to manage order flow by preventing undesirable executions where the firm submits orders in multiple formats (*i.e.*, direct connection or Sponsored Access). As is the case with the existing risk tools, participants, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed self-match prevention functionality can replace participant-managed risk management solutions.

Anti-Internalization Activation

The Exchange also proposes to provide that, unless participants

designate otherwise, for anti-internalization to activate across orders, the orders must reflect the same anti-internalization level. For example, if an order has designated anti-internalization at an MPID level (*i.e.*, quotes/orders entered into the System shall not execute against quotes/orders entered under the same MPID), anti-internalization will only activate against another order designated with anti-internalization at an MPID level.

This is a departure from how anti-internalization activates today. Currently, anti-internalization activates across orders with different anti-internalization levels. For example, a resting order with MPID Level AIQ can have anti-internalization activated against it if an incoming order with Organization Level AIQ has the same Organization ID as the resting order. With the introduction of Affiliate Level AIQ, the anti-internalization levels must match across both orders for anti-internalization to be activated, in order to prevent erroneous activation of anti-internalization.⁸ However, the Exchange proposes to preserve current functionality by providing participants with the option to elect to have anti-internalization activated against any anti-internalization level.

"Use Remover" Strategy

The Exchange currently provides three versions of self-match prevention functionality to allow participants to choose how orders are handled in the event of a self-match situation: (1) decrement, (2) cancel oldest, and (3) cancel newest. Under the first version ("decrement"), if the self-match orders have the same share size, both orders will cancel back to the customer. If the orders are not equivalent in size, the smaller order will cancel back to the originating customer and the larger order will decrement by the size of the smaller order. The remaining shares of the larger order will remain on the book. Under the second version ("cancel oldest"), the full size of the order residing on the book will cancel back to the customer if the incoming order would execute against it. The incoming order will remain intact with no changes. Under the third version ("cancel newest"), the full size of the order coming into the book will cancel

³ See General 2, Section 22(a). Sponsored Access shall mean an arrangement whereby a member permits its customers to enter orders into the System that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third party technology provider.

⁴ For purposes of Equity 4, Rule 4757, the term "Common Ownership" shall mean participants under 75% common ownership or control.

⁵ The Exchange will require firms requesting to use Affiliate Level AIQ to complete an affidavit stating: (i) it is currently a Member of the Exchange that submits orders directly to the System, and (ii) it also submits orders to the System through a Sponsored Access arrangement.

⁶ A "wash sale" is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. See, *e.g.*, 15 U.S.C 78i(a)(1); FINRA Rule 6140(b) ("Other Trading Practices").

⁷ Self-trades are "transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security." FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. See FINRA Rule 5210, Supplementary Material .02.

⁸ For example, assume Firm 1 accesses the Exchange directly and as a Sponsored Participant via Firm 2. Assume Firm 1 sends an order as a Sponsored Participant through Firm 2 with Affiliate Level AIQ enabled. Assume Firm 2 then sends an order unrelated to Firm 1 with Organization Level AIQ. If the current behavior prevailed, anti-internalization would activate and the orders would not execute, resulting in an undesirable outcome.

back to the customer. The resting order will remain intact with no changes.

The Exchange proposes to add a new strategy (“use remover”), which would allow for a resting order to use the strategy of the removing order. If the use remover strategy is on an order, it will only have anti-internalization activated against it when it is the resting order and will never trigger anti-internalization against another order when it is the incoming order. The Exchange proposes to introduce the “use remover” strategy in order to maintain existing anti-internalization functionality that would otherwise become obsolete with the introduction of the default requirement for anti-internalization activation (*i.e.*, the orders must reflect the same anti-internalization level). As described above, currently, anti-internalization activates across orders with different anti-internalization levels. Currently, resting orders that have anti-internalization disabled are still subject to anti-internalization functionality, based on the anti-internalization selection of the incoming orders. For example, currently, if Firm 1 sends an order with anti-internalization disabled and then Firm 2 sends an order with Organization Level AIQ with a decrement strategy, anti-internalization would activate between the two orders based on the incoming order’s strategy because of the Organization Level AIQ. Assuming the Firm does not designate that anti-internalization activate across quotes/orders, the aforementioned example would no longer occur because Affiliate Level AIQ necessitates matching anti-internalization levels. The Exchange wishes to maintain such functionality as an option for participants and introduction of the use remover strategy would allow participants to choose to have a resting order use the anti-internalization strategy of the removing order.

Taken together, the Exchange believes that the proposed anti-internalization enhancements would provide participants with more tailored self-trade functionality that allows them to manage their trading as appropriate based on the participant’s business needs.

Clarifying Changes

Lastly, the Exchange proposes to make several clarifying changes to Equity 4, Rule 4757(a)(4) to promote clarity.

First, the Exchange proposes to codify which strategy prevails when anti-internalization strategies differ between two orders. Specifically, the Exchange proposes to provide that, when anti-

internalization strategies differ between two orders, the strategy of the order removing liquidity will apply and the strategy of the resting order will be ignored. This is consistent with current Exchange and industry practice.

In addition, the Exchange proposes to modify the text introducing the various anti-internalization strategies to state that, “In each anti-internalization case, as described in this paragraph (4), a market participant may elect from the following strategies”, to make it clear that any strategy may be selected for each anti-internalization level. Relatedly, the Exchange proposes to delete language stating that, “The foregoing options may be applied to all orders entered under the same MPID, across MPIDs under Common Ownership, or, in the case of market participants using the OUCH order entry protocol, may be applied to all orders entered through a specific order entry port.” The Exchange believes that such language is redundant, as the modified introductory language makes it clear that the anti-internalization strategies may be applied to each anti-internalization level. Finally, the Exchange also proposes to add the names of the existing anti-internalization strategies (*i.e.*, Decrement, Cancel Oldest, and Cancel Newest) before the description of such strategies for clarity.

Implementation

The Exchange intends to introduce this new functionality by the first quarter of 2025. The Exchange will issue an Equities Trader Alert to provide notification of the change and relevant date prior to introducing the new functionality.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed Affiliate Level AIQ functionality promotes just and equitable principles of trade by allowing individual firms to better manage order flow and prevent undesirable trading activity such as wash sales¹¹ or self-

trades¹² that may occur as a result of the velocity of trading in today’s high-speed marketplace. The proposed Affiliate Level AIQ functionality does not introduce novel functionality, as the proposed amendment extends the current anti-internalization functionality to another trading relationship. For instance, a participant may operate trading desk 1 that accesses the Exchange via the Member’s direct connection, as well as trading desk 2 that accesses the Exchange as a Sponsored Participant. While these desks may operate different trading strategies, a participant may desire to prevent these desks from trading versus each other in the marketplace because the orders are originating from the same entity. Here, participants may desire anti-internalization functionality on an Affiliate Level AIQ that will help them achieve compliance¹³ with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current anti-internalization functionality applies to existing anti-internalization levels. The proposed Affiliate Level AIQ functionality will also assist participants in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm.

The Exchange believes that the other proposed changes, including modifying the default procedure for activating anti-internalization while preserving the current functionality as an option for participants, adding the use remover strategy, and making clarifying changes, also promote just and equitable principles of trade by providing participants with more tailored self-trade functionality that allows them to manage their trading as appropriate based on the participant’s business needs and providing clarity and transparency to the rules.

The Exchange also believes that the proposed rule change is fair and equitable and is not designed to permit unfair discrimination, in accordance with Section 6(b)(5) of the Act,¹⁴ as use of the proposed Affiliate Level AIQ functionality and related features of the proposal are optional, and use is not a prerequisite for trading on the Exchange.

¹² *Supra* note 7.

¹³ The Exchange reminds participants that while they may utilize anti-internalization to help prevent potential transactions such as wash sales or self-trades, participants, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

¹⁴ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ *Supra* note 6.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to enhance self-match prevention functionality provided to the Exchange's participants and will benefit participants that wish to protect their quotes and orders entered into the System directly as a Member against trading with quotes/orders submitted as a Sponsored Participant. The new functionality is also completely voluntary, and members that wish to use the current functionality (or opt out altogether) can also continue to do so. The Exchange does not believe that providing more flexibility to participants will have any significant impact on competition. In fact, the Exchange believes that the proposed rule change is evidence of the competitive environment where exchanges must continually improve their offerings to maintain competitive standing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NASDAQ-2024-064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-064 and should be

submitted on or before December 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-26192 Filed 11-12-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35378; File No. 812-15564]

Franklin Lexington Private Markets Fund, et al.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of application for an order ("Order") under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit closed-end management investment companies and business development companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Franklin Lexington Private Markets Fund, Franklin Templeton Fund Adviser, LLC, Franklin Advisers, Inc., Lexington Advisors LLC, Lexington Partners L.P., CIP V (Offshore), L.P., Irrevocable Trust Agreement CIB/3036 Account, Irrevocable Trust Agreement CIB/3299 Account, LCP Co-Invest Feeder—G, L.P., LCP Co-Invest Global Feeder—G, L.P., LCP IX (Offshore), L.P., LCP IX (Peru), L.P., LCP IX Co-Invest Partners A, L.P., Lexington Alpine Co-Invest, L.P., Lexington Kale Co-Invest, L.P., Lexington KC Co-Invest—G, L.P., Lexington Loki Co-Invest, L.P., Lexington Loki Feeder, L.P., Lexington Secretariat Co-Invest, L.P., Lexington Secretariat Feeder, L.P., LCP Offshore IX, L.P., LCP Offshore VI, L.P., LCP IX (Luxembourg) Master SCSp, LCP IX (Luxembourg) SCSp, Lexington Global Partners (Lux) Master SCSp, Lexington Global Partners (Lux) SCSp, LCP IX Co-Invest Partners B, L.P., LCP IX Leo, L.P., Lexington Capital Partners IX, L.P., Lexington Capital Partners (Ontario), L.P., Lexington Global Partners IX, L.P., Lexington Global Partners VI, L.P.,

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Lexington Global Partners VII, L.P., Lexington ICON Co-Invest, L.P., LCP X (Luxembourg) Master SCSp, LCP X (Luxembourg) SCSp, LCP X (Offshore), L.P., LCP X Co-Invest Feeder A, L.P., LCP X Co-Invest Partners A, L.P., LCP X Co-Invest Partners G, L.P., LCP X Co-Invest Partners N, L.P., Lexington Blue Sky Co-Invest, L.P., Lexington Blue Sky Feeder, L.P., LCP Offshore VIII, L.P., LCP Offshore XI L.P., LCP X Co-Invest Partners P, L.P., LCP X Co-Invest Partners B, L.P., Lexington Capital Partners (Ontario) II, L.P., Lexington Capital Partners X, L.P., Lexington Global Partners VIII, L.P., Lexington Global Partners XI, L.P., LCP X Co-Invest Partners C, L.P., Lexington CIP V-A-O, L.P., Lexington CIP V-C-O, L.P., Lexington CIP V-F-O, L.P., Lexington CIP V-M-O, L.P., Lexington Co-Investment Partners V, L.P., Lexington Co-Investment Partners V-A, L.P., Lexington Co-Investment Partners V-B, L.P., Lexington Co-Investment Partners V-C, L.P., Lexington Co-Investment Partners V-F, L.P., Lexington Middle Market Investors IV, L.P., Lexington Middle Market Partners, L.P., LMMI IV Leo, L.P., LMMI (Offshore) IV, L.P., LMMP Offshore, L.P., Lexington Middle Market Investors V, L.P., Lexington Global Partners X, L.P., LCP Offshore X, L.P., LCP Intermediate X, L.P., Lexington Private Equity 25, L.P., Leo Lex Partners SCSp, Lexington Co-Investment Partners VI, L.P., Lexington Co-Investment Partners VI-A, L.P., Lexington Co-Investment Partners VI-J, L.P., Lexington Co-Investment Partners VI-F, L.P., Lexington CIP VI-F-O, L.P., Lexington Co-Investment Partners VI-B, L.P., Lexington Co-Investment Partners VI-C, L.P., Lexington Co-Investment Partners VI (Ontario), L.P., CIP VI-J (Offshore), L.P., CIP VI (Offshore), L.P., Lexington CIP VI-J-O, L.P., Lexington CIP VI (Lux) Master SCSp, Lexington CIP VI (Lux) SCSp, Lexington Beacon Feeder, L.P., Lexington Viking Co-Invest, L.P., LCP Offshore XII, L.P., Lexington Epikairois Co-Invest, L.P., Lexington Beacon Co-Invest, L.P., Lexington Global Partners XII, L.P., LCP X Co-Invest Partners H, L.P., Lexington Raptor Co-Invest, L.P., Lexington Private Equity Odin, L.P., LMMI (Offshore) V, L.P., LMMI V (Luxembourg) Master SCSp, LMMI V (Luxembourg) SCSp, Lexington Odin Co-Invest, L.P., LCP X Co-Invest Partners J, L.P., Lexington Continuation Vehicle Investors, L.P., LCVI (Offshore), L.P., LCVI (Luxembourg) Master SCSp, and LCVI (Luxembourg) SCSp.

FILING DATES: The application was filed on April 17, 2024 and amended on

August 7, 2024, October 24, 2024, and November 6, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on December 2, 2024, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants: Todd Lebo, Esq., *Todd.Lebo@franklintempleton.com*.

FOR FURTHER INFORMATION CONTACT: Kris Easter Guidroz, Senior Counsel, or Lisa Reid Ragen, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' third amended and restated application, dated November 6, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, <http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: November 7, 2024.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-26422 Filed 11-12-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101524; File No. 4-443]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options To Make Technical Conforming Changes

November 6, 2024.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 608 thereunder,² notice is hereby given that on October 17, 2024, MIAAX Sapphire, LLC ("MIAAX Sapphire"), Miami International Securities Exchange, LLC, MIAAX PEARL, LLC, and MIAAX Emerald, LLC filed with the Securities and Exchange Commission ("Commission") an amendment to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options ("OLPP" or "Plan").³ The

¹ 15 U.S.C. 78k-1(a)(3).

² 17 CFR 242.608.

³ See Letter from Gregory P. Ziegler, Vice President, Senior Counsel, MIAAX Sapphire, to Vanessa Countryman, Secretary, Commission, dated Oct 17, 2024. On July 6, 2001, the Commission approved the OLPP, which was proposed by the American Stock Exchange LLC ("Amex") (n/k/a NYSE American, LLC ("NYSE American")), Chicago Board Options Exchange, Incorporated ("Cboe"), International Securities Exchange LLC ("ISE") (n/k/a Nasdaq ISE, LLC ("Nasdaq ISE")), Options Clearing Corporation ("OCC"), Philadelphia Stock Exchange, Inc. ("Phlx") (n/k/a Nasdaq Phlx LLC (Nasdaq Phlx)), and Pacific Exchange, Inc. ("PCX") (n/k/a NYSE Arca, Inc. ("NYSE Arca")). See Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). See also Securities Exchange Act Release Nos. 49199 (Feb. 5, 2004), 69 FR 7030 (Feb. 12, 2004) (adding Boston Stock Exchange, Inc. as a Sponsor to the OLPP); 57546 (Mar. 21, 2008), 73 FR 16393 (Mar. 27, 2008) (adding Nasdaq Stock Market, LLC ("Nasdaq") as a Sponsor to the OLPP); 61528 (Feb. 17, 2010), 75 FR 8415 (Feb. 24, 2010) (adding BATS Exchange, Inc. ("BATS") (n/k/a Cboe BZX Exchange, Inc. ("Cboe BZX")) as a Sponsor to the OLPP); 63162 (Oct. 22, 2010), 75 FR 66401 (Oct. 28, 2010) (adding C2 Options Exchange Incorporated ("C2") (n/k/a Cboe C2 Exchange, Inc. ("Cboe C2")) as a sponsor to the OLPP); 66952 (May 9, 2012), 77 FR 28641 (May 15, 2012) (adding BOX Options Exchange LLC ("BOX") as a Sponsor to the OLPP); 67327 (June 29, 2012), 77 FR 40125 (July 6, 2012) (adding Nasdaq OMX BX, Inc. ("BX") (n/k/a Nasdaq BX, Inc. ("Nasdaq BX")) as a Sponsor to the OLPP); 70765 (Oct. 28, 2013), 78 FR 65739 (Nov. 1, 2013) (adding Topaz Exchange, LLC as a Sponsor to the OLPP ("Topaz") (n/k/a Nasdaq GEMX, LLC ("Nasdaq GEMX")); 70764 (Oct. 28, 2013), 78 FR 65733 (Nov. 1, 2013) (adding Miami International Securities Exchange, LLC ("MIAAX") as a Sponsor to the OLPP); 76822 (Jan. 1, 2016), 81 FR 1251 (Jan. 11, 2016) (adding EDGX Exchange, Inc. ("EDGX") (n/k/a Cboe EDGX Exchange, Inc. ("Cboe EDGX")) as a Sponsor to the OLPP); 77323 (Mar. 8, 2016), 81 FR 13433 (Mar. 14, 2016) (adding ISE Mercury,

Continued

Commission approved the application of MIAx Sapphire to register as a national securities exchange on July 15, 2024.⁴ One of the conditions of the Commission's approval of MIAx Sapphire was the requirement for the exchange to join the OLPP.⁵ The previous amendment added MIAx Sapphire as a Plan Sponsor⁶ of the OLPP.⁷ This amendment restores text inadvertently deleted or altered from the Plan as part of the prior amendment to add MIAx Sapphire as a Plan Sponsor. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Description and Purpose of the Amendment

The OLPP establishes procedures designed to facilitate the listing and trading of standardized options contracts on the options exchanges. The amendment to the OLPP restores text inadvertently deleted or altered from the Plan as part of the prior amendment to add MIAx Sapphire as a Plan Sponsor, which text was approved by the Commission in prior amendments to the Plan.

II. Effectiveness of the OLPP Amendment

The foregoing OLPP amendment has become effective pursuant to Rule 608(b)(3)(iii)⁸ because it has been designated by the sponsors as involving solely technical or ministerial matters. At any time within sixty days of the filing of the amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,⁹ if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

LLC ("ISE Mercury") (n/k/a Nasdaq MRX, LLC ("Nasdaq MRX")) as a Sponsor to the OLPP); 79897 (Jan. 30, 2017), 82 FR 9263 (Feb. 3, 2017) (adding MIAx PEARL, LLC ("MIAx PEARL") as a Sponsor to the OLPP); 85228 (Mar. 1, 2019), 84 FR 8355 (Mar. 7, 2019) (adding MIAx Emerald, LLC ("MIAx Emerald") as a Sponsor to the OLPP); 98388 (Sept. 14, 2023), 88 FR 64963 (Sept. 20, 2023) (adding MEMX LLC ("MEMX") as a Sponsor to the OLPP); 100622 (July 31, 2024), 89 FR 64005 (Aug. 6, 2024) (adding MIAx Sapphire as a Sponsor to the OLPP).

⁴ See Securities and Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10-240) (order granting registration as a national securities exchange for MIAx Sapphire).

⁵ See *id.* at 58866.

⁶ A "Plan Sponsor" is an Eligible Exchange whose participation in the OLPP has become effective pursuant to Section 7 of the OLPP.

⁷ See Letter from Gregory P. Ziegler, Vice President, Senior Counsel, MIAx Sapphire, to Vanessa Countryman, Secretary, Commission, dated July 26, 2024.

⁸ 17 CFR 242.608(b)(3)(iii).

⁹ 17 CFR 242.608(a)(1).

or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amendment is consistent with the Act and the rules thereunder. 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 4-443 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number 4-443. 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 plan that are filed with the Commission, and all written communications relating to the plan 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 exchanges. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number 4-443 and should be submitted on or before December 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-26195 Filed 11-12-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101530; File No. SR-C2-2024-020]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fees Schedule Related to Physical Port Fees

November 6, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 28, 2024, Cboe C2 Exchange, Inc. (the "Exchange" or "C2") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the "Exchange" or "C2 Options") proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

¹⁰ 17 CFR 200.30-3(a)(85).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule relating to physical connectivity fees.³

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabit ("Gb") circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes

that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities platforms), Cboe EDGX Exchange, Inc. (options and equities platforms), and Cboe EDGA Exchange, Inc., ("Affiliate Exchanges").⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹⁰ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities. This belief is based on various factors as described below.

First, the Exchange believes its proposal is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical

ports and its offering, even as amended, continues to be more affordable as compared to analogous physical connectivity offerings at competitor exchanges.¹¹

The Exchange also believes the current fee does not properly reflect the quality of the service and product, as fees for 10 Gb physical ports have been static in nominal terms since 2018, and therefore falling in real terms due to inflation. As a general matter, the Producer Price Index ("PPI") is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI), that measure price change from the purchaser's perspective.¹² About 10,000 PPIs for individual products and groups of products are tracked and released each month.¹³ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI ("Data PPI"), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (BLS) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System.¹⁴ According to the BLS "[t]he primary output of NAICS 518210 is the

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR-C2-2023-014). On September 1, 2023, the Exchange withdrew that filing and submitted SR-C2-2023-020. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the "OIP") in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR-C2-2023-021). On October 13, 2023, the Exchange withdrew that filing and submitted SR-C2-2023-022. On December 12, 2023, the Exchange withdrew that filing and submitted SR-C2-2023-025. On February 9, 2024, the Exchange withdrew that filing and submitted SR-C2-2024-004. On April 9, 2024, the Exchange withdrew that filing and submitted SR-C2-2024-005. On June 7, 2024 the Exchange withdrew that filing and submitted SR-C2-2024-010. On August 29, 2024, the Exchange withdrew that filing and submitted SR-C2-2024-015. On October 25, 2024, the Exchange withdrew that filing and submitted SR-C2-2024-019. On October 28, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ See e.g., The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR-MIAX-2024-016).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See e.g., The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed \$22,000 per month, per port.

¹² See <https://www.bls.gov/ppi/overview.htm>.

¹³ *Id.*

¹⁴ NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract."¹⁵

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule change to modify the 10 Gb physical port fee because the Exchange uses its "own computer systems" and "proprietary software," *i.e.*, its own data center and proprietary matching engine software, respectively, to collect, organize, store, report and receive orders on the Exchange's proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. For example, the average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.¹⁶

As noted above, the current 10 Gb physical port fee remained unchanged

for six years, particularly since June 2018.¹⁷ Since its last increase over 6 years ago however, there has been notable inflation, including under the industry-specific PPI, which as described above is a tailored measure of inflation.¹⁸ Particularly, the Data PPI had a starting value of 107 in June 2018 (the month the Exchange started assessing the current fee) and an ending value of 116.22 in August 2024, representing an 8.6% increase.¹⁹ This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 8.6% during this period.

The Exchange also believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2018. The impact of this inflationary effect is also independent of any change in the Exchange's costs in providing its goods and services. The Exchange therefore believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. Additionally, the Exchange historically does not increase fees every year notwithstanding inflation. Other exchanges have also filed for increases in certain fees, based in part on comparisons to inflation.²⁰ Accordingly, based on the above-described percentage change, and in conjunction with the rationale further described above and below, the Exchange believes the proposed fee increase is reasonable.

Next, the Exchange believes significant investments into, and enhanced performance of, the Exchange, in the years following the last 10 Gb physical port fee increase support the reasonableness of the proposed fee increase. These investments enhanced the quality of its services, as measured by, among other things, increased throughput and faster processing speeds. Customers have therefore greatly benefitted from these investments, while the Exchange's

ability to recoup its investments has been hampered.

For example, the Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center ("NY6")), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that

¹⁷ See Securities and Exchange Release No. 83455 (June 15, 2018), 83 FR 28892 (June 21, 2018) (SR-C2-2018-014).

¹⁸ See <https://fred.stlouisfed.org/series/PCU51825182#0>.

¹⁹ *Id.*

²⁰ See, e.g., Securities Exchange Act Release Nos. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79) and 34-100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR-BOX-2024-16).

¹⁵ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-services-industry-naics-518210.htm>.

¹⁶ See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>.

all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other options markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 18 registered options markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition as well as the interests of market participants and investors.

Finally, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the

10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.*, ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

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 proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (*i.e.*, all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pay the most.

The proposed fee change also does not impose a burden on competition or on other Self-Regulatory Organizations that is not necessary or appropriate. As described above, the Exchange evaluated its proposed fee change using objective and stable metric with limited volatility. Utilizing Data Processing PPI over a specified period of time is a reasonable means of recouping a portion of the Exchange's investment in maintaining and enhancing the connectivity service identified above. The Exchange believes utilizing Data Processing PPI, a tailored measure of inflation, to increase certain connectivity fees to recoup the Exchange's investment in maintaining and enhancing its services and products would not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²¹ and paragraph (f) of Rule 19b-4²² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f).

• Send an email to rule-comments@sec.gov. Please include file number SR–C2–2024–020 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–C2–2024–020. 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–C2–2024–020 and should be submitted on or before December 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024–26197 Filed 11–12–24; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20856 and #20857; SEMINOLE TRIBE of FLORIDA Disaster Number FL–20017]

Presidential Declaration of a Major Disaster for the Seminole Tribe of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Seminole Tribe of Florida (FEMA–4844–DR), dated November 5, 2024.

Incident: Hurricane Milton.

DATES: Issued on November 5, 2024.

Incident Period: October 5, 2024 and continuing.

Physical Loan Application Deadline Date: January 6, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: August 5, 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 November 5, 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 Areas (Physical Damage and Economic Injury Loans): Seminole Tribe of Florida.

Contiguous Counties (Economic Injury Loans Only):

Florida: Broward, Collier, Glades, Hendry, Hillsborough, St. Lucie.
The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.625
Homeowners without Credit Available Elsewhere	2.813
Businesses with Credit Available Elsewhere	8.000

	Percent
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
<i>For Economic Injury:</i>	
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 208568 and for economic injury is 208570.

(Catalog of Federal Domestic Assistance Number 59008)

Alejandro Contreras,

Acting Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–26231 Filed 11–12–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 20858 and # 20859; SEMINOLE TRIBE of FLORIDA Disaster Number FL–20018]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Seminole Tribe of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Seminole Tribe of Florida (FEMA–4844–DR), dated November 5, 2024.

Incident: Hurricane Milton.

DATES: Issued on November 5, 2024.

Incident Period: October 5, 2024 and continuing.

Physical Loan Application Deadline Date: January 6, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: August 5, 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 November 5, 2024, Private Non-Profit

²³ 17 CFR 200.30–3(a)(12).

organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas: Seminole Tribe of Florida.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 208588 and for economic injury is 208590.

(Catalog of Federal Domestic Assistance Number 59008)

Alejandro Contreras,
*Acting Deputy Associate Administrator,
Office of Disaster Recovery & Resilience.*
[FR Doc. 2024-26235 Filed 11-12-24; 8:45 am]
BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice 12579]

30-Day Notice of Proposed Information Collection: Law Enforcement Officers Safety Act (LEOSA) Photographic Identification Card Application

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 December 13, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: 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 Jason Taylor, SA-9 2025 E Street NW, Washington, DC 20588, who may be reached on 202-472-8801 or at TaylorJE@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* LEOSA Photographic Identification Card Application.
- *OMB Control Number:* 1405-0245.
- *Type of Request:* Renewal of an approved information collection.
- *Originating Office:* Diplomatic Security, Domestic Operations, Security Support Division (DS/DO/DFP/SSD).
- *Form Number:* DS-7809.
- *Respondents:* Current and former Diplomatic Security Service special agents.
- *Estimated Number of Respondents:* 90.
- *Estimated Number of Responses:* 90.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 90 hours.
- *Frequency:* Once per application.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

This information is being collected in response to the Department’s requirements under the Law Enforcement Officers Safety Act of 2004 (LEOSA), as amended and codified at 18 U.S.C. 926C, which exempts a “qualified retired law enforcement officer” carrying a LEOSA photographic identification card from most state and local laws prohibiting the carriage of concealed firearms, subject to certain restrictions and exceptions.

Methodology

Applicants will download the application form from the Department’s website and fill it out either electronically or by hand and submit via email or mail.

John Ferguson,
*Division Chief, Bureau of Diplomatic Security,
Department of State.*

[FR Doc. 2024-26217 Filed 11-12-24; 8:45 am]

BILLING CODE 4710-43-P

SUSQUEHANNA RIVER BASIN COMMISSION

Minor Modification Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for previously approved projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: October 1–31, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238-0423, ext. 1312; fax (717) 238-2436; email: joyler@srbc.gov. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modification, described below, pursuant to 18 CFR 806.18 or to Commission Resolution Nos. 2013-11 and 2015-06, for the time period specified above.

1. Blackhill Energy LLC—Susquehanna River, Docket No. 20240923, Ulster Township, Bradford County, Pa.; modification approval to change the intake design; Approval Date: October 8, 2024.

2. Hazleton Area Water Company, Inc.—Tomhicken Mountain Springs

(Wells 9 and 10), Docket No. 20240924, Black Creek and Sugarloaf Townships, Luzern County, Pa.; modification approval to add Wells 9 and 10 as sources of consumptive use; Approval Date: October 16, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806 and 808.

Dated: November 7, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024–26239 Filed 11–12–24; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will conduct its regular business meeting on December 12, 2024 in Harrisburg, Pennsylvania. Details concerning the matters to be addressed at the business meeting are contained in the **SUPPLEMENTARY INFORMATION** section of this notice. Also the Commission published a document in the **Federal Register** on September 30, 2024 concerning its public hearing on October 30, in Harrisburg, Pennsylvania.

DATES: The meeting will be held on Thursday, December 12, 2024, at 9 a.m.

ADDRESSES: This public meeting will be conducted in person and digitally from the Susquehanna River Basin Commission at 4423 North Front Street, Harrisburg, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: 717–238–0423; fax: 717–238–2436.

SUPPLEMENTARY INFORMATION: The business meeting will include actions or presentations on the following items: (1) Regulatory Program Fee Schedule (Resolution 2024–09); (2) approval of contracts and grants; (3) Release Proposed GP–04 Into-Basin Diversion of Water for Public Comment; and (4) Actions on 16 regulatory program projects.

This agenda is complete at the time of issuance, but other items may be added, and some stricken without further notice. The listing of an item on the agenda does not necessarily mean that the Commission will take final action on it at this meeting. When the Commission does take final action, notice of these actions will be published

in the **Federal Register** after the meeting. Any actions specific to projects will also be provided in writing directly to project sponsors.

The meeting will be conducted both in person and digitally at the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania. The public is invited to attend the Commission's business meeting. The public may access the Business Meeting remotely via Zoom: <https://us02web.zoom.us/j/89292000071?pwd=S1E2Qi9QNHUyTkhhY3ZoRUJJeXpqUT09> Meeting ID 892 9200 0071; Passcode: SRBC4423! or via telephone: 305–224–1968 or 309–205–3325; Meeting ID 892 9200 0071.

A public hearing and written comment period was provided for the Regulatory Fee Schedule and actions on the 16 projects and the comment period on those proposed actions is closed. Written comments pertaining to all other items on the agenda at the business meeting may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania 17110–1788, or submitted electronically at the link Business Meeting Comments. Comments are due to the Commission for all items on the business meeting agenda on or before December 9, 2024. Comments will not be accepted at the business meeting noticed herein.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 801, 806, and 808.

Dated: November 7, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024–26240 Filed 11–12–24; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: October 1–31, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT:

Jason E. Oyler, General Counsel and Secretary to the Commission, telephone:

(717) 238–0423, ext. 1312; fax: (717) 238–2436; email: joyler@srbc.net.

Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (f) for the time period specified above.

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. Range Resources—Appalachia, LLC; Pad ID: Laurel Hill 17–22; ABR–202410001; Jackson Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 8, 2024.

2. RENEWAL—EQT ARO LLC; Pad ID: Bonnel Run H&F Pad D; ABR–201404003.R2; Pine Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 8, 2024.

3. RENEWAL—EQT ARO LLC; Pad ID: COP 252 Pad B; ABR–20090445.R3; Grugan Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 8, 2024.

4. RENEWAL—Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 596 Pad A; ABR–201909004.R1; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.9000 mgd; Approval Date: October 8, 2024.

5. RENEWAL—Range Resources—Appalachia, LLC; Pad ID: Cornwall B Unit 1H–4H; ABR–201405003.R2; Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 8, 2024.

6. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: HARRIS (01 012) A; ABR–20090523.R3; Armenia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 8, 2024.

7. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: OLD MINE ROAD (02 188); ABR–201909003.R1; Hamilton Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 8, 2024.

8. RENEWAL—Blackhill Energy LLC; Pad ID: Houseknecht 2H; ABR–20090419.R3; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 1.5000 mgd; Approval Date: October 23, 2024.

9. RENEWAL—Blackhill Energy LLC; Pad ID: Housknecht 1H; ABR–20090423.R3; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 1.5000 mgd; Approval Date: October 23, 2024.

10. RENEWAL—Blackhill Energy LLC; Pad ID: Housknecht 3H; ABR–

20090422.R3; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 23, 2024.

11. RENEWAL—Blackhill Energy LLC; Pad ID: Ward M 1H; ABR—20090421.R3; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 1.5000 mgd; Approval Date: October 23, 2024.

12. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Phelps B Drilling Pad; ABR—201409001.R2; Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 23, 2024.

13. RENEWAL—Coterra Energy Inc.; Pad ID: Friedland Farms P1; ABR—201405009.R2; Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 23, 2024.

14. RENEWAL—Coterra Energy Inc.; Pad ID: Gesford P1; ABR—20090547.R3; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 23, 2024.

15. RENEWAL—Coterra Energy Inc.; Pad ID: Gesford P4; ABR—20090550.R3; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 23, 2024.

16. RENEWAL—Coterra Energy Inc.; Pad ID: Greenwood P1; ABR—20090548.R3; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 23, 2024.

17. RENEWAL—Coterra Energy Inc.; Pad ID: Pijanowski P1; ABR—201404002.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 23, 2024.

18. RENEWAL—Coterra Energy Inc.; Pad ID: Slocum S P1; ABR—201403015.R2; Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 23, 2024.

19. RENEWAL—EQT ARO LLC; Pad ID: COP 259 Pad A; ABR—20090513.R3; Burnside Township, Centre County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 23, 2024.

20. RENEWAL—EQT ARO LLC; Pad ID: COP 259 Pad B; ABR—20090440.R3; Burnside Township, Centre County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 23, 2024.

21. RENEWAL—EQT ARO LLC; Pad ID: COP Tr 551 A; ABR—201404008.R2; McIntyre Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 23, 2024.

22. RENEWAL—EQT ARO LLC; Pad ID: Marilyn Ely Pad A; ABR—201404009.R2; Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 23, 2024.

23. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: Harer 713; ABR—201206004.R2; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 23, 2024.

24. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: SHERMAN (03 144) M; ABR—201910001.R1; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 23, 2024.

25. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: WARNER (05 121) W; ABR—201906001.R1; Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 23, 2024.

26. RENEWAL—Seneca Resources Company, LLC; Pad ID: D.M. Pino Pad H; ABR—20090933.R3; Covington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 23, 2024.

27. RENEWAL—Seneca Resources Company, LLC; Pad ID: PHC 23H/24H; ABR—20090917.R3; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 23, 2024.

28. RENEWAL—Seneca Resources Company, LLC; Pad ID: PHC 28H/29H; ABR—20090918.R3; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 23, 2024.

29. RENEWAL—SWN Production Company, LLC; Pad ID: Ivey Pad Site; ABR—20090608.R3; Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: October 23, 2024.

30. RENEWAL—SWN Production Company, LLC; Pad ID: NR—03—COLWELL WEST—PAD; ABR—201406002.R2; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9999 mgd; Approval Date: October 23, 2024.

31. RENEWAL—SWN Production Company, LLC; Pad ID: NR—17—COLEMAN—PAD; ABR—201406003.R2; Great Bend Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: October 23, 2024.

32. RENEWAL—Coterra Energy Inc.; Pad ID: Heitsman P1; ABR—20090537.R3; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 27, 2024.

33. RENEWAL—Coterra Energy Inc.; Pad ID: Heitsman A P2; ABR—20090552.R3; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 27, 2024.

34. RENEWAL—Coterra Energy Inc.; Pad ID: Hubbard P1; ABR—20090545.R3; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 27, 2024.

35. RENEWAL—Coterra Energy Inc.; Pad ID: Plonski P1; ABR—201405008.R2; Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 27, 2024.

36. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Trowbridge; ABR—201909001.R1; Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 29, 2024.

37. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Welles 2; ABR—20090940.R3; Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 29, 2024.

38. RENEWAL—Coterra Energy Inc.; Pad ID: Lathrop P1; ABR—20090538.R3; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 29, 2024.

39. RENEWAL—Coterra Energy Inc.; Pad ID: Ratzel P1; ABR—20090539.R3; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 29, 2024.

40. RENEWAL—Coterra Energy Inc.; Pad ID: Rozanski P1; ABR—20090553.R3; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 29, 2024.

41. RENEWAL—Coterra Energy Inc.; Pad ID: Severcool B P1; ABR—20090536.R3; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 29, 2024.

42. RENEWAL—Coterra Energy Inc.; Pad ID: Smith P1; ABR—20090540.R3; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 29, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806 and 808.

Dated: November 7, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024–26233 Filed 11–12–24; 8:45 am]

BILLING CODE 7040–01–P

**SUSQUEHANNA RIVER BASIN
COMMISSION****Grandfathering Registration Notice**

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: October 1–31, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: joyler@srbc.gov. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR part 806, subpart E, for the time period specified above:

1. Heidelberg Materials Northeast LLC—Montoursville Sand & Gravel, GF Certificate No. GF–202410280, Fairfield Township, Lycoming County, Pa.; Canal and consumptive use; Issue Date: October 11, 2024.

2. Energy Center Harrisburg LLC, GF Certificate No. GF–202410281, City of Harrisburg, Dauphin County, Pa.; consumptive use; Issue Date: October 11, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806 and 808.

Dated: November 7, 2024.

Jason E. Oyler,
General Counsel and Secretary to the Commission.

[FR Doc. 2024–26236 Filed 11–12–24; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Docket No. FAA–2024–2081]

**Agency Information Collection
Activities: Clearance of Renewed
Approval of Information Collection:
Airport Noise Compatibility Planning**

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the

Federal Aviation Administration (FAA) invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew an information collection. The collection involves information on voluntary airport noise compatibility programs. The information to be collected is necessary because noise compatibility program measures are eligible for Federal grants in-aid if they are provided to FAA for review and approval in advance. The respondents are airport sponsors that voluntarily submit noise exposure maps and noise compatibility programs to the FAA for review and approval.

DATES: Written comments should be submitted by December 13, 2024.

ADDRESSES: Written comments and recommendations for the FAA's request for OMB's approval to renew this information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Comments may also be submitted via electronic mail to susan.staehle@faa.gov.

FOR FURTHER INFORMATION CONTACT: Susan Staehle by electronic mail at: susan.staehle@faa.gov or by phone at: 202–267–7935.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0517.

Title: Airport Noise Compatibility Planning.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an Information Collection.

Background: The voluntarily submitted information from the collection process pursuant to title 14 Code of Federal Regulations (CFR) part 150, (e.g., airport noise exposure maps and airport noise compatibility programs, or their revisions) is used by the FAA to conduct reviews of the submissions to determine if an airport

sponsor's noise compatibility program is eligible for Federal grant funds. If airport sponsors did not voluntarily submit noise exposure maps and noise compatibility programs for FAA review and approval, the airport sponsor would not be eligible for the set aside of discretionary grant funds. The **Federal Register** Notice with a 60-day review period soliciting comments on this information collection of information was published in the **Federal Register** on August 5, 2024 (89 FR 63466) and no public comments were received.

Respondents: Approximately 15 airport sponsors.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 2,080 hours.

Estimated Total Annual Burden: 31,200 hours.

Issued in Washington, DC, November 6, 2024.

Susan Staehle,

Environmental Protection Specialist, Office of Airports, Planning and Environmental Division, APP–400.

[FR Doc. 2024–26199 Filed 11–12–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Docket No.: FAA–2024–1724]

**Airport Investment Partnership
Program**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of the Record of Decision for the participation of Avon Park Executive Airport, Highlands County, Avon Park, Florida, in the Airport Investment Partnership Program (AIPP).

SUMMARY: The FAA has approved the Final Application by the City of Avon Park, Avon Park, Florida (City), for Avon Park Executive Airport to participate in AIPP. Three exemptions were issued from certain provisions of Federal law. The Application procedures require the FAA to approve the Final Application to permit exemptions after review of all documents necessary to comply with laws and regulations within the FAA's jurisdiction.

DATES: The Record of Decision was signed on October 29, 2024. The City will lease Avon Park Executive Airport to Florida Airport Management KAVO, L.L.C., (FAM KAVO) in accordance with the Lease Agreement.

ADDRESSES: The Record of Decision is available for public review under Docket Number 2023–1724, on the internet at <https://www.regulations.gov>, and on the FAA’s website at https://www.faa.gov/airports/airport_compliance/privatization.

FOR FURTHER INFORMATION CONTACT: Michael Helvey, Director, Airport Compliance and Management Analysis, ACO–1, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–3085.

SUPPLEMENTARY INFORMATION:

Introduction and Background

Title 49 of the U.S. Code, section 47134, establishes the AIPP and authorizes the Secretary of Transportation, and through delegation, the FAA Administrator (Administrator), to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, per section 47134(b)(1) the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, (in the case of a non-primary airport, after the airport has consulted with at least 65 percent of the owners of aircraft based at that airport). If the exemption under section 47134(b)(1) is granted, the Administrator shall exempt the sponsor from the obligation to pay back a portion of Federal grants upon the sale or lease of an airport, or to return airport property deeded by the Federal Government upon transfer of the airport. If the exemption under section 47134(b)(1) is granted, the Administrator shall exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

On April 20, 2021, the FAA issued a notice of procedures to be used in applications for exemptions under the AIPP (86 FR 20586).

On July 7, 2023, the City and FAM KAVO filed the AIPP Final Application for the privatization of Avon Park Executive Airport (Docket Number 2023–1724). The Final Application provides for the lease of Avon Park Executive Airport to FAM KAVO, and to operate the airport as a public-use general aviation facility.

On September 22, 2023, the FAA published in the **Federal Register** a Notice of Receipt of the Final

Application of Avon Park Executive Airport; commencement of a 60 day public view and comment period (88 FR 65422). The Notice made known the availability of the Final Application for Avon Park Executive Airport for public view and comment. Comments were requested by November 21, 2023.

The FAA received five comments in response to the Notice. The FAA’s response to the comments is included as an attachment to the Record of Decision.

On October 29, 2024, the FAA signed the Record of Decision approving the participation of the Avon Park Executive Airport in the AIPP.

Issued in Washington, DC, on October 29, 2024.

Michael Helvey,

Director, Office of Airport Compliance and Management Analysis.

[FR Doc. 2024–26190 Filed 11–12–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2024–1458]

Agency Information Collection

Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Verification of Authenticity of Foreign License, Rating, and Medical Certification

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 5, 2024. The collection involves information used to identify foreign airmen in order to allow the agency to verify their foreign license when used to qualify for a U.S. certificate. Respondents are holders of foreign licenses wishing to obtain U.S. certificates.

DATES: Written comments should be submitted by December 13, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/

PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Margaret A. Hawkins by email at: Margaret.A.Hawkins@FAA.Gov; phone: 1–405–954–3261.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA’s performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0724.

Title: Verification of Foreign License, Rating and Medical Certification.

Form Numbers: Form 8060.71.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 5, 2024 (89 FR 55676). The information collected is used to properly identify airmen to allow the agency to verify their foreign license being used to qualify for a U.S. certificate. The respondents are holders of a foreign license wishing to obtain a U.S. certificate. A person who is applying for a U.S. pilot certificate or rating on the basis of a foreign pilot license must apply for verification of that license at least 90 days before arriving at the designated FAA FSDO where the applicant intends to receive the U.S. pilot certificate.

Respondents: Approximately 12,000 foreign applicants for U.S. certificates annually.

Frequency: On occasion.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 2,000 hours.

Margaret A. Hawkins,

Airmen Certification Specialist, Airmen Certification Branch, AFB–720.

[FR Doc. 2024–26191 Filed 11–12–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–2023–0143]

**Truck Leasing Task Force (TLTF):
Notice of Rescheduled Public Meeting**

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of a rescheduled meeting of the TLTF.

SUMMARY: FMCSA announces that the public meeting of the TLTF previously scheduled for Wednesday, November 20, 2024, is rescheduled for Tuesday, December 3, 2024.

DATES: The meeting will be held on Tuesday, December 3, 2024, from 10 a.m. to 4 p.m. ET. Requests for accommodations for a disability and requests to submit written materials for consideration during the meeting must be received no later than Friday, November 22, respectively.

ADDRESSES: The meeting will be virtual for its entirety. Please register in advance of the meeting at www.fmcsa.dot.gov/tltf. A copy of the agenda for each meeting will be made available at www.fmcsa.dot.gov/tltf 1 week in advance of each meeting. Once approved, copies of the meeting minutes will be available at the website following each meeting. You may visit the TLTF website at www.fmcsa.dot.gov/tltf for further information on the committee and its activities.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Deputy Designated Federal Officer, TLTF, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 360–2925, tltf@dot.gov. Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 23009 of the Bipartisan Infrastructure Law (BIL) (Pub. L. 117–58) requires the Federal Motor Carrier Safety Administration (FMCSA) to establish the TLTF, which was set up in accordance with the Federal Advisory Committee Act (FACA), Public Law 92–463 (1972). TLTF will examine the terms, conditions, and equitability of common truck leasing arrangements, particularly as they impact owner-operators and trucking businesses subject to such agreements and submit a report on the task force's identified issues and conclusions regarding truck

leasing arrangements, including recommended best practices, to the Secretary, the Secretary of Labor, and the appropriate committees of Congress. TLTF will work in coordination with the United States Department of Labor.

TLTF operates in accordance with FACA under the terms of the TLTF charter, filed February 11, 2022, and amended April 28, 2023, and renewed February 9, 2024.

II. Agenda

- The final report of the Consumer Financial Protection Bureau on its analysis of the leases submitted to FMCSA and their implications on predatory leasing of trucks to drivers of commercial motor vehicles;
- A presentation from the Drafting Subcommittee on recommendations for TLTF's final report to FMCSA outlining its recommendations on truck leasing agreements and TLTF's consideration of these recommendations; and
- A public comment period that will allow drivers and lessees of CMVs to share their personal experiences with leases and present any supporting information they would like to share to assist TLTF in making recommendations on such agreements.

III. Public Participation

The meeting will be open to the public via virtual platform. Advance registration via the website (www.fmcsa.dot.gov/tltf) is required by Friday, November 22, 2024.

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services due to a disability, such as sign language interpretation or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by Friday, November 22.

Oral comments from the public will be heard during the designated comment period at the discretion of the TLTF chair and Designated Federal Officer. To accommodate as many speakers as possible, the time for each commenter will be limited to 2 minutes. Speakers may submit a written copy of their remarks for inclusion in the meeting records and for circulation to TLTF members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–26218 Filed 11–12–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION**Office of the Secretary**

[Docket No. DOT–OST–2024–0103]

Evaluation of the Appropriateness of Public-Private Partnership Project Delivery Including Value for Money or Comparable Analyses; Bipartisan Infrastructure Law

AGENCY: Build America Bureau, Office of the Secretary (OST), and Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Proposed guidance, request for comments.

SUMMARY: The Build America Bureau (the Bureau) and the Federal Highway Administration (FHWA) propose guidance to help the public understand statutory requirements to evaluate the appropriateness of using public-private partnerships (P3s) to deliver infrastructure projects. This proposed guidance intends to inform project sponsors of the Bureau's implementation of the evaluation requirements when seeking Federal credit assistance through the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) and the Railroad Rehabilitation and Improvement Financing (RRIF) credit assistance programs and FHWA's implementation of the major project financial plan requirement perform detailed Value for Money (VfM) analysis. The Bureau and FHWA invite public comment on this proposed guidance. In addition to general comments, the Bureau is seeking specific feedback on the implementation of certain statutory requirements. The guidance does not contain any new criteria, does not impose any new legal requirements, and has no legal effect.

DATES: Written comments on this proposed guidance must be submitted on or before December 31, 2024 after posting. The Bureau and FHWA will consider comments received after that date to the extent possible without incurring additional expense or delay.

ADDRESSES: You may submit comments, referencing Docket ID No. DOT–OST–2024–0103 by using the Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this proposed guidance. All comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. Please

see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read the proposed guidance or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Innovative Finance Technical Assistance Team at the Build America Bureau: InnovativeFinanceTA@dot.gov, or call Jennifer Hara, Strategic Partnerships Program Manager at 202–839–0199.

SUPPLEMENTARY INFORMATION:

Contents

1. Introduction
2. Definitions
3. Principles of P3 Analysis
4. P3 Analysis Requirements
5. Compliance Guidelines
 - A. Early Phase P3 Evaluation (Stage 1)
 - B. Progressive P3 Procurement (Stage 1A)
 - C. Subsequent P3 Evaluations (Stage 2)
 - D. Auditing and Public Information
6. P3 Post-Implementation Review Requirements

1. Introduction

A public-private partnership (P3) is an infrastructure project delivery method in which a public owner and project sponsor (called the public sponsor) leverages private sector resources and methods through a long-term contract that finances the project and typically includes design, construction, maintenance, and/or operations. A mutually beneficial P3 aligns public and private interests through the commercial and financial terms of a project agreement, herein referred to as the concession agreement.

Where appropriate, P3 delivery could provide more value for projects as compared to conventional public delivery. However, in some cases, P3 delivery also creates complexities and limitations for the public sponsor. Public sponsors can analyze these complexities, including project risks,

and consider how best to manage them before choosing a P3 with its long-term partnership obligations. The general term for the process of analyzing and comparing advantages and disadvantages of P3 versus conventional public delivery options is value for money analysis (VfM). The analysis demonstrates whether delivering a project using a P3 would yield more or less value to the public sponsor than the most suitable public delivery option. The analysis also documents the goals, objectives, and underlying assumptions for the project delivery. The intent of VfM is not to analyze the benefits of the project itself but to document the analysis underlying the public sponsor's chosen delivery option based on expected benefits to the public.

Federal surface transportation statutes require public sponsors to conduct a VfM or comparable analysis for certain projects, as described below and shown in Exhibit 1. A VfM or comparable analysis is required for:

- Any project type using any delivery method where the project cost is over \$750 million, the project sponsor is a public entity seeking federal credit assistance, the project is in a state with P3 laws, and the project generates revenue or user fees;
- Any surface transportation project receiving federal financial assistance under title 23, United States Code, using a P3 delivery method with a project cost over \$500 million; and
- Any project type using a P3 delivery method and seeking federal credit assistance. On November 15, 2021, the President signed the Infrastructure Investment and Jobs Act (also known as the “Bipartisan Infrastructure Law”) (IIJA or the BIL) into law.¹ Section 70701 of the BIL requires that certain projects with an estimated total cost of more than \$750,000,000 conduct a VfM analysis or comparable analysis. Additionally, section 11508 of the BIL requires that

Major Projects² under section 106(h) of title 23, United States Code, for which the project sponsor intends to carry out the project through a P3 shall include a detailed VfM analysis or similar comparative analysis. In addition, many states' P3 laws require public sponsors to conduct due diligence analysis, such as VfM, to determine whether the P3 delivery method would provide more value and benefits to the public sponsor than other delivery methods.

This proposed guidance is not aimed at building the capacity or capability of entities to develop and deliver infrastructure projects through P3s. Entities that want to build their capacities and capabilities may access Bureau and FHWA educational and technical assistance resources.³ Through such resources, Bureau and FHWA subject matter experts are available upon request to conduct targeted workshops and provide training materials for project sponsors.

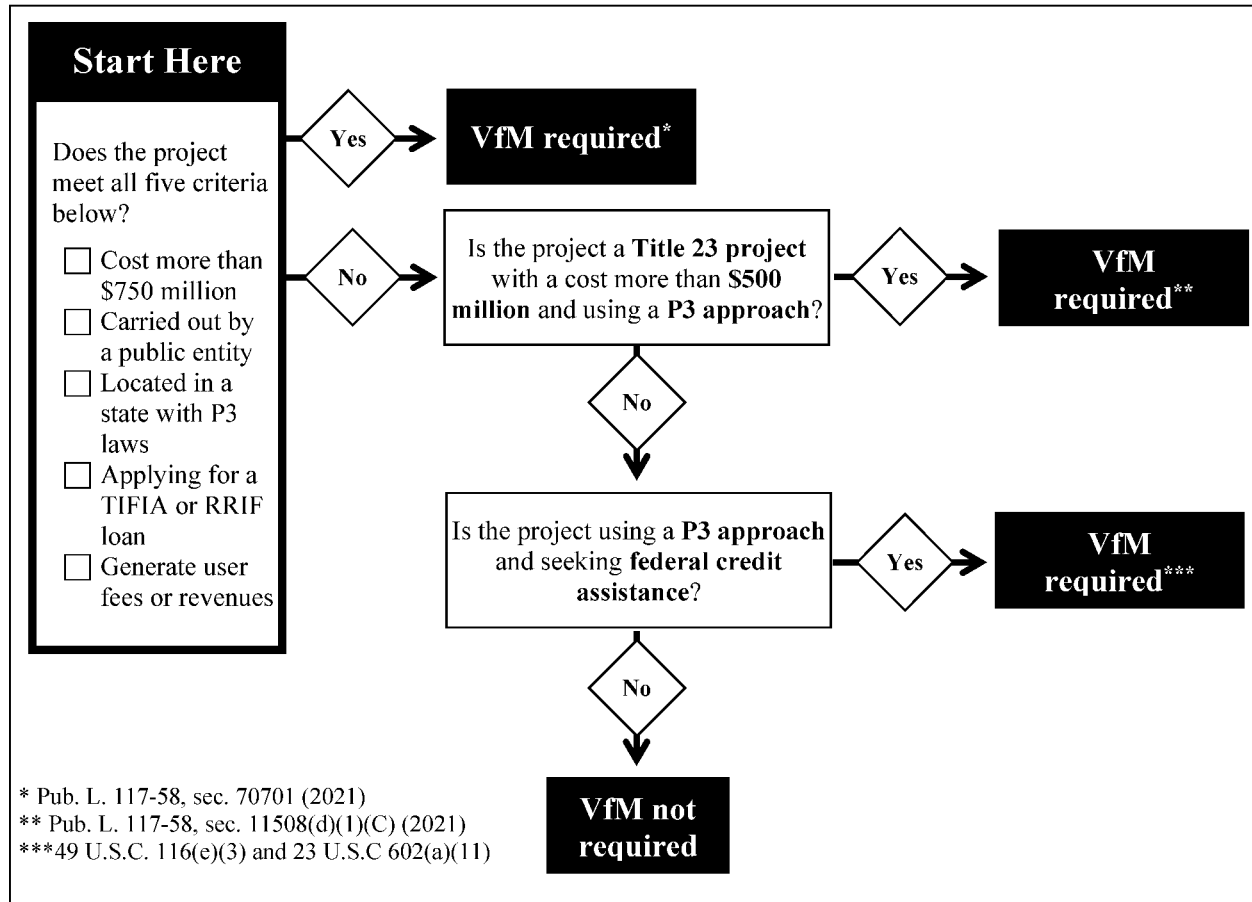
To improve readability, clarity, and brevity, this proposed guidance describes the requirements with words that might differ from statute and regulation. The proposed guidance does not contain any new criteria, does not impose any new legal requirements, and has no legal effect. The contents of this document do not have the force of law and are not meant to bind the public in any way. This document is intended only to share information with the public on existing requirements under the law or agency policies and is not intended to modify any Major Projects requirements under 23 U.S.C. 106(h). The proposed guidance only applies to Major Projects that require a VfM analysis.

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² A Major Project is a project funded with Federal financial assistance under title 23, United States Code, with a total estimated cost of \$500 million or more and such other projects as identified by the Secretary of Transportation pursuant to 23 U.S.C. 106(h).

³ <https://buildamerica.dot.gov/buildamerica/andhttps://www.fhwa.dot.gov/ipd/p3/toolkit/>.

¹ Public Law 117–58 (2021).

Exhibit 1: Value for Money Guidance Use Decision Chart**BILLING CODE C**

A. Proposed Guidance Public Comments. The goal of this guidance is to help public sponsors fulfill VfM or comparable analysis requirements for federally assisted projects where applicable. The Bureau and FHWA invite public comment on this guidance. In addition, the Bureau is asking for public input on two matters.

First, the Bureau is seeking input about applying the VfM statutory requirement for projects with costs exceeding \$750,000,000 that are “anticipated to generate user fees or other revenues that could support the capital and operating costs of such project.”⁴ In theory, the provision requires a public sponsor to conduct VfM if the project might generate a single dollar of user fees or other revenues. The statute does not specify an amount of revenue generated below which VfM is not required. The Bureau invites the public to suggest ways to apply the requirement without unduly burdening public sponsors.

The proposed methodology for VfM analyses in this guidance is useful for

Major Project financial plan requirements under section 106(h)(3)(D) as added by BIL section 11508.⁵ The proposed methodology will also be useful for Major Projects receiving title 23 assistance that are intended to be delivered as a P3. However, we note that not all of the VfM requirements in this proposed guidance apply to all Major Projects. Only those Major Projects that also meet the threshold requirements of BIL sections 11508 and 70701 and section 116(e)(3) of title 49, United States Code, would need to satisfy the VfM requirements described therein, as supplemented by this proposed guidance. For more information on FHWA’s Major Projects requirements, see FHWA’s Major Projects proposed guidance documents, available at <https://www.fhwa.dot.gov/majorprojects/>.

Second, the Bureau is asking for public input on “other information” that would be advantageous for the Secretary of Transportation to require in detailed P3 VfM evaluations. The VfM requirement in BIL section 70701 lists required elements for VfM or

comparable analysis and authorizes the Secretary to require additional information, as appropriate.⁶ Examples of additional information that could be beneficial to include as part of VfM are long-term commitments and risks the P3 agreement creates for the public sponsor, such as non-compete clauses and revenue protections that could lead to compensation from the public sponsor; and impacts of P3 delivery on business and labor, including disadvantaged business enterprises, local contractors, and public and private employees.

The Bureau asks for comments from the public to better inform its proposed guidance process. The Bureau will post 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 is available at www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is

⁴ Public Law 117–58, sec. 70701(b)(3)(B) (2021).

⁵ Public Law 117–58, sec. 11508(d)(1)(C) (2021).

⁶ Public Law 117–58, sec. 70701(a)(5) (2021).

completely optional. The Bureau will fully consider all timely comments, whether or not commenters identify themselves. If you wish to provide comments containing proprietary or confidential information, please contact

the agency for alternate submission instructions.

2. Definitions

For purposes of this proposed guidance, the definitions in Exhibit 2

apply. If the exhibit does not specifically define a term, industry standard definitions apply.

EXHIBIT 2—DEFINITIONS OF TERMS IN THIS PROPOSED GUIDANCE

Term	Definition
Public-private partnership (P3)	A long-term arrangement between a public sponsor and a private entity for delivery of a project that includes at least the following elements: design, construction, financing, and either operations or maintenance or both of the project over a term specified in a concession agreement (as defined below).
Agreement types:	
Concession Agreement	An agreement between a public sponsor and private entity (e.g., concessionaire or developer) signed after a preferred bidder is selected or contract price is agreed upon. Other names for such agreements include P3 agreement, project agreement, project development agreement, and comprehensive project agreement. BIL section 70701(a) uses the term "Project Development Agreement," which the Bureau interprets as a concession agreement.
Pre-development Agreement	An agreement between a public sponsor and private entity to develop and design the project further and finalize a committed proposal.
Contract types:	
Long-term Contract	A contract between a public sponsor and a private entity to deliver a project, including some or all elements for design, construction, financing, operations, and maintenance over the concession term.
Short-term Contract	A contract between a public sponsor and private entity to deliver a project that does not include operations or maintenance.
Evaluation types:	
Screening Evaluation	An evaluation that sets high-level criteria based on the public sponsor's project goals and objectives.
Qualitative Evaluation	Before detailed project scope, cost, and schedule are available, an evaluation that compares advantages and disadvantages of all practical conventional and alternative delivery options including public-private partnership delivery. The public sponsor documents the process for selecting the preferred delivery option based on the project's characteristics, feasibility, goals, and objectives.
Detailed Evaluation	An evaluation that compares all practical conventional and alternative delivery options to select the most suitable public delivery option and most suitable P3 delivery option and then estimates the likely quantitative outcomes of public and P3 options. Conventional VfM quantifies differences in financial outcomes to the public sponsor and evaluates other outcomes qualitatively. Detailed P3 evaluation may account for non-financial benefits such as differences in service levels for the public and costs to the public and society at large by use of benefit-cost analysis methodology. For example, if one delivery method results in an earlier start of operations than the other, the public will benefit earlier from higher service levels, which can be quantified in economic terms.
Federal financial assistance	Includes grants and loans from the Federal government to support infrastructure investment, not including private activity bond allocations and grants for technical assistance.
Major Project	A project funded with Federal financial assistance under title 23, United States Code, with a total estimated cost of \$500 million or more and such other projects as identified by the Secretary of Transportation pursuant to 23 U.S.C. 106(h).
P3 procurement types:	
Conventional P3 Procurement	Public sponsor seeks competitive, fixed price, and certain schedule bids from qualified bidders after the public sponsor completes a limited preliminary design of the project.
Progressive P3 Procurement	Through a competitive process early in project development, the public sponsor selects a qualified private entity to develop a project without a bid price.

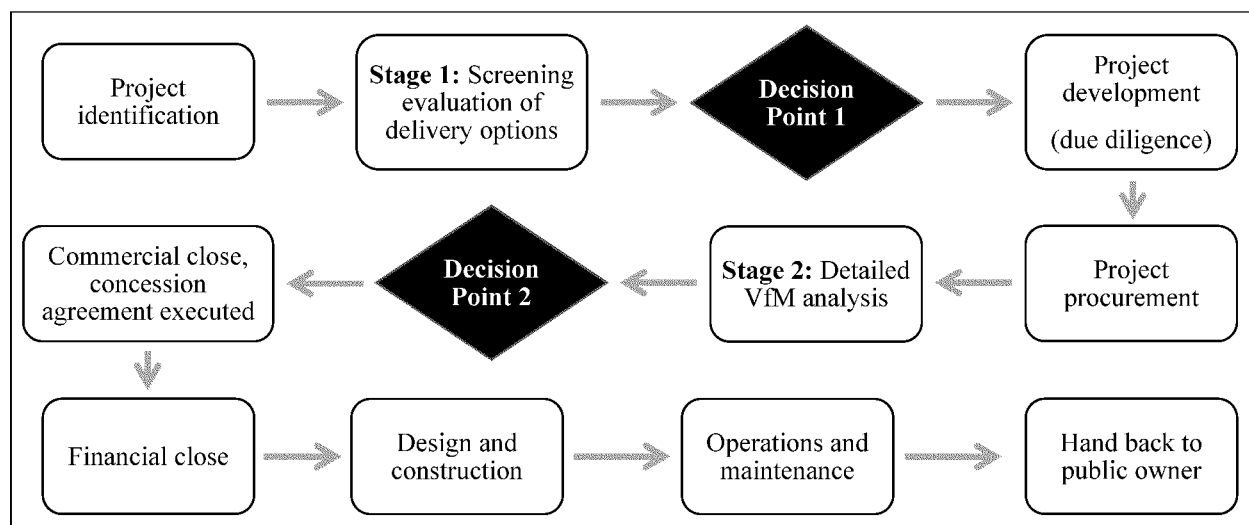
3. Principles of P3 Analysis

The appropriateness of P3 delivery as an option should be evaluated during the early phases of the project life cycle (such as project identification and delivery option screening) and as the project progresses during project development and procurement. With better and more information available later in the project life cycle, and as the

commercial and financial terms or assumptions change, the public sponsor should update the P3 evaluation by conducting detailed VfM to ensure a P3 model is still appropriate and in the public interest.

To ensure compliance with statutory VfM or comparable analysis requirements, the Bureau expects public sponsors to evaluate the appropriateness of, and value to be generated from, P3

project delivery at two decision points in the project lifecycle: (1) after project identification and before the project development phase, and (2) after the P3 procurement and before entering into a concession agreement between the public sponsor and private developer at commercial close. Exhibit 3 below shows these two decision points in a simplified P3 project lifecycle.

Exhibit 3: Illustrative P3 Project Life Cycle

The project life cycle presented in Exhibit 3 also applies to Major Projects under section 106(h) of title 23, United States Code, with an estimated total cost above \$750 million that meet the other criteria under BIL section 70701. Additionally, under BIL section 11508, the Major Project financial plan for Major Projects being carried out through a P3 must include a detailed VfM analysis or similar comparative analysis. This analysis is submitted as part of the initial financial plan, or subsequent financial plan annual update where appropriate. For requirements applicable to Major Projects that do not meet these criteria, see FHWA's Major Projects guidance documents, available at <https://www.fhwa.dot.gov/majorprojects/>.

Observing principles derived from lessons learned and best practices helps public sponsors objectively analyze the advantages and disadvantages of delivering an infrastructure project through a P3. Following these principles also helps public sponsors communicate to the public the basis of their decisions. The next paragraphs describe principles public sponsors should incorporate into their analyses to support requests for DOT federal financial assistance.

A. Establish Delivery Option Goals. VfM provides insights to support decision-making, when the public sponsor defines goals related to the delivery method. Examples of delivery goals are maximizing use of innovative approaches and technologies, preserving flexibility for future improvements, and minimizing the taxpayers' near-term financial burden in subsidizing the project. Delivery goals may be different than project goals. Whether a project is likely to achieve project goals is better

analyzed through techniques such as benefit-cost analysis or environmental or economic impact analysis, rather than VfM.

B. Identify Practical Delivery Options. After setting project delivery goals, public sponsors can then consider which delivery methods are likely to fulfill the identified goals. Sponsors can then narrow their choices by screening out impractical ones. For example, a public sponsor might have authority for some delivery methods and not others. Documenting the basis for rejecting a delivery method enhances credibility of the public sponsor's process.

C. Inform Subsequent Decisions. VfM analyzes tradeoffs between delivery options to identify the most suitable public delivery option and most suitable P3 option. The public sponsor can then determine whether the public or P3 option provides the most value relative to the established delivery option goals. The purpose of VfM is to inform selection of the project delivery method, not to justify project delivery decisions public sponsors previously made. Using VfM as intended, public sponsors will be able to show how the analysis preceded, and directly contributed to, the decision to advance the project with a P3 or other delivery approach.

D. Analytical Framework and Data. VfM involves predictions, projections, and assumptions. Public sponsors should (a) use actual, verifiable data, if possible, and (b) where predictions, projections, and assumptions are necessary, provide the methodology and basis for the inputs.

E. Transparency and Accountability. To the maximum extent practicable, public sponsors should make information available to the public,

including (a) the project's delivery goals, (b) the information used in the VfM analysis, (c) how the VfM analysis was employed in the decision-making process, and (d) the decision-makers charged with selecting the final delivery method.

4. P3 Analysis Requirements

Several provisions in the legislation established or amended statutory P3 evaluation requirements. Applicability of these requirements depends on project size, source of funding or financing, phase of the project life cycle, and other attributes. In 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users defined the term major project, reduced the financial plan requirement threshold to \$500 million, and required submission of project management plans.⁷ In 2012, the Moving Ahead for Progress in the 21st Century Act established the requirement to assess the appropriateness of a P3 for delivering major projects.⁸ The 2015 FAST Act established the requirement that public sponsors receiving credit assistance from the Bureau have conducted VfM or comparable analysis before deciding to advance projects as P3s.⁹

Enacted November 15, 2021, the BIL established new, and amended prior, statutory P3 evaluation requirements.¹⁰ The BIL:

⁷ Public Law 109–59, sec. 1904(a) (2005), amending 23 U.S.C. 106(h).

⁸ Public Law 112–141, sec. 1503(a)(4)(B) (2012), amending 23 U.S.C. 106(h).

⁹ Public Law 114–94, sec. 9001(a) (2015), adding 49 U.S.C. 116(e)(3).

¹⁰ Public Law 117–58, secs. 11508 and 70701 (2021).

- establishes a P3 evaluation requirement for projects with total estimated costs of more than \$750 million. Sponsors of these projects are required to conduct VfM if they intend to seek TIFIA or RRIF credit assistance, are in a state in which there is a state law authorizing the use and implementation of P3s for transportation projects, and the project is anticipated to generate user fees or other revenues that could support

project capital and operating costs.¹¹ This provision of BIL further specifies the level of detail and specific elements to be included in this detailed P3 evaluation;¹²

- amends the requirements of section 106(h) of title 23 to require public sponsors of projects with an estimated cost of \$500 million or more, receiving title 23 assistance, and intended to be delivered as a P3, to conduct a *detailed* VfM or similar comparative analysis;¹³

- stipulates reporting and transparency requirements throughout project delivery and following key project delivery milestones;¹⁴ and
- adds VfM as a TIFIA eligibility criterion for projects to be carried out through P3s.¹⁵

Exhibit 4 summarizes the statutory requirements for projects required to conduct a VfM analysis and the expected evaluation type based on the project delivery type.

EXHIBIT 4—P3 EVALUATION REQUIREMENTS BY PROJECT AND DELIVERY TYPE

Project type	Delivery type	Required public sponsor P3 evaluation *		
		Stage 1	Stage 1A	Stage 2
All transportation projects costing more than \$750 million that generate user fees or other revenues carried out by certain public agencies in states with P3 authority, and seeking TIFIA or RRIF credit assistance ¹⁶ .	All delivery types, except progressive P3. Progressive P3	Screening Screening	<i>n.a</i> Qualitative	Detailed. Detailed.
Title 23 projects costing \$500 million or more ¹⁷	All P3	Detailed.**		
All projects proposed for P3 delivery and seeking TIFIA or RRIF credit assistance ¹⁸ .	Conventional P3 Progressive P3	Screening Screening	<i>n.a</i> Qualitative	Detailed. Detailed.

Notes:

* Stage 1: early in project development before starting the procurement process.

Stage 1A: for a progressive P3, before signing a pre-development agreement.

Stage 2: before signing a concession agreement with a private P3 entity, if a P3 delivery method is selected in Stage 1.

n.a.: not applicable.

** The Major Project financial plan for Major Projects being carried out through a P3 agreement must include a detailed VfM analysis or similar comparative analysis. This analysis is submitted as part of the initial financial plan, or subsequent financial plan annual update where appropriate. Project sponsors of Major Projects under 23 U.S.C. 106(h) should consider whether their project also meets the requirements of the other VfM requirements detailed in this guidance. If so, their projects would also be subject to the additional VfM requirements detailed in this guidance.

5. Compliance Guidelines

This section details and clarifies aspects of the P3 evaluation requirements. Public sponsors and their projects often have unique attributes and circumstances that require in-depth analysis and review that might differ from the general descriptions herein. We encourage you to discuss your projects and applicable requirements directly with the Bureau and FHWA staff. Email us at BuildAmerica@dot.gov or FHWAMajorProjects@dot.gov.

A. Early Phase P3 Evaluation (Stage 1). Outlining of strategies for the business case early in the project lifecycle, *i.e.*, project identification and screening, is critical for successful project delivery selection. During project identification and screening, public sponsors should engage relevant stakeholders through brainstorming and risk assessment workshops and may use any tool for qualitative or high-level quantitative analysis to compare the most suitable public project delivery

option and the appropriate P3 option. Project sponsors seeking credit assistance under TIFIA and RRIF for all projects procured as P3s (regardless of size) are required to complete VfM or comparable analysis prior to deciding to advance the project as a P3.¹⁹ Because the decision to advance a project as a P3 is made at Stage 1, public sponsors that anticipate either seeking TIFIA or RRIF credit assistance directly or that TIFIA or RRIF might be part of their ultimate preferred bidder's financing package, must conduct VfM at Stage 1. Information available at Stage 1 is often limited, so the Bureau anticipates VfMs conducted at this stage would comprise a screening analysis for conventional P3s and any project required to perform detailed VfM analysis under BIL Section 70701.

If the public sponsor cannot define a workable public delivery option (*e.g.*, in a transit-oriented development project for which a private entity already owns the land or has secured development rights), VfM or comparable analysis

might not be feasible. In such cases, the public sponsor can demonstrate compliance with statutory requirements by documenting before signing a concession agreement why it cannot complete a meaningful VfM or comparable analysis and why it decided to use a P3 delivery option.

B. Progressive P3 Procurement (Stage 1A). In a progressive P3 procurement, the public sponsor selects a private developer and executes a pre-development agreement to design and de-risk the project collaboratively. Then, the private developer negotiates and submits a firm price proposal for delivering the project. If the public sponsor accepts the proposal, the parties sign a concession agreement.

The Bureau expects public sponsors using a progressive P3 procurement to conduct a qualitative VfM before signing a pre-development agreement and a detailed VfM prior to signing a concession agreement. Similar to the discussion of Stage 1 above, the Bureau expects the VfM at Stage 1A will be

¹¹ Public Law 117–58, sec. 70701 (2021).

¹² Public Law 117–58, sec. 70701(a) (2021).

¹³ Public Law 117–58, sec. 11508(d)(1)(C) (2021), adding 23 U.S.C. 106(h)(3)(D).

¹⁴ Public Law 117–58, secs. 11508(b), (c), and 70701(c), (d) (2021).

¹⁵ Public Law 117–58, sec. 11508(d) (2021), adding 23 U.S.C. 602(a)(11).

¹⁶ Public Law 117–58, sec. 70701 (2021).

¹⁷ Public Law 117–58, sec. 11508(d)(1)(C) (2021).

¹⁸ 49 U.S.C. 116(e)(3) and 23 U.S.C. 602(a)(11).

¹⁹ 49 U.S.C. 116(e)(3) and 23 U.S.C. 602(a)(11).

qualitative with limited information available regarding the project. After the private developer submits a committed bid price pursuant to the pre-development agreement, the Bureau would expect the public sponsor to update and finalize the VfM based on the terms and conditions of the proposed P3 agreement. At this point, the Bureau expects the public sponsor to conduct a detailed P3 evaluation prior to signing a concession agreement.

C. Subsequent P3 Evaluations (Stage 2). The Bureau expects this Stage 2 detailed analysis to be done once the project sponsor has additional details on project cost, funding/financing, and risk allocation. However, the Bureau expects that the Stage 2 analysis would be completed before signing the concession agreement. If the Stage 1 analysis resulted in the selection of a non-P3 delivery method, a Stage 2 analysis will not be required.

The detailed Stage 2 evaluation must include:

- i. the life-cycle cost and project delivery schedule;
- ii. the costs of using public funding versus private financing for the project;
- iii. a description of the key assumptions made in developing the analysis, including—
 - a. an analysis of any Federal grants or loans and subsidies received or expected (including tax depreciation costs);
 - b. the key terms of the proposed public-private partnership agreement, if applicable (including the expected rate of return for private debt and equity), and major compensation events;
 - c. a discussion of the benefits and costs associated with the allocation of risk;
 - d. the determination of risk premiums assigned to various project delivery scenarios;
 - e. assumptions about use, demand, and any user fee revenue generated by the project; and
 - f. any externality benefits for the public generated by the project;
- iv. a forecast of user fees and other revenues expected to be generated by the project, if applicable; and
- v. any other information the Secretary of Transportation determines to be appropriate.²⁰

Project sponsors may choose any tool that provides analysis of items (i), (ii), and (iii), including items (iii)(a) through (f), above to meet the requirements for detailed VfM. The Bureau recommends public sponsors document the basis for the analysis, project goals and objectives, and the underlying assumptions and rationale and then make such analysis and documentation available for public review. Any enhancements or adjustments such as risk premiums should be based on

actual data, to the extent possible, and reasonably verifiable.

The Bureau strongly encourages public sponsors of P3 projects that anticipate seeking TIFIA or RRIF credit assistance to undertake both (a) a screening analysis at Stage 1 or a qualitative analysis at Stage 1A and (b) a detailed VfM or comparable analysis at Stage 2. The Bureau will evaluate the type of VfM conducted at each stage to determine whether a public sponsor has satisfied all applicable requirements. In doing so, the Bureau will seek to ensure the public sponsor used information appropriate for the stage at which the analysis was conducted and that the VfM was thorough. The Bureau therefore expects to see a bifurcated analysis as described above and that public sponsors of P3 projects seeking Bureau credit assistance²¹ conduct a detailed VfM that includes evaluation of the elements in BIL Section 70701. The Bureau is unlikely to find a public sponsor satisfied these requirements if a P3 project of any size or a project with an anticipated cost of more than \$750 million that generates user fees or other revenues in states with P3 laws did not undergo a screening VfM at Stage 1 (or qualitative VfM for a progressive P3 at Stage 1A) and a detailed VfM at Stage 2 (for projects selected for delivery as a P3 as a result of Stage 1 analysis) that evaluates the elements in BIL Section 70701.

If the public sponsor cannot define a workable public delivery option, the public sponsor can demonstrate compliance with statutory requirements by documenting before signing a concession agreement why it cannot complete a meaningful VfM or comparable analysis and why it decided to use a P3 delivery option.

D. Auditing and Public Information. Transparency is an integral part of proper public sector decision making, particularly for long term commitments. The Bureau recommends public sponsors conduct an independent audit prior to signing contracts, such as concession agreements. An entity that has no ties to the project should conduct the audit and should ensure all processes have been followed and all major risks are properly identified, documented, and shared with decision makers and stakeholders. It should also ensure all local and federal approvals needed prior to execution of the concession agreement are in place and execution of the agreement will not

impose any undisclosed major risks to the public.

In addition to the foregoing, 49 U.S.C. 116(e)(3) requires public sponsors to make the analysis and key terms of the concession agreement publicly available at an appropriate time. The Bureau believes the appropriate time is as early as possible after signing the concession agreement, subject to any statutory limitations on a public sponsor's ability to make this information public. The Bureau expects public sponsors to make the analysis and key terms of the concession agreement (for P3 projects) publicly available (including on the website of the project, for projects described in BIL Section 70701²²) shortly after commercial close and prior to financial close. The Bureau does not expect to reach financial close on TIFIA or RRIF credit assistance for P3 projects or projects with anticipated costs of more than \$750 million that generate user fees or other revenues in states with P3 laws if the requisite information has not yet been made public.

6. P3 Post-Implementation Review Requirements

The FAST Act and BIL require project sponsors to conduct post-implementation reviews of the private partners' compliance with concession agreement terms, as a condition for receiving TIFIA and RRIF credit assistance.²³ BIL directs the Secretary to require the public sponsor of title 23 P3 projects costing \$100,000,000 or more that receive federal financial assistance, including Bureau credit assistance, not later than three years after the date of opening of the project to traffic, to:

- Review the project, including the private partner's compliance with the terms of the concession agreement;
- Certify to the Secretary that the private partner is meeting terms of the concession agreement for the project or notify the Secretary about the private partner's non-compliance, including a brief description of each violation of the concession agreement; and
- Make publicly available the above certification or notification without disclosing proprietary or confidential business information.²⁴

Section 116(e)(3)(A)(iii) of title 49 establishes a similar review requirement for any P3 project receiving TIFIA or RRIF credit assistance and further requires the public sponsor to provide a publicly available summary of total

²² BIL section 70701(c) requires public sponsors to post the results of the analysis on the website of the project.

²³ 49 U.S.C. 116(e)(3)(A)(iii) and (iv) and Public Law 117–58, sec. 11508(b) (2021).

²⁴ Public Law 117–58, sec. 11508(b).

²¹ Including where the public sponsor is not itself directly seeking TIFIA or RRIF credit assistance but anticipates that its preferred bidder might do so.

²⁰ Public Law 117–58, sec. 70701(a) (2021).

federal financial assistance in the project.

To satisfy these statutory review and disclosure requirements, the Bureau will require a public sponsor to sign a direct agreement with the Bureau prior to closing on Bureau credit assistance that memorializes the public sponsor's obligation to conduct and disclose the results of such review. A public sponsor should incorporate into its concession agreement the public sponsor's obligation to evaluate the concessionaire's performance and report as the law requires. The Bureau's loan agreement with the concessionaire will reference the relevant concession agreement and applicable statutory requirements and trigger a default in the event the public sponsor does not comply with its statutory obligations.

Appendix: Statutory References to Value for Money or Comparable Analysis Bipartisan Infrastructure Law (Pub. L. 117–58, 11508)

Sec. 11508. Requirements for Transportation Projects Carried Out Through Public-Private Partnerships

(a) DEFINITIONS.—In this section:

(1) PROJECT.—The term “project” means a project (as defined in section 101 of title 23, United States Code) that—

(A) is carried out, in whole or in part, using Federal financial assistance; and

(B) has an estimated total cost of \$100,000,000 or more.

(2) PUBLIC-PRIVATE PARTNERSHIP.—The term “public-private partnership” means an agreement between a public agency and a private entity to finance, build, and maintain or operate a project.

(b) REQUIREMENTS FOR PROJECTS CARRIED OUT THROUGH PUBLIC-PRIVATE PARTNERSHIPS.—With respect to a public-private partnership, as a condition of receiving Federal financial assistance for a project, the Secretary shall require the public partner, not later than 3 years after the date of opening of the project to traffic—

(1) to conduct a review of the project, including a review of the compliance of the private partner with the terms of the public-private partnership agreement;

(2)(A) to certify to the Secretary that the private partner of the public-private partnership is meeting the terms of the public-private partnership agreement for the project; or

(B) to notify the Secretary that the private partner of the public-private partnership has not met 1 or more of the terms of the public-private partnership agreement for the project, including a brief description of each violation of the public-private partnership agreement; and

(3) to make publicly available the certification or notification, as applicable, under paragraph (2) in a form that does close any proprietary or confidential business information.

(c) NOTIFICATION.—If the Secretary provides Federal financial assistance to a

project carried out through a public-private partnership, not later than 30 days after the date on which the Federal financial assistance is first obligated, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a notification of the Federal financial assistance made available for the project.

(d) VALUE FOR MONEY ANALYSIS.—

(1) PROJECT APPROVAL AND OVERSIGHT.—Section 106(h)(3) of title 23, United States Code, is amended—

(A) in subparagraph (C), by striking “and” at the end;

(B) by redesignating subparagraph (D) as subparagraph (E); and

(C) by inserting after subparagraph (C) the following: “(D) for a project in which the project sponsor intends to carry out the project through a public-private partnership agreement, shall include a detailed value for money analysis or similar comparative analysis for the project; and”.

(2) SURFACE TRANSPORTATION BLOCK GRANT PROGRAM.—Paragraph (21) of section 133(b) of title 23, United States Code (as redesignated by section 1109(a)(1)(C)), is amended by inserting “, including conducting value for money analyses or similar comparative analyses,” after “oversight”.

(3) TIFIA.—Section 602(a) of title 23, United States Code, is amended by adding at the end the following: “(11) PUBLIC-PRIVATE PARTNERSHIPS.—In the case of a project to be carried out through a public-private partnership, the public partner shall have—“(A) conducted a value for money analysis or similar comparative analysis; and “(B) determined the appropriateness of the public-private partnership agreement.”.

(e) APPLICABILITY.—This section and the amendments made by this section shall only apply to a public-private partnership agreement entered into on or after the date of enactment of this Act.

Bipartisan Infrastructure Law (Pub. L. 117–58, 70701)

Title VII—Public-Private Partnerships

Sec. 70701. Value For Money Analysis

(a) IN GENERAL.—Notwithstanding any other provision of law, in the case of a project described in subsection (b), the entity carrying out the project shall, during the planning and project development process and prior to signing any Project Development Agreement, conduct a value for money analysis or comparable analysis of the project, which shall include an evaluation of—

(1) the life-cycle cost and project delivery schedule;

(2) the costs of using public funding versus private financing for the project;

(3) a description of the key assumptions made in developing the analysis, including—

(A) an analysis of any Federal grants or loans and subsidies received or expected (including tax depreciation costs);

(B) the key terms of the proposed public-private partnership agreement, if applicable (including the expected rate of return for

private debt and equity), and major compensation events;

(C) a discussion of the benefits and costs associated with the allocation of risk;

(D) the determination of risk premiums assigned to various project delivery scenarios;

(E) assumptions about use, demand, and any user fee revenue generated by the project; and

(F) any externality benefits for the public generated by the project;

(4) a forecast of user fees and other revenues expected to be generated by the project, if applicable; and

(5) any other information the Secretary of Transportation determines to be appropriate.

(b) PROJECT DESCRIBED.—A project referred to in subsection (a) is a transportation project—

(1) with an estimated total cost of more than \$750,000,000;

(2) carried out—

(A) by a public entity that is a State, territory, Indian Tribe, unit of local government, transit agency, port authority, metropolitan planning organization, airport authority, or other political subdivision of a State or local government; and

(B) in a State in which there is in effect a State law authorizing the use and implementation of public-private partnerships for transportation projects; and

(3)(A) that intends to submit a letter of interest, or has submitted a letter of interest after the date of enactment of this Act, to be carried out with—(i) assistance under the TIFIA program under chapter 6 of title 23, United States Code; or (ii) assistance under the Railroad Rehabilitation and Improvement Financing Program of the Federal Railroad Administration established under chapter 224 of title 49, United States Code; and

(B) that is anticipated to generate user fees or other revenues that could support the capital and operating costs of such project.

(c) REPORTING REQUIREMENTS.—

(1) PROJECT REPORTS.—For each project described in subsection (b), the entity carrying out the project shall—

(A) include the results of the analysis under subsection (a) on the website of the project; and

(B) submit the results of the analysis to the Build America Bureau and the Secretary of Transportation.

(2) REPORT TO CONGRESS.—The Secretary of Transportation, in coordination with the Build America Bureau, shall, not later than 2 years after the date of enactment of this Act—

(A) compile the analyses submitted under paragraph (1)(B); and

(B) submit to Congress a report that—

(i) includes the analyses submitted under paragraph (1)(B);

(ii) describes—

(I) the use of private financing for projects described in subsection (b); and

(II) the costs and benefits of conducting a value for money analysis; and

(iii) identifies best practices for private financing of projects described in subsection (b).

(d) GUIDANCE.—The Secretary of Transportation, in coordination with the

Build America Bureau, shall issue guidance on performance benchmarks, risk premiums, and expected rates of return on private financing for projects described in subsection (b).

United States Code, Title 23, Section 106(h)

(h) Major Projects.—

(1) In general.—Notwithstanding any other provision of this section, a recipient of Federal financial assistance for a project under this title with an estimated total cost of \$500,000,000 or more, and recipients for such other projects as may be identified by the Secretary, shall submit to the Secretary for each project—

(A) a project management plan; and

(B) an annual financial plan, including a phasing plan when applicable.

(2) Project management plan.—A project management plan shall document—

(A) the procedures and processes that are in effect to provide timely information to the project decisionmakers to effectively manage the scope, costs, schedules, and quality of, and the Federal requirements applicable to, the project; and

(B) the role of the agency leadership and management team in the delivery of the project.

(3) Financial plan.—A financial plan—

(A) shall be based on detailed estimates of the cost to complete the project;

(B) shall provide for the annual submission of updates to the Secretary that are based on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project;

(C) may include a phasing plan that identifies fundable incremental improvements or phases that will address the purpose and the need of the project in the short term in the event there are insufficient financial resources to complete the entire project. If a phasing plan is adopted for a project pursuant to this section, the project shall be deemed to satisfy the fiscal constraint requirements in the statewide and metropolitan planning requirements in sections 134 and 135;

(D) for a project in which the project sponsor intends to carry out the project through a public-private partnership agreement, shall include a detailed value for money analysis or similar comparative analysis for the project; and

(E) shall assess the appropriateness of a public-private partnership to deliver the project.

United States Code, Title 49, Section 116(e)

(e) Innovative Financing Best Practices.—

(1) In general.—The Bureau shall work with the modal administrations within the Department, eligible entities, and other public and private interests to develop and promote best practices for innovative financing and public-private partnerships.

(2) Activities.—The Bureau shall carry out paragraph (1)—

(A) by making Federal credit assistance programs more accessible to eligible recipients;

(B) by providing advice and expertise to eligible entities that seek to leverage public and private funding;

(C) by sharing innovative financing best practices and case studies from eligible entities with other eligible entities that are interested in utilizing innovative financing methods; and

(D) by developing and monitoring—

(i) best practices with respect to standardized State public-private partnership authorities and practices, including best practices related to—

(I) accurate and reliable assumptions for analyzing public-private partnership procurements;

(II) procedures for the handling of unsolicited bids;

(III) policies with respect to noncompete clauses; and

(IV) other significant terms of public-private partnership procurements, as determined appropriate by the Bureau;

(ii) standard contracts for the most common types of public-private partnerships for transportation facilities; and

(iii) analytical tools and other techniques to aid eligible entities in determining the appropriate project delivery model, including a value for money analysis.

(3) Transparency.—The Bureau shall—

(A) ensure the transparency of a project receiving credit assistance under a program referred to in subsection (d)(1) and procured as a public-private partnership by—

(i) requiring the sponsor of the project to undergo a value for money analysis or a comparable analysis prior to deciding to advance the project as a public-private partnership;

(ii) requiring the analysis required under subparagraph (A), and other key terms of the relevant public-private partnership agreement, to be made publicly available by the project sponsor at an appropriate time;

(iii) not later than 3 years after the date of completion of the project, requiring the sponsor of the project to conduct a review regarding whether the private partner is meeting the terms of the relevant public-private partnership agreement; and

(iv) providing a publicly available summary of the total level of Federal assistance in such project; and

(B) develop guidance to implement this paragraph that takes into consideration variations in State and local laws and requirements related to public-private partnerships.

(4) Support to project sponsors.—At the request of an eligible entity, the Bureau shall provide technical assistance to the eligible entity regarding proposed public-private partnership agreements for transportation facilities, including assistance in performing a value for money analysis or comparable analysis.

Duane Callender,

Acting Executive Director, Build America Bureau.

[FR Doc. 2024–26210 Filed 11–12–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

RIN 1506–AB54

Agency Information Collection Activities; Proposed Collection; Comment Request; Real Estate Reports

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN invites all interested parties to comment on the proposed information collection associated with the requirement to report information about certain residential real estate transfers, as required by the Anti-Money Laundering Regulations for Residential Real Estate Transfers final rule published on August 29, 2024. The details included in the information collection are listed below. This request for comment is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before January 13, 2025.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal:* <http://www.regulations.gov/>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2024–0019 and the specific Office of Management and Budget (OMB) control number 1506–0080.

- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2024–0019 and OMB control number 1506–0080.

Please submit comments by one method only. Comments will be reviewed consistent with the Paperwork Reduction Act of 1995 (PRA) and applicable OMB regulations and guidance. Comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: FinCEN's Regulatory Support Section at 1–800–767–2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and

Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act)¹ and other legislation, including the Anti-Money Laundering Act of 2020 (AML Act).² The BSA is codified at 12 U.S.C. 1829b, 1951–1960 and 31 U.S.C. 5311–5314, 5316–5336, including notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury (Secretary) to, *inter alia*, require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, risk assessments or proceedings, or in the conduct of intelligence or counter-intelligence activities to protect against terrorism, and to implement anti-money laundering/countering the financing of terrorism (AML/CFT) programs and compliance procedures.³ The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.⁴

Among the financial institutions subject to these requirements are “persons involved in real estate closings and settlements.”⁵ In particular, section 5318(g) of the BSA authorizes the Secretary to require financial institutions to report, via Suspicious Activity Reports (SARs), any “suspicious transactions relevant to a possible violation of law or regulation.”⁶ However, the BSA affords the Secretary flexibility in implementing that requirement, and indeed directs the Secretary to consider “the means by or form in which the Secretary shall receive such reporting,” including the relevant “burdens imposed by such means or form of reporting,” “the efficiency of the means or form,” and the “benefits derived by the means or form of reporting.”⁷ A provision added to the BSA by section 6202 of the Anti-Money Laundering Act of 2020 (AML Act) further directs FinCEN to “establish streamlined . . .

processes to, as appropriate, permit the filing of noncomplex categories of reports of suspicious activity.” In assessing whether streamlined filing is appropriate, FinCEN must determine, among other things, that such reports would “reduce burdens imposed on persons required to report[.]” while at the same time “not diminish[ing] the usefulness of the reporting to Federal law enforcement agencies, national security officials, and the intelligence community in combating financial crime, including the financing of terrorism[.]”⁸

On August 29, 2024, FinCEN issued a final rule, “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” hereafter referred to as the Residential Real Estate Rule (RRE Rule).⁹ The RRE Rule requires certain persons involved in real estate closings and settlements (reporting persons) to submit reports to FinCEN and keep records on certain non-financed transfers of residential real property to specified legal entities and trusts on a nationwide basis. The reports are expected to curtail the ability of illicit actors to launder illicit proceeds anonymously through transfers of residential real property, which threatens U.S. economic and national security. More broadly, the reports are expected to assist the U.S. Department of the Treasury (Treasury), law enforcement, and national security agencies in addressing illicit finance vulnerabilities in the U.S. residential real estate sector. The rule describes the circumstances in which a report must be filed, who must file a report, what information must be provided, and when a report is due.

II. Paperwork Reduction Act of 1995¹⁰

FinCEN conducted certain supplemental analyses, which are discussed below, to estimate the incremental Paperwork Reduction Act (PRA) burden¹¹ attributable to the specifics of the proposed information collection associated with the RRE Rule, particularly those relating to the Real Estate Report (RER), including both the proposed data fields of the RER and the mechanism by which a RER would be submitted to FinCEN. Public comments

on this analysis, including relevant, readily generalizable data that would improve the accuracy of FinCEN’s estimates, are invited.

Title: Real Estate Reports.

OMB Control Number: 1506–0080.

Type of Collection: Revision.

Description: The RRE Rule imposes a new reporting and recordkeeping requirement on certain persons involved in real estate closings and settlements, or reporting persons, when they perform certain functions in relation to non-financed transfers of residential real property to a specified legal entity or a trust. The reports are to be filed electronically through an online interface using the same free system that other financial institutions required to file BSA reports use for purposes other than in connection with real estate transactions.¹² For some reporting persons, this system will already be familiar and ready for use as it is also the same filing system for submitting reports under geographic targeting orders relating to non-financed transfers of residential real estate (Residential Real Estate GTOs). Reporting persons who do not already use FinCEN’s BSA E-filing system will first need to enroll. The enrollment process for FinCEN’s BSA E-Filing System entails identifying the reporting person and assigning a designated Supervisory User.¹³ The Supervisory User is an individual who will facilitate the process of creating general user accounts for the reporting person’s other employees, if any, that may file RERs; the Supervisory User has access to system functionality not available to regular users, such as ability to update filing organization information and track the status of filings submitted by all users from across the organization. To file RERs through FinCEN’s BSA E-Filing System, individual users will be required to create a *login.gov* account (if they have not already done so for other purposes).¹⁴ Once the enrollment process has been completed, the BSA E-Filing System will provide three different filing options for RERs. Filers

¹ USA PATRIOT Act, Public Law 107–56, 115 Stat. 272 (2001).

² The AML Act was enacted as Division F, sections 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388.

³ See 31 U.S.C. 5311.

⁴ Treasury Order 180–01 (Jan. 14, 2020); see also 31 U.S.C. 310(b)(2)(i) (providing that FinCEN Director “[a]dminister the requirements of subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91–508, and section 21 of the Federal Deposit Insurance Act, to the extent delegated such authority by the Secretary.”).

⁵ See 31 U.S.C. 5312(a)(2)(U).

⁶ See 31 U.S.C. 5318(g)(1)(A).

⁷ See 31 U.S.C. 5318(g)(5)(B)(i)–(iii).

⁸ See AML Act, section 6202 (codified at 31 U.S.C. 5318(g)(D)(i)(1)).

⁹ FinCEN, Final Rule, “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” 89 FR 70258 (Aug. 29, 2024).

¹⁰ Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

¹¹ This is intended to include the “time, effort, or financial resources expended to generate, [. . .] or disclose or provide information to” FinCEN as required by the PRA. See Carey and Ortiz, “The Paperwork Reduction Act and Federal Collections of Information: A Brief Overview” (Apr. 17, 2024).

¹² Other BSA reports include, for example, Suspicious Activity Reports (SARs) and Reports of Foreign Bank and Financial Accounts (FBARs). See FinCEN, BSA E-Filing System, “Supported Forms”, available at <https://bsaeifiling.fincen.treas.gov/SupportedForms.html>.

¹³ If the enrolling party intends to be the sole user of the access being set up, there is no distinction between the person named as Supervisory User and the general user, and there would be only one account.

¹⁴ *Login.gov* is available at <https://www.login.gov/>. To create a *Login.gov* account, users will be required to provide an email address and a form of identification. BSA E-filing is available at <https://bsaeifiling.fincen.treas.gov>.

will file individual reports either through an online form or as a PDF form, or filers may file multiple reports through a user-developed automated interface.

The proposed RER contains 111 distinct fields, of which, FinCEN expects approximately 60 percent must be completed to report a given transfer per the requirements specified in the RRE rule.¹⁵ The form may require as few as approximately 40 fields to be completed, and FinCEN anticipates that significantly more fields may be required for certain highly complex reportable transfers, such as those with multiple beneficial owners or multiple sources of funds that would require the same fields to be populated for each owner or source of funds.

The effective date of the RRE Rule is December 1, 2025. As set forth in the rule, the RER must contain information about the person filing the report (the “reporting person”), the legal entity (the “transferee entity”) or trust (the “transferee trust”) receiving ownership of the property, the beneficial owners of the transferee entity or transferee trust, certain individuals signing documents on behalf of the transferee entity or transferee trust, the transferor (e.g., the seller), the property being transferred, and any payments made.¹⁶ The reporting person may reasonably rely on information obtained from others, absent knowledge of facts that would reasonably call into question the reliability of that information. For purposes of reporting beneficial ownership information in particular, a reporting person may reasonably rely on information obtained from a transferee or the transferee’s representative if the accuracy of the information is certified in writing to the best of the information provider’s own knowledge. The collected information will be maintained by FinCEN and made accessible to authorized users.

Report: Real Estate Report.

Affected Public: Residential Real Estate Settlement Agents, Title Insurance Carriers, Escrow Service Providers, Attorneys and Offices of

Attorneys, and Other Real Estate Professionals.

A. Respondent-Based Incremental Reporting Burdens

Estimated Number of Respondents: One per reportable transaction.

As explained in the RRE Rule, the reporting person for any transfer is one of a number of persons who perform specified roles in a given real estate closing and settlement, with the specific reporting person determined through a cascading approach, unless superseded by a designation agreement among persons in the reporting cascade.¹⁷ The reporting cascade is ordered by function performed or service provided, rather than by the defined primary occupations (i.e., job titles such as real estate agent) or categories of service providers (e.g., real estate lawyers), because the role of the reporting person provides more clarity about their placement in the reporting cascade rather than a job title or occupational category or similar attribute originally intended for census purposes.

To estimate the total number of respondents in the RRE Rule, FinCEN grouped potential reporting persons by features of their primary occupation and treated them as functionally distinct members of the cascade.¹⁸ In the final rule, FinCEN estimated that there may be up to approximately 172,753 reporting persons and 642,508 employees of those persons.¹⁹ While FinCEN continues to treat these estimates as an expected upper bound on the number of persons who could incur the reporting burden estimated in

this notice, it is likely that the number of reporting persons and affected employees that would in practice incur the full incremental burden estimated in this notice would be much lower. In its experience with the more limited Residential Real Estate GTOs, FinCEN data suggests that most reporting has been performed by a concentrated subset of the total population of potential reporting entities and that few identifiably unique individual employees per reporting person are associated with the reports filed.²⁰ For example, from the date of the first effective Residential Real Estate GTOs in March 2016 through the end of August 2024, FinCEN estimates that approximately 64 percent of all reports filed²¹ were submitted by the five largest title companies²² and an additional 8 percent, approximately, were filed by the remaining 15 of the 20 largest title companies.²³ The residual share of total reports filed were submitted by either smaller title companies or law offices, with an average filing volume of 16 GTO reports filed per remaining filer and an average of one identifiably distinct employee filer per reporting year per reporting entity. Consequently, a number of the incremental burden estimates presented below have been calculated over a smaller subpopulation of the total number of respondents as estimated in the RRE Rule.

Estimated Burden per Respondent: 50 minutes.²⁴

²⁰ See 31 U.S.C. 5326; 31 CFR 1010.370; Treasury Order 180–01 (Jan. 14, 2020), available at <https://home.treasury.gov/about/general-information/orders-and-directives/treasury-order-180-01>. In general, a GTO is an order administered by FinCEN which, for a finite period of time, imposes additional recordkeeping or reporting requirements on domestic financial institutions or other businesses in a given geographic area, based on a finding that the additional requirements are necessary to carry out the purposes of, or to prevent evasion of, the BSA. The statutory maximum duration of a GTO is 180 days unless further renewed. Since 2016, the Residential Real Estate GTOs have required certain title insurance companies to file reports and maintain records concerning non-financed purchases of residential real estate above a specific price threshold by certain legal entities in select metropolitan areas of the United States.

²¹ This includes both reports filed on Form 8300, which were originally required for reports filed by the Residential Real Estate GTOs, and on a Currency Transaction Report (CTR), which has been the required form for the GTOs since April 13, 2018. FinCEN has included GTO reports incorrectly filed using Form 8300 after April 13, 2018, in its analysis because they conceptually represent reporting activity undertaken regarding real estate transfers of interest.

²² As measured by market share at the end of calendar year 2022.

²³ *Id.*

²⁴ FinCEN bases this estimate on an expected average training time cost of 30 minutes for one

¹⁵ Because the requirement for certain fields to be populated is unique to the facts and circumstances of a given transfer, not all 111 original fields are relevant to each potential reportable transfer. However, due to the possibility that in some transfers, a single individual may perform more than one role, some fields might need to be completed more than once for the same individual, causing the number of fields completed in practice to exceed the percent of fields required to be completed for a given RER.

¹⁶ See FinCEN, Final Rule, “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” 89 FR 70258 (Aug. 29, 2024). See also Appendix.

¹⁷ The reporting cascade consists of a list of seven different functions that a real estate professional may perform in a transfer of residential real property, with the reporting obligation for any such transfer applying to the professional that performed a function that appears highest on the list. For example, the first function on the list is the professional listed as the agent on the closing or settlement statement. If no such professional is involved in the transfer, then the reporting obligation applies to any professional that performed the second function on the list (i.e., the professional that prepared the closing or settlement statement), and so on down the list. See FinCEN, Final Rule, “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” 89 FR 70258, 70290–70291 (Aug. 29, 2024).

¹⁸ Analysis of Residential Real Estate GTO filings to date illustrates certain potential limitations of this approach because it demonstrates that covered businesses under the GTO requirements (which are limited to title insurance agents), may function in a role other than their self-identified primary occupation. To illustrate, FinCEN notes that of the approximately 2,400 identifiably unique filers who submitted at least one Residential Real Estate GTO report through August 2024, approximately 38.4 percent self-identified as either primarily employed as an attorney or the employee of a law office.

¹⁹ See FinCEN, Final Rule, “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” 89 FR 70258, 70283 (Aug. 29, 2024).

FinCEN continues to acknowledge that some costs related to the proposed information collection may be independent of a potential respondent ever submitting an RER. These may be expected to include certain training and reporting mechanism-specific technology costs.

Training Costs

As in the regulatory impact analyses (RIAs) in both the February 2024 notice of proposed rulemaking (RRE NPRM) and the RRE Rule, FinCEN continues to expect that all potential reporting persons and at least some proportion of their respective employees, as a proper superset of all actual reporting persons, are likely to engage in some measure of preparatory training in advance of any instance in which a non-designatable reporting requirement is realized.²⁵ Unlike the RRE NPRM and RRE Rule however, FinCEN has considered it appropriate to include an incremental estimate of training costs as part of the PRA burden in this 60-day Notice. This is because training in how to complete and submit the RER itself represents an expenditure of resources without which it would not be possible to “disclose or provide information to”²⁶ FinCEN because the RER filing will be the only mechanism by which a reporting person may inform FinCEN of a reportable transfer.

The training burden contemplated in this notice is therefore intended to include an estimate of only the average expected reporting person’s necessary training specific to the completion of the RER in the format proposed, using the submission process anticipated to be adopted by such persons and their employees. It is intended to capture aspects of training distinct from, and complementary to, the broader training necessary to ensure adequate familiarity with the RRE Rule generally and a reporting person’s compliance policies and procedures specifically.²⁷

natural person per year and a one-time technology time cost of 1 hour, or 20 minutes per year for three years. FinCEN intends to request comment on filers’ realized technology costs and is prepared to further refine this estimate upon renewal of the OMB control number.

²⁵ See FinCEN, NPRM, “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” 89 FR 12424 (Feb. 16, 2024), and FinCEN, Final Rule, “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” 89 FR 70258 (Aug. 29, 2024).

²⁶ See *supra* note 11.

²⁷ As discussed in Section VI.A.4.a.i. of the RRE Rule, where the training burden was intended to capture “the costs of preparing informational material and training personnel about the proposed rule generally as well as certain firm-specific policies and procedures related to reporting, complying, and documenting compliance.”

In two rounds of FinCEN’s internal tests of user experience with the RER, participants with self-reported prior familiarity with the RRE Rule ranging from none to moderate were provided with 10 to 20 minutes of training and instruction on how to complete a RER before being provided with sample scenarios of varying complexity, which were then used to populate a simulated version of the report. Participants’ responses to a post-exercise survey reported that, conditional on adequate familiarity with the rule, 78.9 percent found the training time they were provided to be adequate, while 21.1 percent signaled that more training time would be needed, expressing a belief that a mean training time including 22 additional minutes would be necessary. Participants who reported that more training time than they received would be helpful did not perform meaningfully differently from participants who reported a belief that the training time they received was adequate. While participants who recommended longer training scored an average of 3.2 percentage points lower than other participants, this difference could not be determined to be statistically significant.

FinCEN took into consideration the results of its internal testing as well as certain comments received in response to the RRE NPRM that FinCEN’s estimates of training time needs were insufficient.²⁸ FinCEN continues to believe that these comments may have intended to include both form-specific and form-independent training and that its expectation that an average of 30 minutes per trained employee is necessary for report-specific training is consistent with both the results of its testing and public comments received.

Technology Costs

FinCEN recognizes that potential reporting persons may need or opt to incur certain technology related expenditures to facilitate their filing activity, and that these costs may vary by the format and filing mechanism choices of the individual business. As in the RRE NPRM and the RRE Rule, FinCEN continues to anticipate that most reporting persons will make use of the online form and PDF form options. FinCEN is continuing to not assign an incremental cost for use of technology that is already incorporated into the ordinary business operations of potential respondents. However,

²⁸ One commenter suggested FinCEN estimates should be increased by 45 minutes, another by 75 minutes, and a third suggested the training burden should be estimated at one hour per report filed (or 850,000 hours annually).

FinCEN is assigning a non-recurring time cost of one hour per respondent associated with setting up access and accounts in the BSA E-Filing System.²⁹

FinCEN is not including additional cost estimates at this time associated with adopting new technologies that would facilitate batch-filing because while Residential Real Estate GTO filers have had the option to file reports in batch format since 2018,³⁰ FinCEN has not yet received any reportable real estate transaction filings in batch format.³¹ FinCEN acknowledges that this may underestimate costs which, because of the difference in scale and scope of the reporting requirements under the RRE Rule from those under the Residential Real Estate GTOs, certain reporting persons may now find it more cost effective to invest in technological updates that would facilitate batch filing. To the extent that this may be the case, FinCEN is soliciting public comment, including information on the expected per business costs and the anticipated benefits of these technological investments.

B. Response-Based Incremental Reporting Burdens

Estimated Number of Responses:
850,000 per year.³²

As described in the RRE Rule, because the specific conditions under which a person in the reporting cascade becomes the reporting person for a reportable transfer and would consequently file the RER may depend on factors unique to the specific reportable transaction, FinCEN considers it more appropriate to assign the remainder of the estimated incremental burden associated with the proposed information collection on a

²⁹ For entities that have already set up access in the course of Residential Real Estate GTO reporting compliance, this burden can be alternatively interpreted as a 20 minute per year burden, over three years, associated with maintaining accounts. In FinCEN’s review of Residential Real Estate GTO filings, it appears that while certain filers have submitted reports in each of the past nine years, the individual user(s) submitting the filing does not remain the same for more than one or two years at a time.

³⁰ While it has been possible to batch file CTRs since May 18, 2017 (see FinCEN Currency Transaction Report (CTR) Electronic Filing Requirements (*treas.gov*)), Residential Real Estate GTOs originally required reports to be submitted using Form 8300 (see note 20), which did not have a batch-filing option until March 2019 (see XMLUserGuide_FinCEN8300.pdf (*treas.gov*)). This analysis therefore treats 2018 as the earliest year in which Residential Real Estate GTO filers would have been able to submit batch filings.

³¹ Data analyzed covers the period January 1, 2016, through August 31, 2024, and includes both Form 8300 and CTR GTO filings.

³² See FinCEN, Final Rule, “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” 89 FR 70258, 70277 (Aug. 29, 2024).

per response basis rather than on a per respondent basis.

Frequency of Response: Once per reportable transfer.³³

Estimated Incremental Time per Response: 15 minutes, or 0.25 hours.

In the RRE NPRM and the RRE Rule, FinCEN estimated that the reporting person would need an average of 2 hours per reportable transfer to collect and review transferee and transfer-specific reportable information and related documents, and an average of 30 minutes in additional time to complete and submit a RER. In providing this notice in connection with the proposed RER, FinCEN considered whether any elements of the specific format of the proposed RER and the proposed available variations in format and filing mechanisms might reasonably be expected to increase the previously estimated reporting burden. Similarly, FinCEN conducted internal testing that simulated the use of the proposed report to assess whether time in excess of the originally budgeted 30 minutes to file a report might be systematically necessary to represent the expected average completion and review needed to submit a RER.

Based on its two rounds of internal testing, FinCEN observed that the originally budgeted 30 minutes was generally sufficient insofar as the participants' self-reported time used to complete a RER for a transfer of low-complexity³⁴ was approximately 27 minutes on average. However, the average error rate in low-complexity responses was approximately 10 percent. Additionally, the average self-reported time needed to complete a high-complexity RER was 9 minutes longer than for a low-complexity RER and the average error rate was

approximately 6 percentage points higher. While there are certain limitations to the generalizability of FinCEN's internal testing, the results suggest that to incorporate sufficient time for reporting persons to review completed RERs for accuracy before submission and to account for the additional fields that must be completed and reviewed for transfers of higher complexity, the originally budgeted 30 minutes may be insufficient. FinCEN is revising its estimated time upward by 15 minutes, on average, per response to account for the time needed for variation in transfer complexity and the review of completed RERs.

C. Total Incremental Reporting Burden Estimates

Estimated Total Incremental Reporting Burden Hours: 356,461 hours.³⁵

Estimated Reporting Burden Hours in the RRE Rule: In the RRE Rule, FinCEN estimated that up to a maximum number of four non-reporting persons could be expected to incur a 15-minute reporting burden and that the reporting person who files a Real Estate Report that is also a party to a designation agreement would incur a three-hour reporting burden. In total, FinCEN estimated a PRA reporting and recordkeeping burden of 4,604,167 hours annually.

Revised Estimate of Total Burden Hours: The supplemental burden hour estimated in this notice is 50 minutes per potential respondent and 15 minutes per response per year, or approximately 356,461 hours in total, which would increase the total PRA burden associated with Anti-Money Laundering Regulations for Residential Real Estate Transfers under OMB control number 1506–0080 by approximately 7.7 percent from 4,604,167 to 4,960,628 hours.

Estimated Total Incremental Reporting Cost: \$45,324,233.33.³⁶

³⁵ This estimate includes an expected respondent-based incremental burden of 0.83 hours per potential reporting person (172,753) and a response-based incremental burden of 0.25 hours per response (850,000). The total is rounded to the nearest whole hour.

³⁶ This estimate includes an expected respondent-based incremental burden of \$12,709,733.33 and a response-based incremental burden of \$32,614,500.00 (using the same conservative assumptions as in the RRE Rule PRA).

Estimated Reporting Cost in the RRE Rule: Based on the range of expected reportable transfers and the wages associated with different persons in the potential reporting cascade in the RRE Rule, FinCEN anticipated that the rule's reporting costs may be between approximately \$174.6 million and \$466.5 million. In total, FinCEN estimated a PRA reporting and recordkeeping burden of up to approximately \$630,976,662.47.

Revised Estimate of Total Burden Cost: The supplemental reporting cost estimated in this notice is \$45,324,233.33, which would increase the total PRA burden associated with Anti-Money Laundering Regulations for Residential Real Estate Transfers under OMB control number 1506–0080 by approximately 7.2 percent from \$630,976,662.47 to \$676,300,895.80.

Request for Comments

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. Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

(Authority: 44 U.S.C. 3501 *et seq.*)

Andrea M. Gacki,
Director, Financial Crimes Enforcement Network.

Appendix—Real Estate Report Summary of Data Fields

BILLING CODE 4810–02–P

³³ While FinCEN anticipates that some reported transfers may subsequently require amendment or revision, it is not inclined to speculate at this time on the potential future rate of refiling. Additionally, because FinCEN is revising its estimated time burden associated with RER completion in this notice to account for time reporting persons may need to review and revise reports before submission, this should correspond to a reduced need for additional filings per reportable transfer. FinCEN intends to review the inflow of filings to assess the realized volume of amendment filings and is prepared to further refine this estimate upon renewal of the OMB control-number.

³⁴ In FinCEN's internal testing, complexity represents the number of informational units that the study-participant would be required to report in the fields of the simulated RER.

NOTE:

Fields with an asterisk (*) symbol are required by default (*i.e.*, in the report's initial state, fields with an asterisk symbol must contain an entry); however, field requirements may change based on certain data entry conditions (as noted in *italic text* throughout this document). Data entry conditions may also result in fields becoming non-required or disabled/not applicable. That fields are not labeled with an asterisk does not imply that they are optional; rather, all fields must contain a valid entity if the data is available (unless otherwise directed by FinCEN).

Filing Information

1. *Type of filing (*select one*)
 - a. Initial report
 - b. Correct/Amend prior report
 - i. BSA Identifier (BSA ID) of/associated with the prior report
(*If Correct/Amend prior report is selected, the BSA ID assigned to the previously filed report must be entered; otherwise, must be blank.*)
 - c. FinCEN directed back-filing
(*Select only if FinCEN directs the reporting person to file the report for a reportable transfer that was not previously reported.*)
2. *Date prepared
(*This is the date on which the report preparation is complete and it is ready for submission to FinCEN.*)
3. Note to FinCEN
(*Must be blank unless otherwise directed by FinCEN*)

Part I. Reporting Person Information

The report must include information about the reporting person as determined according to 31 CFR 1031.320(c). Only one reporting person may be recorded.

4. *Reporting Person category (*select one*)
 - a. Person listed as closing or settlement agent on the closing or settlement statement for the transfer
 - b. Person that prepares the closing or settlement statement for the transfer
 - c. Person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property
 - d. Person that underwrites an owner's title insurance policy for the transferee with respect to the transferred residential real property
 - e. Person that disburses in any form the greatest amount of funds in connection with the residential real property transfer
 - f. Person that provides an evaluation of the status of the title
 - g. Person that prepares the deed or any other legal instrument that transfers ownership of the residential real property
5. *Reporting person's last name if an individual or legal name if an entity
6. Entity (*checkbox indicator*)
(*Select if the reporting person is an entity; as a result, first/middle/suffix name must be blank.*)
7. *First name
8. Middle name
9. Suffix
10. *Street address – number, street, and apt. or suite no.
(*Enter the reporting person's principal place of business in the United States.*)
11. *City
12. *U.S. or U.S. Territory
13. *State or U.S. Territory
(*If a U.S. Territory is selected in prior field, the same U.S. Territory will auto-populate in this field.*)
14. *ZIP code
15. *Date of closing

Part II. Property Information

The report must include information about the property involved in the reportable transfer. Multiple properties may be recorded, in which case Part II of the report will repeat for each property.

16. *Street address – number, street, and apt. or suite no.

a. No street address (*checkbox indicator*)

(*Select if there is no street address for this property; as a result, only this field will be blank for the property address.*)

17. *City

18. *U.S. or U.S. Territory

19. *State or U.S. Territory

(*If a U.S. Territory is selected in prior field, the same U.S. Territory will auto-populate in this field.*)

20. *ZIP code

21. *Legal description type (*select one*)

a. Lot and block

b. Subdivision

c. Government rectangular survey system

d. Metes and bounds

e. Other | Description

(*If “Other” is selected, the type must be described.*)

22. *Legal description

(*Enter the legal description of the property verbatim from the relevant deed.*)

Part III. Transferee Information

The report must include information about the transferee entity and/or trust involved. Multiple transferees may be recorded, in which case Part III of the report will repeat for each transferee entity or trust.

23. *Transferee type (*select one*)
- a. Transferee Entity
 - b. Transferee Trust
24. *Legal name
(*Enter the full legal name of the transferee entity or full legal name of the transferee trust, such as the full title of the agreement establishing the trust.*)
25. Alternate name (if any.)
(*Enter the trade name or "doing business as name." This field applies to a transferee entity only.*)
26. *Total consideration paid or to be paid, by or on behalf of this transferee (in U.S. dollars.)
- a. No consideration paid (*checkbox indicator*)
(*Select if there was no consideration paid by or on behalf of this transferee entity or trust; as a result, total consideration paid above must be blank.*)
27. Foreign principal place of business with no U.S. location (*checkbox indicator*)
(*This field may be selected for a transferee entity only. Select if the entity's principal place of business is not in the United States and there is no U.S. location where business is conducted; as a result, only the entity's foreign principal place of business address is recorded below.*)
28. Address type (*select one; this may contain an entry for a transferee entity only*)
- a. Principal place of business (U.S.)
(*Select if the entity's principal place of business is in the United States and record the address as the only address for the entity.*)
 - b. Foreign principal place of business (non-U.S.)
(*Select if the entity's principal place of business is not in the United States and record the non-U.S. address below. If the entity has a primary location in the United States where it conducts business, a second set of address fields must be recorded by selecting the address type: -c- Primary U.S. location where entity conducts business.*)
 - c. Primary U.S. location where entity conducts business
(*Select if the entity has a primary location in the United States where it conducts business in addition to the recorded foreign principal place of business. This selection can only be made when the principal place of business is not in the United States.*)
29. *Street address – number, street, and apt. or suite no.
(*This field, along with the address fields below, may contain an entry for a transferee entity only. Enter the principal place of business and, if applicable, the primary U.S. location. If such principal place of business is not in the United States, record the foreign address of the principal place of business and then add a second set of address fields to record the primary location in the United States where the transferee entity conducts business, if any.*)
30. *City
31. *Country/Jurisdiction
32. *State or U.S. Territory
(*If a U.S. Territory is selected in prior field, the same U.S. Territory will auto-populate in this field.*)
33. *ZIP/Foreign postal code

34. *Type of unique identifying number (*select one*)
- a. EIN
 - b. SSN-ITIN
 - c. Foreign tax identification number
 - d. Foreign entity registration number
(*This type of unique identifying number may be selected for a transferee entity only.*)
 - e. No identification
(*Select if the transferee entity/trust does not have any of the above types of unique identifying numbers; as a result, unique identifying number and issuing jurisdiction must be blank.*)
35. *Unique identifying number
36. Issuing jurisdiction (if foreign)
(*If a foreign tax identification number or foreign entity registration number is selected above, the foreign issuing jurisdiction must be entered; otherwise, this field must be blank.*)
37. *Date trust instrument was executed
(*This field is applicable only for a transferee trust.*)
38. Revocable trust (*checkbox indicator*)
(*This field is applicable only for a transferee trust. Select if the trust is revocable or leave blank if it is not.*)

Person(s) associated with this Transferee

The report must include information about the person(s) associated with each recorded transferee. Multiple persons may be recorded per transferee. The same person may be reportable in more than one category of associated person, as both a beneficial owner and a signing individual.

The following guidelines apply when recording the person(s) associated with the transferee:

- ❖ For each recorded transferee entity:
 - One or more beneficial owners, or parent/guardian of a beneficial owner minor child, must be recorded.
 - One or more signing individuals must be recorded (if any) must be recorded.
- ❖ For each recorded transferee trust:
 - One or more beneficial owners (if any), or parent/guardian of a beneficial owner minor child where the child is a beneficial owner of the trust indirectly through a legal entity, must be recorded.
 - One or more signing individuals (if any) must be recorded.
 - One or more trustees, limited to trustees that are legal entities (if any), must be recorded – NOTE: A trustee that is an individual is considered to be a beneficial owner of the transferee trust for the purposes of this report; therefore, they should be recorded as a beneficial owner. If a trustee is a legal entity (reported here as a trustee that is a legal entity) or a trust, a beneficial owner of that legal entity or trust is considered to be a beneficial owner of the transferee trust.

39. *Person type (*select one*)
- a. Beneficial Owner
 - b. Signing Individual
 - c. Trustee that is a Legal Entity

40. Parent/guardian information instead of minor child *(checkbox indicator)*
(Select if the person type is beneficial owner and the parent/guardian of the beneficial owner minor child is being recorded instead of the minor child; otherwise, this field must be blank)
41. *Last name or entity legal name of person associated with this transferee
(Enter the last name of the beneficial owner / signing individual, or the full legal name of the trustee that is a legal entity)
42. Alternate name (if any)
(This field applies to a trustee that is a legal entity only.)
43. *First name
(This field applies to a beneficial owner / signing individual only.)
44. Middle name
(This field applies to a beneficial owner / signing individual only.)
45. Suffix
(This field applies to a beneficial owner / signing individual only.)
46. *Date of birth
(This field applies to a beneficial owner / signing individual only.)
47. Foreign principal place of business with no U.S. location *(checkbox indicator)*
(This field may be selected for a trustee that is a legal entity only. Select if the entity's principal place of business is not in the United States and there is no U.S. location where business is conducted; as a result, only the entity's foreign principal place of business address is recorded below.)
48. Address type *(select one; this field applies to a trustee that is a legal entity and must contain an entry)*
 - a. Principal place of business (U.S.)
(Select if the entity's principal place of business is in the United States and record the address as the only address for the entity.)
 - b. Foreign principal place of business (non-U.S.)
(Select if the entity's principal place of business is not in the United States and record the non-U.S. address below. If the entity has a primary location in the United States where it conducts business, a second set of address fields must be recorded by selecting the address type: -c- Primary U.S. location where entity conducts business.)
 - c. Primary U.S. location where entity conducts business
(Select if the entity has a primary location in the United States where it conducts business in addition to the recorded foreign principal place of business. This selection can only be made when the principal place of business is not in the United States.)
49. *Street address – number, street, and apt. or suite no.
(If the person recorded is a beneficial owner or signing individual, enter current residential address. If the person recorded is a trustee that is a legal entity, enter the principal place of business and, if applicable, the primary U.S. location. If such principal place of business is not in the United States, record the foreign address here and then add a second set of address fields to record the primary location in the United States where the transferee entity conducts business, if any.)
50. *City
51. *Country/Jurisdiction
52. *State or U.S. Territory
53. *ZIP/Foreign postal code
54. * Type of unique identifying number *(select one)*

- a. EIN
 - b. SSN-ITIN
 - c. Foreign tax identification number
 - d. Foreign passport
(This type of unique identifying number may be selected for a beneficial owner / signing individual only.)
 - e. Foreign entity registration number
(This type of unique identifying number may be selected for a trustee that is a legal entity only.)
 - f. No identification
(Select if the trustee that is a legal entity does not have any of the above types of unique identifying numbers; as a result, unique identifying number and issuing jurisdiction must be blank.)
55. * Unique identifying number
56. Issuing jurisdiction (if foreign)
(If a foreign tax identification number, foreign passport, or foreign entity registration number is selected above, the foreign issuing jurisdiction must be entered; otherwise, this field must be blank.)
57. Beneficial Owner category
(This field applies to a beneficial owner associated with a transferee trust only. Select all that apply.)
- a. An individual who is a trustee of the transferee trust
 - b. An individual other than a trustee with the authority to dispose of transferee trust assets
 - c. A beneficiary who is the sole permissible recipient of income and principal from the transferee trust or who has the right to demand a distribution of, or withdraw, substantially all of the assets from the transferee trust
 - d. A grantor or settlor who has the right to revoke the transferee trust or otherwise withdraw the assets of the transferee trust
 - e. A beneficial owner of a legal entity or trust that is a trustee of the transferee trust
 - f. A beneficial owner of a legal entity or trust with authority to dispose of transferee trust assets in a manner other than as a trustee of a transferee trust
 - g. A beneficial owner of a legal entity or trust that is the sole permissible recipient of income and principal from the transferee trust or who has the right to demand a distribution of, or withdraw, substantially all of the assets from the transferee trust
 - h. A beneficial owner of legal entity or trust that is a grantor or settlor with the right to revoke the transferee trust or otherwise withdraw the assets of the transferee trust
58. Country/Jurisdiction of citizenship
(Select all that apply for the beneficial owner.)
59. Authorization capacity description *(select one for the signing individual).*
- a. Employee
 - b. Agent
 - c. Partner
 - d. Officer
 - e. Counsel
 - f. Trustee
 - g. Other | Description
(If "Other" is selected, a description must be entered.)
60. Name of employer, principal, partnership, etc.
(Enter for signing individual unless authorization capacity above is "Other" in which case this field may be blank.)

Part IV. Transferor Information

The report must include information about the transferor individual, entity, and/or trust involved in the reportable transfer. Multiple transferors may be recorded, in which case Part IV of the report will repeat for each transferor.

61. If transferor is not an individual, select the appropriate option
(By default, the transferor is considered an individual; otherwise, one of the below values must be selected.)
 - a. Transferor Entity
 - b. Transferor Trust
62. *Transferor's last name if an individual or legal name if an entity
(Enter the transferor's last name if an individual, full legal name if a legal entity, or full legal name, such as the full title of the agreement establishing the trust, if a trust.)
63. Alternate name (if any)
(This field applies to a transferor entity only.)
64. *First name
(This field applies to a transferor individual only.)
65. Middle name
(This field applies to a transferor individual only.)
66. Suffix
(This field applies to a transferor individual only.)
67. *Date of birth
(This field applies to a transferor individual only.)
68. Foreign principal place of business with no U.S. location *(checkbox indicator)*
(This field may be selected for a transferor entity only. Select if the entity's principal place of business is not in the United States and there is no U.S. location where business is conducted; as a result, only the entity's foreign principal place of business address is recorded below.)
69. Address type *(select one; this field applies to a transferor entity and must contain an entry)*
 - a. Principal place of business (U.S.)
(Select if the entity's principal place of business is in the United States and record the address as the only address for the entity.)
 - b. Foreign principal place of business (non-U.S.)
(Select if the entity's principal place of business is not in the United States and record the non-U.S. address below. If the entity has a primary location in the United States where it conducts business, a second set of address fields must be recorded where the address type selected is -c- Primary U.S. location where business is conducted.)
 - c. Primary U.S. location where business is conducted
(Select if the entity has a primary location in the United States where it conducts business in addition to the recorded foreign principal place of business. This selection can only be made when the principal place of business is not in the United States.)
70. *Street address – number, street, and apt. or suite no.
(If the transferor is an individual, enter current residential address. If the transferor is an entity, enter the principal place of business and, if applicable, the primary U.S. location. If such principal place of business is not in the United States, record the foreign address here and then add a second set of address fields to record the primary location in the United States where the transferee entity conducts business, if any.)

-
71. *City
72. *Country/Jurisdiction
73. *State or U.S. Territory
74. *ZIP/Foreign postal code
75. * Type of unique identifying number *(select one)*
- a. EIN
 - b. SSN-ITIN
 - c. Foreign tax identification number
 - d. Foreign passport
(This type of unique identifying number may be selected for a transferor individual only.)
 - e. Foreign entity registration number
(This type of unique identifying number may be selected for a transferor entity only.)
 - f. No identification
(Select if the transferor entity or trust does not have any of the above types of unique identifying numbers; as a result, unique identifying number and issuing jurisdiction must be blank.)
76. *Unique identifying number
77. Issuing jurisdiction (if foreign)
(If a foreign tax identification number, foreign passport, or foreign entity registration number is selected above, the foreign issuing jurisdiction must be entered; otherwise, this field must be blank.)
78. *Date trust instrument was executed
(This field applies to a transferor trust only.)

If the Transferor is a trust, then record the Trustee(s)

The report must include information about the trustee(s) of each recorded transferor trust. Multiple trustees may be recorded per transferor trust.

79. *Trustee's last name, if an individual or legal name if an entity
80. Entity *(checkbox indicator)*
(Select if the trustee is an entity; as a result, first/middle/suffix name and date of birth must be blank.)
81. Alternate name (if any)
(This field applies to a trustee entity only.)
82. *First name
(This field applies to a trustee individual only.)
83. Middle name
(This field applies to a trustee individual only.)
84. Suffix
(This field applies to a trustee individual only.)
85. Foreign principal place of business with no U.S. location *(checkbox indicator)*
(This field may be selected for a trustee entity only. Select if the entity's principal place of business is not in the United States and there is no U.S. location where business is conducted; as a result, only the entity's foreign principal place of business address is recorded below.)
86. Address type *(select one; this field applies to a trustee entity and must contain an entry)*

- a. Principal place of business (U.S.)
(Select if the entity's principal place of business is in the United States and record the address as the only address for the entity)
 - b. Foreign principal place of business (non-U.S.)
(Select if the entity's principal place of business is not in the United States and record the non-U.S. address below. If the entity has a primary location in the United States where it conducts business, a second set of address fields must be recorded where the address type selected is -c- Primary U.S. location where business is conducted.)
 - c. Primary U.S. location where business is conducted
(Select if the entity has a primary location in the United States where it conducts business in addition to the recorded foreign principal place of business. This selection can only be made when the principal place of business is not in the United States.)
87. *Street address – number, street, and apt. or suite no.
(If the trustee is an individual, enter current residential address. If the trustee is an entity, enter the principal place of business and, if applicable, the primary U.S. location. If such principal place of business is not in the United States, record the foreign address here and then add a second set of address fields to record the primary location in the United States where the transferee entity conducts business, if any.)
88. *City
89. *Country/Jurisdiction
90. *State or U.S. Territory
91. *ZIP/Foreign postal code
92. * Type of unique identifying number *(select one)*
- a. EIN
 - b. SSN-ITIN
 - c. Foreign tax identification number
 - d. Foreign passport
(This type of unique identifying number may be selected for a trustee individual only)
 - e. Foreign entity registration number
(This type of unique identifying number may be selected for a trustee entity only)
 - f. No identification
(Select if the trustee entity does not have any of the above types of unique identifying numbers; as a result, unique identifying number and issuing jurisdiction must be blank.)
93. *Unique identifying number
94. Issuing jurisdiction (if foreign)
(If a foreign tax identification number, foreign passport, or foreign entity registration number is selected above, the foreign issuing jurisdiction must be entered; otherwise, this field must be blank.)

Part V. Payment Information

The report must include information about the total consideration paid for the reportable transfer as well as each payment made by or on behalf of each recorded transferee entity/trust.

95. *Total consideration paid or to be paid for the transfer by all transferees, including transferees not reportable in Part III (in U.S. dollars).
- a. No consideration paid (*checkbox indicator*)
(*Select if there is no paid consideration associated with the transfer; such as in the case of a non-sale transfer; as a result, the above total consideration paid field along with all remaining fields in the section must be blank.*)
96. Hard money, private, or other similar loans involved in reportable transfer
(*Select if the buyer is using credit extended by a person that is not a financial institution with an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under Chapter X of Subtitle B of Title 31 of the Code of Federal Regulations; as a result, the type of credit must be entered below*)
97. Type of hard money, private, and other similar loans (*select one*)
- a. Hard money
b. Private money
c. Seller financed
d. Other | Description
(*If "Other" is selected, a description must be entered.*)

Payment made by or on behalf of the Transferee entity/trust

The report must include information about each payment made by or on behalf of each recorded transferee entity/trust; however, this section must be blank when "No consideration paid" is indicated above for the transfer. Multiple payments may be recorded.

98. *Payment amount (in U.S. dollars.)
99. *Payment method
- a. Wire
b. Cashier's check
c. Personal/Business check
d. Money order
e. U.S. currency
f. Foreign currency
g. Digital assets
h. Stocks/Bonds
i. Other | Description
(*If "Other" is selected, a description must be entered.*)
100. If foreign payment method, select currency code
(*Select the currency code from the ISO-4217 currency code list when foreign currency payment method is selected above. If the appropriate foreign currency code is not found in this list, enter a description, such as the currency name and issuing country/jurisdiction name, below.*)
- a. If the foreign currency code is not listed above, enter description
101. Payment not from financial institution account
(*Select if the recorded payment did not originate from an account held at a financial institution; as a result, account number and financial institution legal name must be blank.*)
102. *Account number

103. *Financial institution legal name
104. Payment associated with all recorded transferees
(Select if the recorded payment is associated with all recorded transferee entities and trusts; as a result, the "Associated Transferee legal name" must be blank.)
105. *Associated transferee legal name
(Enter the full legal name of the recorded transferee entity or trust that is associated with this payment. If more than one recorded transferee is associated with this payment, add multiples of this field to record each associated transferee legal name. If this payment is associated with all recorded transferees, leave this field blank and select "Payment associated with all recorded Transferees" above.)
106. All payors are recorded transferees (checkbox indicator)
(Select if this payment only involved payors that are the above recorded transferee entities or trusts. If not selected, the name of the payor(s) must be entered in the fields below.)
107. *Payor's last name if an individual or legal name if an entity
(Enter the last name of the payor if an individual or the legal name of the payor if an entity. Record multiple payors by adding additional sets of payor name fields.)
108. Entity (checkbox indicator)
(Select if the payor is an entity; as a result, first/middle/suffix name must be blank)
109. *First name
110. Middle name
111. Suffix

[FR Doc. 2024-26262 Filed 11-12-24; 8:45 am]

BILLING CODE 4810-02-C

UNITED STATES SENTENCING COMMISSION

Requests for Applications; Practitioners Advisory Group

AGENCY: United States Sentencing Commission.

ACTION: Notice.

SUMMARY: The United States Sentencing Commission is issuing this notice to advise the public that the application period for membership for the First Circuit in the Practitioners Advisory Group has been extended to December 2, 2024. The deadline was originally October 14, 2024. An applicant for voting membership for the First Circuit of the Practitioners Advisory Group should apply by sending a letter of interest and resume to the Commission as indicated in the **ADDRESSES** section below.

DATES: Application materials for voting membership of the Practitioners Advisory Group should be received not later than December 2, 2024.

ADDRESSES: An applicant for voting membership of the Practitioners Advisory Group should apply by

sending a letter of interest and resume to the Commission by electronic mail or regular mail. The email address is pubaffairs@ussc.gov. The regular mail address is United States Sentencing Commission, One Columbus Circle NE, Suite 2-500, South Lobby, Washington, DC 20002-8002, Attention: Public Affairs—PAG Membership.

FOR FURTHER INFORMATION CONTACT: Jennifer Dukes, Senior Public Affairs Specialist, (202) 502-4597. More information about the Practitioners Advisory Group is available on the Commission's website at www.ussc.gov/advisory-groups.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The Practitioners Advisory Group is a standing advisory group of the United States Sentencing Commission

established pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the advisory group, the purpose of the advisory group is (1) to assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments; (3) to disseminate to defense attorneys, and to other professionals in the defense community, information regarding federal sentencing issues; and (4) to perform other related functions as the Commission requests. The advisory group consists of not more than 17 voting members, each of whom may serve not more than two consecutive three-year terms. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members.

To be eligible to serve as a voting member, an individual must be an attorney who (1) devotes a substantial portion of his or her professional work to advocating the interests of privately-represented individuals, or of individuals represented by private

practitioners through appointment under the Criminal Justice Act of 1964, within the federal criminal justice system; (2) has significant experience with federal sentencing or post-conviction issues related to criminal sentences; and (3) is in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. Additionally, to be eligible to serve as a circuit member, the individual's primary place of business or a substantial portion of his or her practice must be in the circuit concerned. Each voting member is appointed by the Commission.

The Commission issued a notice inviting eligible individuals to apply for membership of the Practitioners Advisory Group on August 14, 2024 (*see* 89 FR 66178) in view of vacancies in two circuit memberships (for the First and Eleventh Circuits) and one at-large membership. The deadline was originally October 14, 2024, but is now extended to December 2, 2024, for individuals applying for the First Circuit membership of the Practitioners Advisory Group. This application period is extended to ensure sufficient time for any eligible individual to apply. An applicant for voting membership for the First Circuit of the Practitioners Advisory Group should apply by sending a letter of interest and a resume to the Commission as indicated in the **ADDRESSES** section above.

Authority: 28 U.S.C. 994(a), (o), (p), 995; USSC Rules of Practice and Procedure 2.2(c), 5.4.

Carlton W. Reeves,
Chair.

[FR Doc. 2024-26219 Filed 11-12-24; 8:45 am]

BILLING CODE 2210-40-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0757]

Agency Information Collection Activity: Supportive Services for Veteran Families (SSVF) Program— Grant Application, Survey and Report

AGENCY: Veterans Health
Administration, Department of Veterans
Affairs.

ACTION: Notice.

SUMMARY: Veterans Health
Administration, Department of Veterans
Affairs (VA), is announcing an
opportunity for public comment on the
proposed collection of certain
information by the agency. Under the
Paperwork Reduction Act (PRA) of
1995, Federal agencies are required to

publish notice in the **Federal Register**
concerning each proposed collection of
information, including each proposed
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 January 13, 2025.

ADDRESSES: Comments must be
submitted through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Program-Specific information:

Rebecca Mimmall, 202-695-9434,
vhacopra@va.gov.

VA PRA information: Maribel Aponte,
202-461-8900, vacopaperworkreduct@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, VHA invites
comments on: (1) whether the proposed
collection of information is necessary
for the proper performance of VHA's
functions, including whether the
information will have practical utility;
(2) the accuracy of VHA'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: Supportive Services for Veteran
Families (SSVF) Program—Grant
Application, Survey and Report (VA
Forms 10-10072, 10-10072a, 10-10072b
and 10-10072c).

OMB Control Number: 2900-0757.
[https://www.reginfo.gov/public/do/
PRASearch](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: Consistent with the
Financial Assistance for Supportive
Services Act (38 U.S.C. 2044), the
purpose of the Supportive Services for
Veteran Families (SSVF) Program is to
provide supportive services grants to
private non-profit organizations and
consumer cooperatives who will
coordinate or provide supportive
services to very low-income veteran
families who are residing in permanent
housing, are homeless and scheduled to

become residents of permanent housing
within a specified time period, or after
exiting permanent housing, are seeking
other housing that is responsive to such
very low-income veteran family needs
and preferences. The following VA
forms are included in this collection: 1.
Application for Supportive Services
Grants, VA Form 10-10072; 2.
Participant Satisfaction Survey, VA
Form 10-10072a; 3. Quarterly Grantee
Performance Report, VA Form 10-
10072b; and 4. Renewal Application,
VA Form 10-10072c. The information
collected will be used by the SSVF
Program Office to determine the
allocation of grant funds under the
SSVF Program. This collection has a
reduction in the number of responses
and burden hours because the SSVF
Program no longer requires a pre-service
survey, but SSVF will continue to
administer an exit Participant
Satisfaction Survey.

Total Annual Burden: 22,693 hours.

Total Annual Responses: 13,230.

VA Form 10-10072

Affected Public: Individuals or
Households.

Estimated Annual Burden: 14,000
hours.

**Estimated Average Burden per
Respondent:** 2100 minutes.

Frequency of Response: Once
annually.

Estimated Number of Respondents:
400.

VA Form 10-10072a

Affected Public: Individuals or
Households.

Estimated Annual Burden: 2,813
hours.

**Estimated Average Burden per
Respondent:** 15 minutes.

Frequency of Response: Once
annually.

Estimated Number of Respondents:
11,250.

VA Form 10-10072b

Affected Public: Individuals or
Households.

Estimated Annual Burden: 2,880
hours.

**Estimated Average Burden per
Respondent:** 135 minutes.

Frequency of Response: Once
annually.

Estimated Number of Respondents:
320.

VA Form 10-10072c

Affected Public: Individuals or
Households.

Estimated Annual Burden: 3,000
hours.

**Estimated Average Burden per
Respondent:** 600 minutes.

Frequency of Response: Once annually.
Estimated Number of Respondents: 300.
(Authority: 44 U.S.C. 3501 *et seq.*)

Dorothy Glasgow,
VA PRA Clearance Officer, (Alt.), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.
[FR Doc. 2024–26269 Filed 11–12–24; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

meeting on December 3–5, 2024. The meeting will begin and ends as follows:

Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the Advisory Committee on Women Veterans will conduct a virtual

Date	Time	Location
December 3, 2024	1 p.m.–4 p.m. eastern standard time (EST)	WEBEX link and call-in information below.
December 4, 2024	1 p.m.–4:30 p.m. (EST)	WEBEX link and call-in information below.
December 5, 2024	1 p.m.–4 p.m. (EST)	WEBEX link and call-in information below.

The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

On Tuesday, December 3, 2024, the agenda includes updates on Veterans Health Administration initiatives, and full committee discussion on 2018 report recommendations.

On Wednesday, December 4, 2024, the Committee will receive updates from the Veterans Health Administration and the Veterans Benefits Administration, and will have full committee discussion on 2020 report recommendations.

On Thursday, December 5, 2024, the Committee will receive updates from the Veterans Health Administration, and conduct a full committee discussion on the status of 2022 report recommendations. Time will also be allotted for the public to provide oral comments starting at 3:30 p.m. and ending no later than 4 p.m. EST. The comment period may end sooner, if there are no comments presented or they are exhausted before the end time. Individuals interested in providing comments during the public comment period are allowed no more than three minutes for their statements.

Those who want to submit written statements for the Committee’s review

should submit them to the Center for Women Veterans at 00W@mail.va.gov no later than November 21, 2024. Any member of the public who wishes to participate virtually may use the following access information: (<https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m97ca3736b9a0fc71af05a4a956c51bbe>); meeting number: 2829 196 4414; password: btJWhnm@226. Join by phone at 1–404–397–1596 (USA toll number); Access code: 2829 196 4414.

Dated: November 7, 2024.

Jelessa M. Burney,
Federal Advisory Committee Management Officer.
[FR Doc. 2024–26237 Filed 11–12–24; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Department of Veterans Affairs National Academic Affiliations Council, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the VA National Academic Affiliations Council (NAAC) will meet via conference call on December 4, 2024, from 1 p.m. to 3 p.m., eastern standard time. The meeting is open to the public.

The purpose of the Council is to advise the Secretary on matters affecting partnerships between VA and its academic affiliates.

On December 4, 2024, the Council will receive project updates and have discussions on actions affecting the educational mission of VA. The Council will receive oral public comments from 2:25 p.m. to 2:55 p.m. EST.

Interested persons may attend and/or present oral statements to the Council.

The dial in number to attend the conference call is: 669 254 5252. At the prompt, enter meeting ID 161 789 6622, then press #. The meeting passcode is 267962 then press #. Individuals seeking to present oral statements are invited to submit a 1–2-page summary of their comments at the time of the meeting for inclusion in the official meeting record. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Council prior to the meeting or at any time, by email to Nellie.Mitchell@va.gov, or by mail to Nellie Mitchell, MS, RHIA, Designated Federal Officer, Office of Academic Affiliations (14AA), 810 Vermont Avenue NW, Washington, DC 20420. Any member of the public wishing to participate or seeking additional information should contact Ms. Mitchell via email or by phone at 608–358–9902.

Dated: November 7, 2024.

Jelessa M. Burney,
Federal Advisory Committee Management Officer.
[FR Doc. 2024–26238 Filed 11–12–24; 8:45 am]
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Part II

Department of Energy

48 CFR Chapter 9

Department of Energy Acquisition Regulation; Final Rule

DEPARTMENT OF ENERGY

48 CFR Chapter 9

RIN 1991–AC17

Department of Energy Acquisition Regulation (DEAR)

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or the Department) is publishing a final rule comprehensively revising its Acquisition Regulation in order to update and streamline the policies, procedures, provisions and clauses that are applicable to the Department’s contracts. This rulemaking updates or eliminates coverage that is obsolete or that unnecessarily duplicates the Federal Acquisition Regulation (FAR) and retains only that coverage which either implements or supplements the FAR for the award and administration of the DOE’s contracts. The rule adds several new clauses and amends several existing clauses in order to promote more uniform application of the DOE’s contract award and administration policies.

DATES: This rule is effective December 13, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Jason Taylor, U.S. Department of Energy, Office of Management, Office of Acquisition Management at (301) 518–2257 or by email at jason.taylor@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

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 - C. Review Under the Paperwork Reduction Act
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I. Background

The Federal Acquisition Regulation (FAR), 48 CFR chapter 1, is the primary regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds. The Office of Federal Procurement Policy Act (OFPP Act), 41 U.S.C. 1702, authorizes the issuance of agency-specific acquisition regulations that implement or supplement the FAR. Pursuant to this authority, DOE and the National Nuclear Security Administration (NNSA) promulgated the Department of Energy Acquisition Regulation (DEAR), set forth at 48 CFR chapter 9, to provide uniform acquisition policies and procedures for DOE and NNSA. This final rule to update the DEAR is issued under that same authority.

Over the past decade, DOE has worked to improve the way it conducts business with its contractors by strengthening contract management policies and practices and implementing new processes throughout the Department complex. In the spirit of alleviating unnecessary regulatory burdens while remaining prudent stewards of taxpayer resources, DOE undertook a review of its acquisition framework, including the DEAR.

As a result of that process, DOE issued a notice of proposed rulemaking (NPR) on October 26, 2023, proposing amendments to the DEAR to update or remove obsolete provisions, incorporate class deviations, streamline policies and procedures where appropriate, and implement ten new clauses which would standardize clause language and eliminate the need for various local clauses in current use (88 FR 73644). In response to comments received on the NPR, DOE has made several changes to the proposed language, as discussed in more detail in section III of this document but left the majority of the proposed language unchanged. This final rule amends the DEAR to correct inconsistencies, remove provisions which unnecessarily duplicate coverage contained in the FAR, delete outdated information, and renumber DEAR provisions where required, in order to comport with the FAR numbering. The final rule includes revisions to 48 CFR parts 901, 902, 903, 904, 908, 909, 912, 915, 916, 917, 922, 923, 925, 926, 927, 931, 932, 933, 935, 936, 941, 942, 945, 951, 952, and 970.

II. Renumbering

As discussed in the proposed rule, DOE is renumbering existing and proposed DEAR sections that have

section numbers containing two dashes (e.g., section 915.404–4–70), in order to conform with the FAR numbering system as outlined at 48 CFR 1.105–2. DOE is also making conforming changes to other sections of the DEAR as necessary to implement the new numbering. Finally, DOE is also renumbering existing DEAR sections in subparts 923 and 970.23 as necessary to conform with the recent restructuring of FAR Part 23 accomplished under FAR Case 2022–006. Conforming changes have been made in other sections of the DEAR as necessary to implement the new numbering. The following table provides an overview of the redesignations:

Previous section	New section
Subpart 901.3:	
901.301.70	901.301–70
Subpart 915.4:	
915.404–2	915.404–2000
915.404–2–70	915.404–2700
915.404–4	915.404–4000
915.404–4–70	915.404–4700
915.404–4–70–1	915.404–4710
915.404–4–70–2	915.404–4720
915.404–4–70–3	915.404–4730
915.404–4–70–4	915.404–4740
915.404–4–70–5	915.404–4750
915.404–4–70–6	915.404–4760
915.404–4–70–7	915.404–4770
915.404–4–70–8	915.404–4780
915.404–4–71	915.404–4800
915.404–4–71–1	915.404–4810
915.404–4–71–2	915.404–4820
915.404–4–71–3	915.404–4830
915.404–4–71–4	915.404–4840
915.404–4–71–5	915.404–4850
915.404–4–71–6	915.404–4860
915.404–4–72	915.404–4900
Subpart 923.1:	
923.101	923.170
923.102	923.171
923.103	923.172
Subpart 923.5:	Subpart 926.5:
923.500	926.500
923.570	926.570
923.570–1	926.570–1
923.570–2	926.570–2
923.570–3	926.570–3
Subpart 923.9:	Subpart 923.4:
923.903	923.404
Subpart 927.2:	
927.206–1	927.202
927.206–2	927.202–5
927.207	927.203
927.207–1	927.203–1
Subpart 927.3:	
927.300	927.302
927.302	927.302–70
Subpart 927.4:	
927.402–2	927.402
927.404	927.404–70
927.404–70	927.404–71
Subpart 970.04:	
970.0407–1	970.0407–100
970.0407–1–1	970.0407–110
970.0407–1–2	970.0407–120
970.0407–1–3	970.0407–130
Subpart 970.15:	

Previous section	New section
970.1504-1	915.1504-100
970.1504-1-1	970.1504-101
970.1504-1-2	970.1504-102
970.1504-1-3	970.1504-103
970.1504-1-4	970.1504-104
970.1504-1-5	970.1504-105
970.1504-1-6	970.1504-106
970.1504-1-7	970.1504-107
970.1504-1-8	970.1504-108
970.1504-1-9	970.1504-109
970.1504-1-10 ..	970.1504-110
970.1504-1-11 ..	970.1504-111
970.1504-2	970.1504-200
970.1504-2-1	970.1504-201
970.1504-3	970.1504-300
970.1504-4	970.1504-400
Subpart 970.22:	
970.2201-1	970.2201-100
970.2201-1-1	970.2201-110
970.2201-1-2	970.2201-120
970.2201-1-3	970.2201-130
970.2201-2	970.2201-200
970.2201-2-1	970.2201-210
970.2201-2-2	970.2201-220
Subpart 970.23:	
970.2303-2-70 ..	970.2303-2
970.2305	970.2605
970.2305-1	970.2605-1
970.2305-2	970.2605-2
970.2305-3	970.2605-3
970.2305-4	970.2605-4
970.2306	970.2606
Subpart 970.31:	
970.3101-00-70 ..	970.3101-1
970.3102-3-70 ..	970.3102-370
970.3102-05	970.3102-500
970.3102-05-4 ..	970.3102-504
970.3102-05-6 ..	970.3102-506
970.3102-05-18 ..	970.3102-518
970.3102-05-19 ..	970.3102-519
970.3102-05-22 ..	970.3102-522
970.3102-05-28 ..	970.3102-528
970.3102-05-30 ..	970.3102-530
970.3102-05-30-70.	970.3102-531
970.3102-05-33 ..	970.3102-533
970.3102-05-46 ..	970.3102-546
970.3102-05-47 ..	970.3102-547
970.3102-05-70 ..	970.3102-570
Subpart 970.32:	
970.3200-1-1	970.3200-11
Subpart 970.42:	
970.4207-03-02 ..	970.4207-302
970.4207-03-70 ..	970.4207-370
970.4207-05-01 ..	970.4207-501
Subpart 970.52:	
970.5223-3	970.5226-4
970.5223-4	970.5226-5

III. Discussion of Comments and Changes From the Proposed Rule

In response to the NOPR, DOE received twelve comments from the following individuals/entities:

- (1) Ames National Laboratory (Ames)
- (2) Argonne National Laboratory (Argonne)
- (3) Battelle Memorial Institute, Pacific Northwest Division (Battelle)
- (4) Beta Analytic, Inc. (Beta Analytic)
- (5) Fermi Research Alliance, LLC (Fermi)

- (6) Lawrence Berkeley National Laboratory (LBNL)
- (7) Michael Ravnitzky
- (8) National Technology & Engineering Solutions of Sandia, LLC (NTESS)
- (9) Princeton Plasma Physics Laboratory (PPPL)
- (10) Stanford University/SLAC National Accelerator Facility (Stanford)
- (11) Thomas Jefferson National Accelerator Facility (TJNAF)
- (12) Triad National Security, LLC (Triad)

DOE carefully reviewed the proposed regulation in light of the comments received during the public comment period and has attempted to address those requesting clarification or further detail through either revision to the text of the final rule or through clarification in this preamble discussion.

Every comment has been analyzed and the following discussion provides responses organized by issue.

General Support

Comment: Michael Ravnitzky offered general support for the proposed rule, particularly the efforts to streamline the DEAR and to use plain language. LBNL supported the inclusion of many of LBNL's Revolutionary Working Group (RWG) model contract provisions in the proposed rule. Likewise, SLAC appreciated the inclusion of SLAC's RWG model contract provisions in the proposed rule.

Response: DOE appreciates the support for this rulemaking.

Extension of Comment Period

Comment: LBNL, Stanford, and Argonne requested an extension to the time period for submitting comments.

Response: While DOE recognizes that the proposed rule was lengthy, DOE declines to reopen the comment period, given that DOE provided 60 days for comments on the NOPR.

Existing Deviations

Comment: LBNL and Stanford requested that applicable field elements' and contracting officers' discretion to maintain previously approved deviations be explicitly preserved in guidance implementing clauses revised by this rule.

Response: This final rule does not affect existing contractual language. Any modifications to individual contracts to incorporate the changes in clauses revised by this rule will require negotiation and agreement of the parties.

Contract Cost Principles and Procedures

Comment: In the NOPR, DOE proposed to add a new applicability

section in subpart 970.31 (section 970.3101-00-71, renumbered section 970.3101-2 in this final rule) to clarify that the cost principles of FAR 31.2 and DEAR 970.31 apply regardless of entity type for an M&O contract. SLAC objected to the proposed addition because it would apply FAR subpart 31.2 cost principles applicable to "commercial organizations" to all M&O contracts regardless of entity type. The commenter suggests that DOE retain the discretion to enter into advance understandings and other contractual provisions on allowability that may deviate from the principles in FAR 31.2 if permitted by other parts of the FAR, such as when the contractor is otherwise subject to FAR 31.3. The commenter also asserts that there is no policy reason or justification for this addition to the DEAR, which may serve to significantly restrict DOE's pool of available contractors as well as limit DOE national laboratories' ability to attract talent through joint appointments with universities and nonprofits that provide benefits that are compliant with FAR 31.3.

Response: DOE makes no changes in response to this comment. The addition of the new section does not change any existing requirements for M&O contractors, but rather it clarifies the existing requirement that the cost principles of FAR 31.2 (and DEAR subpart 970.31) apply to M&O contracts, regardless of entity type. The DEAR currently requires DOE contracting officers to include (see DEAR 970.3270(a)(1)) DOE's M&O contract Payments and Advances clause (found at DEAR 970.5232-2) in all M&O contracts. Paragraph (j) of that clause requires contracting officers to determine allowable costs in accordance with FAR subpart 31.2 and DEAR subpart 970.31. The new section simply makes the existing requirement more apparent. DOE hopes that the placement of the section will help prevent confusion over the requirement in the future.

Conditional Payment of Fee

Comment: DOE's conditional payment of fee policy allows for a reduction in payment to a contractor if the contractor fails to meet a performance requirement relating to environment, safety and health or security or safeguarding of restricted data and other classified information. In the NOPR, DOE proposed to expand this to also allow a reduction in payment if the contractor fails to meet a performance requirement related to business and financial systems.

LBNL, Triad, Battelle, Fermi, and TJNAF objected to the proposed expansion of the conditional payment of fee evaluation criteria to include “business and financial systems.” The commenters’ primary concern is that these systems are undefined and therefore not yet fully developed enough to provide DOE or any M&O contractor with certainty on what elements of a business and financial system will be reviewed and considered. The commenters also note that other existing contract mechanisms already exist to appropriately deal with contractor issues in these two areas.

Response: DOE agrees with both of these concerns and has removed the additional business and financial systems evaluation criteria from the final rule. Sections 942.7100, 952.242–71, 970.1504–1–3 (renumbered 970.1504–103), and 970.5215–3 have been updated to reflect this change.

Key Personnel Clause (952.215–70)

Comment: The “Key Personnel” clause requires contractors to notify the Contracting Officer reasonably in advance of removing, replacing or diverting any of the listed or specified personnel under the clause. In the NOPR, DOE proposed changing the “reasonably in advance” language to a Contracting Officer fill-in which would specify a minimum number of calendar days. Battelle objected to the proposed change in notice requirements from “reasonably in advance” to a defined minimum number of days, asserting that it has the potential to be administratively restrictive and may not give consideration for proper pacing and needed flexibility for recruitment/replacement of key personnel.

Response: DOE agrees that the change is unnecessarily restrictive and has retained the existing “reasonably in advance” language in this final rule.

Nuclear Hazards Indemnity Clause (952.250–70)

Comment: In the NOPR, DOE proposed various changes to the “Nuclear Hazards Indemnity” clause. Battelle commented that the level of indemnity in paragraph (d)(ii) for work outside the United States was not consistent with the Atomic Energy Act threshold stated at Section 170(d) of that Act and should be \$500 million instead of \$100 million.

Response: DOE agrees that the amount was incorrectly stated in the NOPR. However, under Public Law 118–47 (Further Consolidated Appropriations Act), the amount of such indemnification for nuclear incidents outside the United States was raised

from \$500 million to \$2 billion (42 U.S.C. 2210(d)(5)). Accordingly, DOE will update the figure in the Nuclear Hazards Indemnity clause to \$2 billion, rather than retain the previous figure of \$500 million.

M&O Conflict of Interest Clause (970.5209–70)

Comments: DOE’s conflict of interest policy resides in subpart 909.5 and section 970.0905 and is implemented in contracts (including M&O contracts) via a contract clause at section 952.209–72. In the NOPR, DOE proposed the addition of a new conflict of interest clause in Part 970 specific to M&O contracts. NTESS expressed concern that the proposed conflicts of interest (COI) nomenclature would be confusing to the workforce, and there was a risk of additional confusion about implementation of the clause in relation to the other organizational conflicts of interest (OCI) clauses found in M&O contracts and section 952.209–72. The commenter also noted that incorporation of the proposed clause would “require unfunded substantive changes to existing OCI policies, training, systems and tools and additional workload on the OCI team and Legal.” Stanford expressed overall support for the addition of the new clause but was concerned that portions of the clause could be overly prescriptive. Stanford and PPPL suggested clarifying in proposed paragraph (b) that the contractor’s responsibility for potential conflicts of interest of affiliates and other entities under this clause is limited to conflicts of interest relating to activities under the M&O contract. Fermi, Stanford, and PPPL also proposed adding “unless otherwise determined by the Contracting Officer” to the end of paragraph (b)(1)(ii) (similar to paragraph (b)(1)(i)) because there may be occasions when it would be desirable and for the benefit of the government to allow the contractor to perform or participate in the work. The same three commenters proposed that with respect to proposed paragraph (c)(6), the Government should retain flexibility for situations in which partnerships between the parent entity and the Department’s facilities are in the Government’s interests. They explain that since in many cases the work of the facility is to perform fundamental research, the levels of restraint indicated in paragraph (c)(6) would be detrimental to the mission of the facility and may deter parent contractors from investing their own resources in supporting the Department’s facilities. Finally, these commenters suggested that the proposed requirement in paragraph (d) to disclose

all COIs that cannot be mitigated, including those of third parties, within 10 calendar days of identifying the COI should be changed to 30 days.

Response: While there was some support for the overall intent of the proposed new clause, DOE agrees with NTESS that its addition does pose a real risk of confusion regarding implementation in relation to the policy in subpart 909.5 and the clause at section 952.209–72. Resolution of these difficulties will require further analysis and consultation with stakeholders in a future effort. Accordingly, DOE has removed from this final rule the proposed new clause at section 970.5209–70, the associated prescription at section 970.0906, and the proposed revisions to the policy at section 909.507–2 and 970.0905. In the interest of clarity, DOE has added a sentence to the end of section 970.0905 which refers Contracting Officers to the policy in subpart 909.5.

Strategic Partnership Projects (970.5217–1)

Comment: In the NOPR, DOE proposed various changes to its “Strategic Partnership Projects” clause. While there were no comments on the specific changes proposed in the NOPR, NTESS suggested a change throughout the clause from use of the word “proposal” to agreement “package” as those words have meaning at both the General Terms & Conditions phase versus the funding Order phase for OFA SPP. Their context here could mean either.

Response: DOE has revised the clause to consistently reference “SPP projects” and eliminate the various terms such as “proposal package” and “SPP proposal”. DOE believes this clarification should eliminate any confusion of the term “proposal” in other parts of the DEAR and address the commenter’s concern.

Rights in Data—Technology Transfer (970.5227–2)

Comment: LBNL, Stanford, Battelle, NTESS, PPPL, TJNAF, and Triad objected to added language in paragraph (e)(1)(iv) regarding patent applications containing export-controlled information (ECI) such that a DOE funding program manager would need to approve adding such export-controlled information or require an export license. LBNL commented that the language may have been added by mistake. NTESS commented that the language will likely cause confusion and may conflict with State Department regulations and publications on filing patent applications. Stanford expressed

concern that obtaining program manager approval before filing a patent application that could contain ECI would protract patenting timelines. Triad expressed concern that delays caused by the provision would impact DOE's and M&O contractors' ability to provide benefit from Federal research to U.S. industrial competitiveness, in compliance with the National Competitiveness Technology Transfer Act of 1989. Similarly, Battelle expressed concern that the delay associated with the additional approval would put U.S. contractors at a competitive disadvantage with non-U.S. entities.

Response: Based on the statutory requirements governing the filing of U.S. patent applications and under the rules of the U.S. Patent and Trademark Office (USPTO), DOE agrees that patent applicants, including our M&O contractors, are legally permitted to include Export Controlled Information (ECI) in their U.S. origin patent applications and are not required to obtain a separate export license as long as they comply with regulations issued by the USPTO, unless the applicant seeks to export technical data exceeding that used to support the patent application in a foreign country. Accordingly, DOE has removed the language in paragraph (e)(1)(iv) requiring program manager approval from this final rule.

Comment: The current DEAR in paragraph (c)(2) recognizes that a contractor may assert copyright in accordance with either paragraph (d) or (e). In the proposed rule, paragraph (f), Open Source Software, was added to this list, so that the proposed language recognized that the contractor may assert copyright in accordance with "either paragraph (d), (e), or (f)." NTESS commented that using "either paragraph" implied that copyright assertion can only be one of these paths, not multiple of these paths.

Response: DOE agrees to remove the word "either" to make it clear that copyright assertion may occur under multiple paths in paragraphs (d) through (f).

Technology Transfer Mission (970.5227–3)

Comment: Paragraph (n) concerns technology transfer through cooperative research and development agreements (CRADAs), which are agreements established between Government-owned, contractor-operated laboratories and partners to perform cooperative research on topics of mutual interest. Under proposed paragraph (n)(5)(i), DOE requires the contractor operating a

laboratory to assure that no employee of the contractor has a conflict of interest while the employee has a substantial role in negotiation, approval or performance of a CRADA. Battelle recommended that DOE clarify that paragraph (n)(5)(i) applies to "active" CRADAs since it would not apply if CRADA-derived IP is no longer obligated (*i.e.* option has been terminated or expired).

Response: DOE disagrees that any change is needed. As proposed, paragraph (n) concerns a conflict of interest in the initial preparation, negotiation, and approval of a CRADA, whereas the comment concerns the disposition of subject inventions and licensing after the CRADA has ended. No change is needed in paragraph (n) because the paragraph does not deal with the intellectual property derived from the performance of the CRADA. Any issues with licensing of intellectual property from a CRADA are covered under paragraph (d) of this clause.

Comment: Fermi suggested updating the definition of CRADA in paragraph (b) of this clause to reflect the authority for Laboratory contractors to enter into CRADAs with Federal entities, as permitted by DOE, by removing the phrase "including at least one non-Federal party" language.

Response: DOE agrees and has revised the definition to remove references to "non-federal parties" in this final rule.

Comment: LBNL noted that proposed paragraph (f) would require M&O contractors to give preference to U.S. businesses for licensing and assignments of all intellectual property, not just subject inventions, as contemplated by the Bayh-Dole Act and the "Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Technologies" (S&E DEC). LBNL recommended narrowing the scope of the paragraph to only cover patents and copyrights, rather than all intellectual property.

Response: DOE agrees with the commenter's suggestion and has revised the clause in this final rule to narrow it from "intellectual property" to "subject inventions". Other intellectual property (copyrights, trademarks, mask works, etc.) will not be included in this clause. The clause was also rewritten to address subject inventions when the S&E DEC applies under paragraph (1) while retaining much of the original provision for addressing U.S. industrial competitiveness when the S&E DEC doesn't apply (usually due to the funding source) under paragraph (2).

Patent Rights—M&O Contracts (970.5227–10)

Comment: LBNL, Battelle, PPPL, Stanford, Fermi, and TJNAF noted that paragraph (t)—U.S. Competitiveness appears to retain the pre-S&E DEC language that suspends all transactions pending DOE approval. That language was superseded for Office of Science laboratories by an Internal Patent Instruction (IPI) dated May 5, 2022, which substituted a notice mechanism instead of suspension. The commenters suggested that the notice mechanism from the IPI is preferable.

Response: DOE agrees to update this provision to reflect the guidance in the IPI to require a notice to DOE of change in foreign ownership rather than require suspension of the license until DOE approval. Additionally, a new paragraph (2) was added to better describe the administrative process of seeking a waiver of the requirements in paragraph (t)(1) (which is the requirement to substantially U.S. manufacture in compliance with the S&E DEC) with DOE approval. There are also provisions for transferring title to DOE if there is a breach of paragraph (t)(1) requirements to substantial U.S. manufacture.

Patent Rights—M&O for Profit, Patent Waiver (970.5227–12)

Comment: Triad noted that the proposed changes would make it more difficult to license technology since a licensee would not want to have its rights suspended when undergoing a liquidity event (*e.g.*, acquisition or large investment in exchange for equity). This could be particularly true in situations where the technology is the foundation of the company and is the basis for its business.

Response: DOE agrees to update this provision to reflect the guidance in the Internal Patent Instructions (IPI) issued by the Assistant General Counsel for Technology Transfer and Intellectual Property to require a notice to DOE of change in foreign ownership rather than require suspension of the license until DOE approval. Additionally, a paragraph (2) was added to better describe the administrative process of seeking a waiver of the requirements in paragraph (1) for DOE approval. There are also provisions for transferring title to DOE if there is a breach of paragraph (t)(1) requirements to substantial U.S. manufacture.

Comment: Proposed paragraph (b)(6)(iv) stated that "[e]xceptional circumstances subject inventions are as set forth in the applicable patent waiver." NTESS commented that the proposed paragraph was inconsistent

with its current patent waiver, saying that the S&E DEC is specifically for Bayh-Dole entities and that NTESS is not governed under Bayh-Dole. NTESS's class waiver of patent rights is W(C)2017-002.

Response: DOE declines to make changes to paragraph (b)(6)(iv) in response to this comment. The S&E DEC is broader than only applying to Bayh-Dole entities. It applies to all entities receiving program funding under the DEC. The second part of paragraph (b)(6)(iv) allows DOE to unilaterally amend the contract for the purpose of defining DOE exceptional circumstance subject inventions. It is clear that DOE policy is to have the S&E DEC apply to for-profit entities by adding new paragraph (b)(6)(iii). However, the comment raises the issue about requiring greater rights determination under paragraph (b)(7) before publications. DOE is revising paragraph (b)(6)(iii) to state that the addition of the enhanced U.S. manufacturing requirements under the S&E DEC does not invoke the greater rights determination process in paragraph (b)(7) requiring DOE approval for each invention or publication on such inventions.

Comment: NTESS commented that proposed paragraph (b)(6)(viii) requires the contractor to obtain approval from DOE prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement. The commenter stated that this change would be very burdensome to patent counsel because almost all subject inventions now fall under an exceptional circumstance subject invention.

Response: DOE believes that NTESS is referring to paragraph (c)(2), which has this requirement. DOE agrees with the commenter's concern and has added the following sentence "Notwithstanding the above, inventions subject to the S&E DEC do not require approval from Patent Counsel prior to any release or publication of information." The purpose of the S&E DEC (US Manufacture) is wholly different from the other DEC's (national security or sensitive technology) so there is no need for review of purely S&E DEC material.

Property (970.5245-1)

Comment: In the NOPR, DOE proposed adding an "application of regulations" paragraph (a) to the "Property" clause which required compliance with 41 CFR chapters 102 and 109 as well as various minor editorial changes. Battelle, Fermi, and

Stanford suggested that invoking the entirety of 41 CFR chapters 102 and 109 is too broad, and recommended it be narrowed to the "applicable" requirements in 41 CFR chapters 102 and 109. NTESS suggested modifying paragraph (a) by adding "as prescribed or approved by OPMO/PA" at the end to ensure that NNSA OPMO would continue to have flexibility to allow contractors to meet their programmatic needs while complying with requirements that are formally integrated into their contracts.

Response: DOE agrees with commenters that referencing the entirety of 41 CFR chapters 102 and 109 is too broad and has revised the language at section 970.5245-1(a) to only require the contractor to comply with "applicable" requirements in those chapters. DOE disagrees with NTESS's recommended change because the clause is applicable beyond NNSA contracts but believes that the change discussed above addresses NTESS's concern.

Comment: NTESS sought clarity on the regulatory references within the clause; specifically, why the general regulatory requirements added to the clause only reference 41 CFR chapter 102 (Federal Management Regulations) and 41 CFR chapter 109 (Department of Energy Property Management Regulations), whereas existing contractual coverage of the management of high risk property and classified materials reference 41 CFR chapter 101 (Federal Property Management Regulations) and 41 chapter 109 (Department of Energy Property Management Regulations).

Response: DOE agrees to also add a reference to 41 CFR chapter 101 in the new paragraph (a), as it still contains relevant requirements for real property and motor vehicles.

Other Comments

Comment: Michael Ravnitzky suggested adding a provision to the final rule allowing for prize contests to help address technological acquisition needs.

Response: DOE appreciates the suggested addition but considers it to be outside the scope of the current rule. DOE may consider addressing prize contests in a future rulemaking.

Comment: Michael Ravnitzky suggested adding an appendix to the DEAR that addresses the use of Other Transaction Authority (OTA), a special authority that allows DOE to enter into agreements with private-sector entities that are not subject to the same rules as standard government contracts or other traditional mechanisms.

Response: DOE appreciates the suggested addition but considers it to be outside the scope of the current rule. DOE may consider addressing OTAs in a future rulemaking.

Comment: Beta Analytic suggested adding direct biobased testing requirements and updating the FAR definition of "biobased product".

Response: DOE considers this suggestion to be outside the scope of the current rule.

Comment: Argonne suggested modifying the Contractor Purchasing System clause at 970.5244-1 by including language excepting "shrink wrap" click through terms for software agreements, excluding purchases under the micro-purchase threshold, and changing the approval level from the Head of Contracting Activity to the local Contracting Officer in consultation with local legal counsel.

Response: DOE considers this to be outside the scope of the current rule but will consider these suggestions in a future rulemaking.

Comment: Ames submitted comments in response to a DOE System of Records Notice (SORN) published on November 27, 2023.

Response: As the SORN notice is unrelated to this rule updating the DEAR, the comments are considered to be outside the scope of this rule.

Department of Energy Mentor-Protégé Program (919.70)

DOE proposed various changes to subpart 919.70 that were intended to update and streamline the DEAR coverage of the mentor-protégé program. DOE is now considering more substantive changes to its mentor-protégé program and has therefore decided to withdraw the changes proposed in the NOPR from this final rule. Additionally, proposed changes to section 952.219-70 that would have conformed the DOE Mentor-Protégé program clause with changes to subpart 919.70, are also not included in this final rule.

IV. Section-by-Section Analysis

- *Section 901.103:* Currently this section provides that the DEAR is issued and amended by the Senior Procurement Executive (SPE) and the National Nuclear Security Administration (NNSA). This final rule amends this section to clarify that (1) references throughout the DEAR to the SPE refers to both the DOE SPE and the NNSA SPE, unless otherwise indicated; (2) the SPEs may approve deviations to the DEAR both together and individually; and (3) except for those authorities designated as non-delegable,

the SPEs are delegated those authorities assigned to the Agency Head in the FAR.

- *Section 901.301–70*: Current section 901.301.70 states that DOE will maintain an Acquisition Guide. This final rule redesignates this section as 901.301–70 and removes the paragraph designation to conform to standard CFR formatting. The newly redesignated section is revised to update the website address to access the Acquisition Guide.

- *Subpart 901.4*: This final rule adds this new subpart to address deviations from the DEAR. The new subpart consists of section 901.401, which provides a definition for what constitutes a deviation from the DEAR; and sections 901.403 and 901.404, which provide instructions to acquisition personnel for preparing and submitting requests for individual deviations and class deviations respectively.

- *Section 901.602–3*: This final rule amends this section to increase the threshold for the ratification authority delegated to heads of contracting activity (HCAs) for unauthorized commitments of \$250,000 or less. A threshold of \$25,000 has been in the DEAR for decades and needs to be updated to account for inflation and associated increases in the Simplified Acquisition Threshold (SAT), which was the original basis for the \$25,000 threshold.

- *Sections 901.603–1 and 901.603–70*: This final rule revises these sections to update references to two DOE orders.

- *Section 902.101*: Section 902.101 is revised to update the definition of Senior Procurement Executive in order to reflect a change in the name of the office held by the DOE SPE and the NNSA SPE.

- *Section 903.104–7*: This final rule amends this section to allow reviews to be conducted by the individual one level above the contracting officer. The regulations at FAR 3.104–7 provide for higher-level review and concurrence within DOE by an individual designated in accordance with agency procedures. For violations or possible violations, the Department decided that this review and concurrence was better undertaken by those with procurement authority and not legal counsel whose role is better aligned with providing advice to those conducting the review and concurrence. Nothing in these changes prevents access to counsel by those with procurement authority.

- *Section 903.1003*: Section 903.1003 is added in order to supplement the FAR subpart 3.10 coverage of Contractor Code of Business Ethics and Conduct. The new language articulates the need

for contractors to identify themselves, particularly when communicating on behalf of DOE, to ensure that all parties know the status of individuals as contractor personnel.

- *Section 903.1004*: Section 903.1004 is revised to prescribe a new clause at 48 CFR 952.203–1, Identification of Contractor Employees, for all solicitations and contracts for services over the micro-purchase threshold. This clause requires contractors to use standard measures to ensure that contractors and their employees properly identify themselves as contractors in all DOE internal and external communications so that all parties are aware of their status as contractor personnel. Minor editorial changes have been made to the content of the section for the purpose of improving clarity and readability as well as updating the website address.

- *Section 904.401*: This final rule amends this section to (1) revise the definition of “access authorization” by including the citation to special nuclear material under the Atomic Energy Act, Executive Order 12968, and 10 CFR part 710 for more specificity; (2) add a definition of “Counterintelligence” previously located in part 970 but proposed to be relocated here because the term is included in revisions to other sections in this part; and (3) amend the definition of “Classified Information” for clarity to also include “Classified National Security Information” and “Transclassified Foreign Nuclear Information”, and to update the reference to Executive Order 12958 with Executive Order 13526 which revoked and replaced Executive Order 12958.

- *Section 904.402*: This final rule amends this section to reorganize content to conform to the FAR numbering and to add a reference to the DOE Organization Act of 1977, as amended and update the reference to Executive Order 12958 with Executive Order 13526 which revoked and replaced Executive Order 12958. This final rule also relocates text about DOE’s counterintelligence program from section 970.0404–2(b). Part 970 primarily concerns management and operating (M&O) contracts, but counterintelligence issues are equally applicable to M&O and non-M&O contracts. Additionally, revisions are made to the paragraph on conditional payment of fee in order to align with other changes proposed to the conditional payment of fee clauses in parts 952 and 970 which are discussed in the appropriate places below. Finally, this final rule adds a paragraph that points to part 927 for policies and

procedures for safeguarding classified information in patent applications and patents.

- *Section 904.404*: This final rule amends section 904.404 to: (1) revise the prescription for the “Security” clause at section 952.204–2 to clarify that it is also required to be included in contracts awarded under simplified acquisition procedures, as well as National Security Program contracts under which access to proscribed information is required; (2) make minor editorial changes and add the title to DOE Order 142.3 to the paragraph that discusses the “Sensitive Foreign Nation Controls” clause at section 952.204–71; (3) delete the prescription for the clause at section 952.204–76, “Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health,” because that clause, along with the clauses at sections 952.223–76 and 952.223–77, is proposed for removal with the content of those three clauses consolidated into a single new clause at section 952.242–71, which is prescribed elsewhere; and (4) add a prescription for the counterintelligence clause proposed to be located at section 952.204–74 (and previously at section 970.5204–1) because DOE has determined that counterintelligence policy is appropriate for both M&O and non-M&O contracts.

- *Section 904.7004*: Section 904.7004 is revised in paragraph (a) to update the name of the office that the Contracting Officer must consult in connection with “Foreign Ownership, Control or Influence (FOCI)” reviews prior to determining that award or continued performance of a contract by a contractor will not pose an undue risk to the common defense and security. The reference to the DOE Office of Safeguards and Security is proposed to be changed to the DOE Office of Environment, Health, Safety and Security.

- *Section 904.7102*: This final rule makes editorial revisions to streamline this section, in paragraph (e), by removing the following extraneous text: “that has been developed by the Safeguards and Security Lead Responsible Office at the contracting activity.”

- *Subpart 904.73*: This final rule adds a new subpart on DOE Directives. The new subpart consists of section 904.7300, which provides general requirements and information, and section 904.7301, which prescribes a new DOE Directives clause at 48 CFR 952.204–78, along with background. Although contractor requirements documents (CRDs) have been integrated

into non-M&O contracts for a long time, adding the general information section, the new clause prescription, and the new clause will clarify the process of integrating the requirements of DOE Directives into non-M&O contracts on a bilateral basis.

- *Subpart 908.71*: This final rule revises subpart 908.71 in order to remove some out-of-date procedures for handling special items. Specifically, sections 908.7103, Office machines; 908.7115, Forms; 908.7116, Electronic data processing tape; and 908.7117, Tabulating machine cards, have been removed.

- *Section 909.403*: Section 909.403 is revised to reflect a change in the name of the offices held by the individuals designated as the DOE and NNSA Debarring Official and Suspending Official.

- *Section 909.405*: Section 909.405 is revised to replace references to the now defunct Excluded Parties List System (EPLS) with the new System for Award Management (SAM).

- *Section 909.407–3*: This final rule amends this section in paragraph (e)(1)(vii) to replace a reference to the now defunct EPLS with the new SAM.

- *Section 912.301*: This final rule adds a new section 912.301 to clarify those DEAR clauses that are also required to be included in solicitations and contracts for the acquisition of commercial items, in accordance with 48 CFR 12.301(f).

- *Subpart 915.4*: This final rule redesignates sections 915.404–2 through 915.404–4–72 as provided by the table in section II of this document to conform with the FAR numbering system. Cross-reference changes are made throughout the subpart to conform with the new numbering.

- *Section 915.404–4–70 (915.404–4700)*: This final rule revises the text to clarify that DOE's structured profit and fee system for non-management and operating contracts comprises two approaches.

- *Section 915.404–4–70–2 (915.404–4720)*: This final rule revises this section to correct the errors throughout the table in paragraph (d) by replacing “items 4.a. thru 4.e.” with “items I.a. thru I.e.”.

- *Section 915.404–4–72 (915.404–4900)*: This final rule revises paragraph (a) of this section to update the reference to fee policy for management and operating contracts from “970.15404–4–8” to “970.1504–101 through 970.1504–300.”

- *Section 915.408–70*: Section 915.408–70 is revised to simplify the clause prescription for section 952.215–70, “Key Personnel,” and make minor editorial changes.

- *Section 915.606*: Section 915.606 is revised to replace a defunct postal address for the receipt of unsolicited proposals with a new email address.

- *Section 916.307*: Section 916.307 is revised to: (1) simplify the prescription for the DEAR “Allowable Cost and Payment” clause at section 952.216–7 in paragraph (a); and (2) remove the prescription for section 952.216–15, “Predetermined Indirect Cost Rates,” because the FAR clause at 48 CFR 52.216–15 is now considered to be adequate.

- *Section 916.504*: Section 916.504 is revised to redesignate paragraph (c) as paragraph (a)(1) to conform with the FAR coverage at 48 CFR 16.504(a)(1) that this language supplements.

- *Section 916.505*: Section 916.505 is revised to: (1) redesignate paragraph (b)(6) as paragraph (b)(8) to conform with the FAR coverage at 48 CFR 16.505(b)(8) that this language supplements and update the corresponding FAR citation accordingly; and (2) update the office name from “Office of Procurement and Assistance Management” to “Office of Acquisition Management”.

- *Subpart 917.6*: This final rule makes several changes to this subpart. Editorial changes are made in sections 917.600(b) and 917.602(b) to remove obsolete references to “performance-based management contracts”. Likewise, section 917.601, which defines “performance-based management contract” and “performance-based contracting” is also removed. Those terms and those references to performance-based management contracts are considered to be unnecessary since all management and operating contracts employ, to the maximum extent practicable, performance-based contracting concepts and methodologies. Editorial changes are also made in section 917.602(c) to streamline the content of that paragraph.

- *Section 917.7402*: This final rule makes revisions to paragraphs (b) and (c)(4) of this section to update the referenced DOE order from DOE Order 430.1B to the current DOE Order 430.1C.

- *Section 922.101–70*: This final rule adds a new section 922.101–70 to describe situations where labor policies applicable to M&O contracts may also apply to non-M&O contracts. DOE labor policies for M&O contracts are located at 48 CFR part 970, subpart 970.22. The policies therein are applicable to non-M&O contracts where the contract work had been previously performed under a DOE Management and Operating contract; and/or the Contractor is required to employ all or part of the

former Contractor's workforce; or contracts designated by the Senior Procurement Executive. The labor policies at 48 CFR part 970, subpart 970.22, are reiterated here to highlight their application to certain non-M&O contracts.

- *Subpart 922.4*: This final rule adds new subpart 922.4 with content previously located in section 970.2204–1–1, but better placed in part 922 since it is applicable to both non-M&O and M&O contracts. The existing content is revised to update references to the Davis-Bacon Act with the Construction Wage Rate Requirements Statute (40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction)) as currently referenced in 48 CFR 22.403–1 and to remove information that unnecessarily duplicates content already set forth in 48 CFR 22.404 through 22.404–12.

- *Section 923.002*: Section 923.002 is removed. Paragraph (a) is removed because it conveys policy from revoked Executive Order 13423 and duplicates coverage in the FAR. The prescription at paragraph (b) is removed because revoked Executive Order 13423 was the basis for that prescription and for the clause at section 970.5223–6.

- *Section 923.101*: This final rule redesignates this section as section 923.170 to maintain consistency with FAR numbering and revise the content to align with current statutory, regulatory, and executive order requirements and to remove an out-of-date hyperlink.

- *Section 923.102*: This final rule redesignates this section as section 923.171 to maintain consistency with FAR numbering.

- *Section 923.103*: This final rule redesignates this section as section 923.172 to maintain consistency with FAR numbering and revises the content to: (1) make minor editorial changes; (2) remove the reference to Alternate I to section 952.223–78, as that alternate is removed as unnecessary as a result of a revision to the base clause; and (3) remove prescriptions to FAR clauses that are already prescribed in 48 CFR chapter 1, and are not necessary to be prescribed here.

- *Subpart 923.5*: This final rule redesignates subpart 923.5 consisting of sections 923.500, 923.570 and 923.570–1 through 923.570–3 as new subpart 926.5 consisting of sections 926.500, 926.570 and 926–570–1 through 926–570–3 respectively. These changes are necessary to align with recent FAR restructuring which moved “Drug Free Workplace” coverage from FAR 23.5 to FAR 26.5. Conforming changes are also made as necessary to update references

to the associated FAR coverage as well as to the referenced DEAR clauses which are appropriately redesignated.

- *Subpart 923.9*: This final rule redesignates subpart 923.9 consisting of section 923.903 as new subpart 923.4 consisting of section 923.404. These changes are necessary to align with a recent FAR restructuring which moved the Contractor Compliance with Environmental Management Systems coverage from FAR 23.9 to FAR 23.404. The newly redesignated section 923.404 is also revised to correctly state the clause number for the FAR Environmental Management Systems clause as “52.223–19”, whereas the current text has “52.223–XX”.

- *Section 923.7002*: Section 923.7002 is revised to: while retaining the current policy, state it more clearly and succinctly; update references to reflect new locations of clauses; add references to clause prescriptions; and update office titles.

- *Section 923.7003*: This final rule amends this section by: (1) in paragraph (a), updating the name of the office which the Contracting Officer is required to consult with in making a decision to include or not include environmental, safety, and health clauses and insert a reference to the appropriate coverage for M&O contracts; (2) consolidating paragraphs (f) and (g) into one paragraph (f) and revising it to state the prescription for the Conditional payment of fee clause more clearly and succinctly and updating the reference to the clause; and (3) redesignating paragraph (h) as paragraph (g).

- *Section 925.1001*: Section 925.1001 is revised to update the name of the “Office of Procurement and Assistance Management” to “Office of Acquisition Management” and the office name of the NNSA Deputy Associate Administrator from “Acquisition and Project Management” to “Office of Partnership and Acquisition Services”.

- *Section 926.7001*: Section 926.7001 is revised to reflect the addition of Qualified HUBZone small business concerns to the list of Energy Policy Act 1992 target groups by the Small Business Reauthorization Act of 1997 (Pub. L. 105–135).

- *Section 926.7004*: This final rule revises this section by removing the outdated reference to Standard Industrial Classification (SIC) 8711 and adding in its place a reference to the North American Industry Classification System code 541330.

- *Section 926.7005*: Section 926.7005 is revised to reorganize the content to remove the separate paragraph on subcontracts as this content is

unnecessarily duplicative of the prescriptions for solicitation provisions and contract clauses in section 926.7007.

- *Section 926.7006*: This final rule revises this section to reorganize and streamline content to remove obsolete and unnecessary reporting requirements.

- *Section 926.7007*: This final rule revises this section in the prescription for the clause at 952.226–72, “Energy Policy Act Subcontracting Goals and Reporting Requirements” to update the dollar threshold from \$500,000 (\$1M for construction) to \$750,000 and (\$1.5M for construction) to conform to the FAR threshold for requiring a subcontracting plan at 48 CFR 19.702.

- *Subpart 926.71*: This final rule amends this subpart by: (1) revising section 926.7101 to update the citation in the first sentence from 42 U.S.C. 7474h to 50 U.S.C. 2704(c)(2); (2) revising section 926.7103 to make the same update to the citation in the first sentence of paragraph (a); and (3) revising section 926.7104 to change the clause title to add the words “Workforce Restructuring and” before “Displaced Employee Hiring Preference” (in order to distinguish this from hiring preferences tied to the Service Contract Act) and revising the clause prescription to add a parenthetical that makes clear that the clause is for both M&O and non-M&O contracts.

- *Sections 927.200 and 927.201–1*: This final rule removes section 927.200 and adds the content of that section to section 927.201–1 to better conform with FAR numbering and section headings. Additionally, the proposed rule broadens the requirement in section 927.201–1 to consult with Patent Counsel regarding the use of the Patent and Copyright Infringement Liability clause, which includes the Authorization and Consent clause referenced currently, to fully address indemnity in contracts based on the work being performed, but instead requires consultation regarding the use of the Patent and Copyright Infringement Liability clause in certain situations.

- *Sections 927.202, 927.202–5, and 927.206*: This final rule removes section 927.206, “Refund of Royalties,” and redesignates sections 927.206–1, “General,” and 927.206–2, “Clause for refund of royalties,” as new sections 927.202, “Royalties,” and 927.202–5, “Solicitation provisions and contract clause,” respectively. These changes are made in order to conform to the FAR numbering and section headings which this coverage supplements.

- *Sections 927.203 and 927.203–1*: This final rule redesignates sections 927.207 and 927.207–1 as new sections 927.203 and 927.203–1 respectively and revises the section heading for section 927.203 (formerly section 927.207). These changes are made in order to correspond with the FAR numbering and section headings which this coverage supplements.

- *Section 927.302*: This final rule redesignates section 927.300 as section 927.302 and revises the section heading to correspond with the FAR numbering and section headings which this coverage supplements. The rule also makes minor reorganization and editorial changes to the content of new section 927.302 for the purpose of improving clarity and readability.

- *Section 927.302–70*: This final rule redesignates current section 927.302 as section 927.302–70 and revises the section heading in order to accommodate the changes to current section 927.300 previously described. In addition, a new paragraph (a) is added to include a definition of “background patent” similar to the definition found in the new Alternate I of section 952.227–13 for the purpose of improving clarity of the regulation. Current paragraphs (b) and (c) are replaced with a new paragraph (c) to reflect DOE’s determination that the requirement of licensing background patents should only be permitted in certain situations approved by DOE Patent Counsel with concurrence of a DOE program official. This policy is implemented in new section 927.303(d)(5) by moving the paragraph regarding background patents from the clause at section 952.227–13 to an Alternate I so that it only applies to certain contracts.

- *Section 927.303*: This final rule revises section 927.303 to correspond with the FAR numbering and to make additions to instructions located in 48 CFR 27.303. The rule also adds paragraph (a)(4) to direct the Contracting Officer to subpart 970.27 for certain decontamination and decommissioning activities and the building and/or operations of other DOE facilities. Additionally, 48 CFR 27.303(d) provides that DOE will insert its specific patent rights clauses according to agency procedures. Therefore, section 927.303(d) outlines the use of the various patent clauses such as the clause at 48 CFR 952.227–13 or 37 CFR 401.14 depending on whether the contractor is a large or small business or university.

- DOE provides in paragraph (d)(2) that contracts with domestic small business firms or nonprofit

organizations use the clause at 37 CFR 401.14 instead of the clause at 48 CFR 952.227–11 because DOE has not modified 48 CFR 48.952.227–11 to keep up with changes in the standard patent clause for these entities, while 37 CFR 401.14 is regularly updated. However, 37 CFR 401.14 has certain provisions requiring agency implementing regulations, which DOE addresses in a prescription for new Alternate I.

- The most significant update is necessary to implement DOE's Declaration of Exceptional Circumstance that requires contractors, at any tier, to substantially manufacture any subject inventions in the United States. Alternate II for domestic small business firms or nonprofit organizations adds both the agency implementing regulations from Alternate I and the U.S. substantial manufacturing requirements. For 952.227–13, an Alternate II is used to implement the U.S. manufacturing requirement, as addressed in section 927.303(d)(6).

- *Section 927.304:* This final rule revises section 927.304 to make minor editorial changes and to replace the reference to the clause at section 952.227–11, which is also revised, with the clause at 37 CFR 401.14. The clause at section 952.227–11 is not regularly updated while the clause at 37 CFR 401.14 does receive regular updates.

- *Subpart 927.4:* This final rule revises the heading of subpart 927.4 to read “Rights in Data and Copyrights” to conform to the FAR heading at 48 CFR part 27, subpart 27.4, which this subpart supplements.

- *Section 927.401:* This final rule adds section 927.401 to provide a definition of “technical data”. The regulations at 48 CFR 27.401 define “data” to include “technical data” and “computer software.” DOE wants to have a clear definition of what technical data encompasses since it relates directly to information sent to DOE's Office of Scientific and Technical Information.

- *Sections 927.402, 927.402–1, and 927.402–2:* This final rule removes sections 927.402 and 927.402–1, and redesignates section 927.402–2 as section 927.402 to conform to FAR numbering, which these sections supplement. The content of section 927.402–1 is added to new section 927.406 and revised for clarity. Finally, DOE also revises the introductory language of the newly redesignated section 927.402 to add a reference to scientific and technical information (STI) because this is the term used at the Office of Scientific and Technical Information (OSTI) where DOE's

publicly available technical data is stored.

- *Section 927.403:* This final rule removes section 927.403, which outlines when DOE Contracting Officers and Patent Counsel make determinations as part of the acquisition and use of technical data, and adds its content to newly added section 927.406–4 for organizational purposes.

- *Sections 927.404 and 927.404–70:* This final rule:

- Redesignates section 927.404–70 as section 927.404–71 for organizational purposes and revises the newly redesignated section to replace the reference to 48 CFR 927.409(a) with 48 CFR 52.227–14 to reflect changes to the prescription at 48 CFR 927.409(a);

- Redesignates section 927.404 as section 927.404–70 for organizational purposes;

- Revises the newly redesignated section 927.404–70 to update the instructions on when to use 48 CFR 52.227–14 as supplemented by this subpart, as well as the use of 48 CFR 52.227–16; and

- Relocates paragraphs (g)(4), (l), and (m) of section 927.404–70 to portions of new section 927.406–4 and revised section 927.409.

- *Sections 927.406 and 927.406–4:* FAR 27.406 is for Acquisition of data with sections 27.406–1 through 27.406–3. This final rule adds section 927.406, Acquisition of data, and section 927.406–4, Acquisition and use of technical data, to conform with the numbering and headings of the FAR, which these sections supplement. Section 927.406–4(a) and (b) address several statutory changes that have been enacted, such as EPO 2005 and the DOE Energy Research and Innovation Act. EPO mandates that DOE maintain publicly available collection of Scientific Technical Information funded by the agency which is achieved by the Office of Scientific and Technical Information. DOE Energy Research and Innovation Act has a similar mandate for DOE to maintain a public database populated with information on unclassified research and development projects as well as relevant literature and patents. Additionally, this final rule relocates content formerly located at section 927.402–1(b) to new section 927.406–4(c) for organizational purposes and revises the text for clarity and to update references. Likewise, the final rule relocates content formerly located at section 927.403 to new section 927.406–4(d) for organizational purposes. And finally, this final rule relocates content formerly located at section 927.404(g)(4) and (l) to new section 927.406–4(e) and (f),

respectively, for organizational purposes and revises the text for clarity and to update references.

- *Section 927.409:* This final rule revises section 927.409 by removing the contract clause at paragraph (a)(1), which permitted the DOE Patent Counsel to only approve copyright of software. In lieu of that clause, new paragraph (a) instructs the contracting officer to use the definitions at Alternate I of 52.227–14 and a new Alternate VIII of 48 CFR 952.227–14, Rights in Data—General, which allows DOE Patent Counsel to approve copyright of all technical data (including software) of a subcontractor. In addition, this final rule reorganizes the section so that paragraph (a)(2) is now a new paragraph (b) that outlines special treatment of certain data. Paragraph (b)(1)(i) requires Patent Counsel to insert a new Alternate I of 48 CFR 952.227–17 to change paragraph (c)(1)(ii) of 48 CFR 52.227–17, Rights in Data—Special Works, such that DOE Patent Counsel can approve the subcontractor to assert copyright in all technical data of subcontractor and transfer to the Government or other entity. Paragraphs (b)(1)(ii) through (vii) of the proposed section remain the same as current paragraphs (a)(2)(ii) through (vii) with some minor changes to streamline content and update references. However, Paragraph (b)(1)(viii) is added to contain an instruction located in current subcontract paragraph (a)(1) regarding the use of Alternate IV of 48 CFR 52.227–14, Rights in Data—General, to be used with educational institutions. The prohibition for use of Alternate IV for any software has been changed to allow for copyright assertion when creating open source software. Paragraph (b)(1)(ix) describes the use of Alternate VI, as provided at 48 CFR 952.227–14, Rights in Data—General. These instructions are being relocated from current section 927.404 (l) to section 927.409(b)(1)(ix) for organizational purposes and revised accordingly to give further guidance on when to require limited licensing of Limited Rights Data and Restricted Computer Software of the subcontractor. Finally, paragraph (b)(1)(x) contains instructions for using Alternate VII as provided at 48 CFR 952.227–14, Rights in Data—General, which are currently located at section 927.404(m) to limit the contractor's use of DOE restricted data. Section 927.409(d) is an expansion of the instructions located in current section 927.409(h) and 48 CFR 27.409(d). Lastly, the current paragraphs (s) and (t) of section 927.409 are relocated to paragraphs (m) and (n),

respectively, to conform with the numbering of 48 CFR 27.409.

- *Section 931.205–18*: This final rule makes minor editorial revisions to this section in order to improve clarity.

- *Section 931.205–47*: This final rule revises section 931.205–47 to update the citation in the definition of “Employee whistleblower action” from 42 U.S.C. 7239 to 50 U.S.C. 2702.

- *Section 932.970*: This final rule revises section 932.970 in paragraph (b) to clarify that: (1) Contracting Officers can specify accelerated payment dates upon making a written determination (on a case-by-case basis) that a shorter contract financing payment cycle will be beneficial to the Government by reducing the contractor’s working capital requirements; and (2) Whenever a contract specifies payment due dates that are sooner than those required under the relevant prompt payment requirements, the contract will permit the Contracting Officer to unilaterally authorize additional time for review of invoices if needed to perform an adequate review prior to payment. These changes are necessary to ensure that accelerated payments are only approved when doing so is determined to be beneficial to the Government, and adequate time for review of invoices is maintained.

- *Section 932.971*: This final rule adds this section concerning electronic submission of invoices/vouchers and prescribes a new clause at 48 CFR 952.232–7. These changes are intended to establish DOE’s strong preference for electronic submission of vendor invoices and to provide standardized instructions for such submissions. While electronic submission is preferred, other methods of submission can be approved after consultation with the Office of the Chief Financial Officer.

- *Subpart 932.70*: This final rule removes subpart 932.70 in its entirety, as DOE Loan Guarantee Authority is regulated at 10 CFR part 609.

- *Section 933.103*: Section 933.103 is revised to: (1) reorganize and renumber the paragraphs to conform to the FAR numbering at 48 CFR 33.103 which this section supplements; (2) make minor editorial revisions for clarity; and (3) clarify that DOE does not accept or adjudicate protests from prospective subcontractors.

- *Section 933.104*: Section 933.104 is revised to reorganize content to conform to the FAR numbering at 48 CFR 33.104 which this section supplements, streamline content, and make minor editorial revisions for clarity.

- *Section 933.106*: Section 933.106 is revised to simplify the prescription for the solicitation provision at section

952.233–2 such that it is required to be inserted whenever the provision at 48 CFR 52.233–2 is included. In addition, this final rule removes the prescriptions for the provisions at sections 952.233–4 and 952.233–5 because the content of those provisions is being added to the provision at section 952.233–2.

- *Section 935.010*: This final rule makes minor editorial revisions to section 935.010 to improve clarity, and to add a sentence at the end of paragraph (c) that clarifies that STI products identified in DOE Order 241.1B are reportable to OSTI whether publicly releasable, controlled unclassified information or classified.

- *Section 935.070*: This final rule revises section 935.070 by making minor editorial revisions and removing the definition paragraph, since research misconduct is already defined in 10 CFR part 733.

- *Section 936.202–71*: This final rule removes section 936.202–71 because its basis (Executive Order 13514) has been revoked.

- *Section 941.201–70*: This final rule amends section 941.201–70 by: (1) revising the section heading to conform to 48 CFR 41.201 which this section supplements; (2) revising the text to add a reference to the Energy Policy Act of 2005 (25 U.S.C. 3502) and integrate new Office of Federal Energy Management Programs (FEMP) policy, given that DOE Order 430.2B has been rescinded.

- *Section 942.705–1*: Section 942.705–1 is revised to remove paragraph (a)(3) as its content is outdated.

- *Sections 942.705–3, 942.705–4, 942.705–5*: This final rule removes sections 942.705–3 through 942.705–5 as they only convey procedures internal to the agency that do not need to be covered in this regulation.

- *Subpart 942.71*: This final rule adds new subpart 942.71 to provide an explanation of the need for and the use of the new clause added at section 952.242–71, “Conditional Payment of Fee, Profit, and Other Incentives,” which is also discussed in sections 904.402, 923.7002, and 923.7003. The new clause’s prescription is also added.

- *Section 945.000*: This final rule revises section 945.000 to account for situations where the personal property management policies in 41 CFR chapter 109 may also apply to certain non-M&O contracts.

- *Section 945.101*: This final rule removes section 945.101 as the definitions are either unnecessary or are already defined in the FAR.

- *Section 945.102–70*: This final rule removes section 945.102–70 as the FAR coverage is considered to be adequate.

- *Section 945.102–71*: This final rule removes section 945.102–71 as the FAR coverage is considered to be adequate.

- *Section 945.570–1*: This final rule revises section 945.570–1 to update the reference to the “Personal Property Policy Division” with the “Office of Asset Management.”

- *Sections 945.602, 945.602–3, and 945.602–70*: This final rule removes these sections as their content is adequately addressed in 41 CFR chapters 102 and 109.

- *Section 945.603*: This final rule removes section 945.603 as its content is adequately addressed in 41 CFR chapters 102 and 109.

- *Section 945.670–1*: This final rule revises section 945.670–1 to update the currently incorrect reference (48 CFR 45.606–3) to 48 CFR 2.101.

- *Section 945.670–3*: This final rule removes section 945.670–3 because the content is adequately addressed in 41 CFR chapter 109.

- *Section 945.671*: This final rule revises section 945.671 to add a reference to “41 CFR chapter 109” in place of an outdated reference to “41 CFR 109–45.50 and 45.51 or its successor”.

- *Section 951.102*: This final rule revises section 951.102, in paragraph (c)(1), to remove the obsolete reference to the Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) and update the reference to the “Office of Resource Management within the Headquarters procurement organization” to the “Systems Division within the Office of Acquisition Management.”

- *Section 952.203–1*: This final rule adds a new clause “Identification of Contractor Employees” to require contractors to use standard measures to ensure that contractors and their employees properly identify themselves as contractors in all DOE internal and external communications so that all parties are aware of their status as contractor personnel.

- *Section 952.204–2*: This final rule makes several amendments to the “Security Requirements” clause. Specifically, this final rule: (1) consolidates definitions previously located in separate paragraphs (c) through (g) into a single paragraph (a), and adds definitions of “contracting officer”, “contract”, “contractor”, “cyber system” and “special access program”; (2) makes minor editorial revisions and update references throughout; and (3) adds a reference in the last paragraph to clarify that facility clearance may be granted prior to award or after award of a subcontract in

accordance with the clause at 48 CFR 952.204–73, “Facility Clearance”.

- *Section 952.204–70*: This final rule revises the “Classification/Declassification” clause by reorganizing its content, with definitions being brought together into a separate paragraph (a). Additionally, minor editorials changes were made to improve clarity.

- *Section 952.204–73*: This final rule amends the “Facility Clearance” clause to make minor editorial revisions throughout and, in paragraph (d), to include both a pre-award facility clearance process and an alternative post-award process. The current 48 CFR 952.204–73 requires a full Facility Clearance prior to the award of a contract requiring access to classified information, and prior to granting any Interim Access Authorizations to key management personnel. The section is revised to provide a process that permits contract award prior to granting a full Facility Clearance, and to permit contract award prior to granting Interim Access Authorizations to key management personnel. This alternate post-award process will enhance efficiencies in awarding contracts while ensuring security requirements are met.

- *Section 952.204–74*: This final rule relocates the “Counterintelligence” clause from section 970.5204–1 to this new section, as it is pertinent to both M&O and non-M&O contracts. This final rule also makes minor editorial revisions.

- *Section 952.204–76*: This final rule removes this clause, “Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information,” to reflect that section 952.242–71, Conditional Payment of Fee, Profit or Incentives, a new clause, is added in its place. The new clause replaces three existing clauses (952.204–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information, 952.223–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, and 952.223–77, Conditional Payment of Fee or Profit—Protection of Worker Safety and Health).

- *Section 952.204–77*: This final rule revises section 952.204–77, in the introductory text, to update the citation for the clause prescription and make minor editorial changes.

- *Section 952.204–78*: This final rule adds this new clause, “DOE Directives” in order to clarify the policy and procedures for integrating directives into non-M&O contracts.

- *Section 952.215–70*: This final rule revises the “Key Personnel” clause to make minor editorial changes to improve clarity.

- *Section 952.216–15*: This final rule removes the “Predetermined Indirect Cost Rates” clause as the corresponding FAR clause at 48 CFR 52.216–15 is considered to be adequate.

- *Section 952.223–71*: This final rule revises this section to add a non-M&O version of the “Integration of Environment, Safety, and Health into Work Planning and Execution” clause on the basis that the requirement is applicable to both non-M&Os and M&Os. The section language previously redirected the reader to a clause for M&O contracts.

- *Section 952.223–75*: This final rule revises this section in the introductory text to update the location of the clause prescription from section 923.7003(h) to section 923.7003(g).

- *Sections 952.223–76 and 952.223–77*: This final rule removes the “Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health” clause and the “Conditional Payment of Fee or Profit—Protection of Worker Safety and Health” clause to reflect that 952.242–71, Conditional Payment of Fee, Profit or Incentives, a new clause, is added in their place. The new clause replaces three existing clauses (section 952.204–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information, section 952.223–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, and section 952.223–77, Conditional Payment of Fee or Profit—Protection of Worker Safety and Health).

- *Section 952.223–78*: This final rule revises the “Sustainable Acquisition Program” clause to streamline requirements, to obviate the need for Alternate I to the clause, and to eliminate outdated references and areas of redundancy with FAR coverage.

- *Section 952.226–70*: This final rule revises the “Subcontracting Goals Under Section 3021(a) of the Energy Policy Act of 1992” clause to reflect the addition of a fourth target group by the Small Business Reauthorization Act of 1997 (Pub. L. 105–135) and to make minor editorial revisions.

- *Section 952.226–71*: This final rule revises the “Utilization of Energy Policy Act target entities” clause by updating the citation for the clause prescription in the introductory text and replacing “Energy Policy Act” where it appears in

the clause title and text with “Energy Policy Act 1992” or “EPAct 1992” in order to more clearly identify the source of these requirements. Additionally, minor editorial changes are made to paragraph (a) of the clause for streamlining purposes.

- *Section 952.226–72*: This final rule amends the “Energy Policy Act of 1992 Subcontracting Goals and Reporting Requirements” clause to reflect the addition of a fourth target group by the Small Business Reauthorization Act of 1997 (Pub. L. 105–135) as well as to replace references to the outdated Standard Form (SF) 294 and SF 295 with references to the Individual Subcontract Report and or Summary Subcontract Report in the Electronic Subcontracting Reporting System (ESRS).

- *Section 952.226–73*: This final rule revises the “Energy Policy Act target group certification” provision to revise the section heading and clause title and to reflect the addition of a fourth target group by the Small Business Reauthorization Act of 1997 (Pub. L. 105–135).

- *Section 952.226–74*: This final rule amends the “Displaced employee hiring preference” clause to revise the section heading and clause title by adding the words “Workforce Restructuring and” before “Displaced Hiring Preference.” This revision is intended to clearly tie this clause to workforce restructuring and distinguish it from other hiring preferences related to the Service Contract Act.

- *Section 952.227–9*: This final rule revises the “Refund of Royalties” clause to require contractors with contracts greater than five years in duration to furnish a statement of royalties paid or required to be paid in connection with performing the contract every five years, and to make minor editorial revisions.

- *Section 952.227–11*: Since 37 CFR 401.14, Standard Patent Rights, is updated regularly, DOE has decided to use that clause in preference to 48 CFR 52.227–11. However, 37 CFR 401.14 has sections requiring agency implementing regulations. Therefore, this final rule revises section 952.227–11 to replace the full clause text with two alternates. Alternate I is used to supplement the standard patent rights clause to include DOE’s implementing regulations. For example, paragraph (g)(2) requires the Contracting Officer to direct whether to include this clause in certain subcontracts. Also, paragraph (l) requires reports to be uploaded into iEdison invention management system. DOE has recently issued a Declaration of Exceptional Circumstance (DEC) to require substantial US manufacture of

subject inventions funded by many DOE programs. Alternate II addresses the modifications and additions to 37 CFR 401.14 to implement this DEC by adding paragraphs (m) and (n).

- *Section 952.227–13*: This final rule amends the “Patent Rights—Acquisition by the Government” clause to update references and account for statutory changes. Paragraph (k) has been moved to a new alternate I to provide for a right to require licensing of third parties to background inventions only when deemed necessary. Also, a new Alternate II has been added to implement the U.S. Competitiveness requirement for DOE funding programs that require it.

- *Section 952.227–14*: This final rule amends the “Rights in Data—General” clause to add a new Alternate VIII which addresses the approval by DOE Patent Counsel of all types of data by subcontractors of the M&O Contractor. Minor editorial revisions and revisions to update references are also made.

- *Section 952.227–17*: This final rule adds a new “Rights in Data—Special Works” clause which supplements the FAR clause at 48 CFR 52.227–17 to permit Patent Counsel to direct the subcontractor to assert copyright and transfer to the Government or M&O Contractor.

- *Section 952.227–82*: This final rule removes the “Rights to proposal data” clause on the basis that the corresponding FAR clause at 48 CFR 52.227–23 is considered to be adequate.

- *Section 952.227–84*: This final rule amends the “Notice of right to request patent waiver” provision to revise the introductory text to correctly specify the location of the prescription and to revise the text in the third sentence to replace the reference to “DEAR 952.227–11” which has been removed, with “37 CFR 401.14.”

- *Section 952.231–71*: This final rule revises the “Insurance—Litigation and Claims” clause, in paragraph (f)(2) to explicitly identify the property clause at 48 CFR 970.5245–1 that defines “contractor’s managerial personnel.”

- *Section 952.232–7*: As detailed in the description to section 932.971, DOE has added this new “Electronic Submission of Invoices/Vouchers” clause to ensure clarity on electronic invoicing and payment procedures.

- *Sections 952.233–2, 952.233–4, and 952.233–5*: This final rule revises the “Service of Protest” clause to add the provisions previously located at sections 952.233–4 and 952.233–5, since all three provisions had the same prescription and interrelated subject matter. Sections 952.233–4 and 952.233–5 have been removed.

- *Section 952.242–71*: This final rule adds a new “Conditional Payment of Fee, Profit or Incentives” clause to replace three existing clauses (section 952.204–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information, section 952.223–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, and section 952.223–77, Conditional Payment of Fee or Profit—Protection of Worker Safety and Health). Like the previous clauses, the new clause provides for a reduction in payment to a contractor if the contractor fails to meet a performance requirement relating to environment, safety and health or security or safeguarding of restricted data and other classified information. The new clause also includes updated references and reflects revisions made for clarity.

- *Section 952.245–2*: This final rule revises section 952.245–2 to update the clause prescription to conform with the current FAR.

- *Section 952.245–5*: This final rule revises section 952.245–5 to update the clause prescription to conform with the current FAR.

- *Section 952.250–70*: This final rule revises the “Nuclear Hazards Indemnity Agreement” clause to correctly reflect the current underlying statute and to eliminate “effective date” considerations not germane to contracts awarded in 2020 and beyond. The clause has been updated to delete Note 1 in accordance with 2005 Pub. L. 109–58, sec. 610(b), which amended Atomic Energy Act (AEA) section 234A(d) to eliminate the exclusion from civil penalties for certain identified non-profit institutions. Prior to amendment, AEA section 234A(d) provided that the provisions of AEA section 234A on imposition of civil penalties would not apply to the University of Chicago for activities associated with Argonne National Laboratory; the University of California for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory; American Telephone and Telegraph Company and its subsidiaries for activities associated with Sandia National Laboratories; Universities Research Association, Inc. for activities associated with FERMI National Laboratory; Princeton University for activities associated with Princeton Plasma Physics Laboratory; the Associated Universities, Inc. for activities associated with the Brookhaven National Laboratory; and Battelle Memorial Institute for activities

associated with Pacific Northwest Laboratory

- *Section 970.0100*: Section 970.0100 indicates that part 970 of the DEAR provides DOE policies, procedures, provisions, and clauses that implement and supplement the FAR and other parts of the DEAR for the award and administration of M&O contracts. This final rule revises this section to clarify that part 970 does not apply to non-M&O contracts, except as approved by the cognizant SPE, or as otherwise prescribed in the DEAR.

- *Section 970.0371–8*: Section 970.0371–8 requires that certain information be included in a written disclosure statement made by an employee of an M&O contractor. In this final rule, DOE requires each disclosure statement to include an acknowledgement that the employee has read and is familiar with DOE Order 486.1, Department of Energy Foreign Government Sponsored or Affiliated Activities. Additionally, section 970.0371–8 already requires that each disclosure statement include an acknowledgement that the employee has read and is familiar with the DOE publication entitled “Reporting Results of Scientific and Technical Work Funded by DOE”. This final rule updates the title of that publication to reflect the publication’s current title.

- *Section 970.0371–9*: Section 970.0371–9 requires a contracting officer to insert the clause at section 970.5203–3, Contractor’s Organization, in all M&O contracts and provides that in paragraph (a) of that clause, the words “and managerial personnel (see 970.5245–1(j))” may be inserted after “(see 952.215–70)”. This final rule updates the cross reference from “970.5245–1(j)” to “970.5245–1(k)” to reflect the new location of that paragraph.

- *Subpart 970.04*: This final rule redesignates sections 970.0407–1, 970.0407–1–1, 970.0407–1–2, and 970.0407–1–3 as provided by the table in section II of this document to conform with the FAR numbering system. A cross reference to section 970.0407–1–3 in section 970.5204–3 is updated to reflect the new numbering.

- *Section 970.0404–1*: Section 970.0404–1 provides definitions of several terms. This final rule removes that section because the definitions of those terms are provided in section 904.401 and duplication in this subpart is unnecessary.

- *Section 970.0404–2*

- Paragraph (a) of section 970.0404–2 points to several places where the reader may find information about the National Industrial Security Program,

information concerning contractor ownership when national security or atomic energy information is involved, and information regarding contractor ownership involving national security program contracts. Paragraph (b) of section 970.0404–2 provides that all DOE elements should undertake the necessary precautions to ensure that DOE and covered contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities. The regulations in 48 CFR part 904 contain DOE policies, definitions, provisions, and clauses associated with the safeguarding and security of classified information. In order to avoid unnecessary duplication, this final rule replaces the content of paragraphs (a) and (b) with a new paragraph (a) that points the reader to that part.

○ Paragraph (c) of section 970.0404–2 provides that for DOE M&O contracts and other contracts designated by the Senior Procurement Executive, or designee, the clause entitled “Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts” implements the requirements of section 234B of the Atomic Energy Act regarding the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor in the event of a violation by the contractor or any contractor employee of any rule, regulation, or order relating to the safeguarding or security of restricted data or other classified information. This final rule makes minor editorial revisions to this text for streamlining purposes and redesignates the content as paragraph (b) of section 970.0404–2.

• *Section 970.0404–4*: Paragraph (a) of section 970.0404–4 requires a contracting officer to include the clause located at 48 CFR 5204–1 in certain contracts. Paragraph (b) of section 970.0404–4 points the contracting officer to sections 904.404 and 904.7103 for the prescription of solicitation provisions and contract clauses relating to safeguarding classified information and foreign ownership, control, or influence over contractors. This final rule removes section 970.0404–4 because (1) the requirement in paragraph (a) of that section has been relocated to paragraph (d)(7) of section 904.404 and (2) the references to sections 904.404 and 904.7103 are unnecessary and duplicative of those sections.

• *Section 970.0407–1–3 (970.0407–130)*: This final rule amends this section to revise the prescription for the “Access to and Ownership of Records” clause to reflect the addition of a non-

M&O version of the “Integration of Environment, Safety, and Health into Work Planning and Execution” clause and to make minor editorial changes.

• *Section 970.0801–2*: This final rule revises section 970.0801–2 to replace the reference to the Federal Property Management Regulation at 41 CFR part 101–43 with a reference to the Federal Management Regulation at 41 CFR chapter 102. This change is necessary because the General Services Administration (GSA) is phasing out the Federal Property Management Regulation and transitioning its sections to the Federal Management Regulation.

• *Section 970.0905*: This final rule revises section 970.0905 to add a sentence at the end referring Contracting Officers to the policy in subpart 909.5 which is also applicable to M&O contracts.

• *Section 970.1100–1*: This final rule amends section 970.1100–1 to more concisely state DOE policy. Accordingly, paragraphs (a) and (b) are streamlined and combined into paragraph (a). Paragraph (c) is redesignated as new paragraph (b). Paragraph (d) is removed, as its content is limited to internal procedures and does not need to be included in the regulation.

• *Section 970.1100–2*: This final rule removes this section as its content is limited to internal procedures and does not need to be included in the regulation.

• *Subpart 970.15*: This final rule redesignates sections 970.1504–1 through 970.1504–4 as provided by the table in section II of this document to conform with the FAR numbering system. Cross-reference changes are made in sections 970.5215–5, 970.3102–3–70, and 970.5244–1 to conform with the new numbering.

DOE’s guidance in subpart 970.15 covers DOE’s fee policy for its Management and Operating contracts. This final rule amends DOE’s current guidance found in sections 970.1504–1 through 970.1504–5 by revising and reorganizing it (into sections 970.1504–100 through 970.1504–400) to simplify and state explicitly its construct, sequence for calculating, and step-by-step process for determining the total available fee for an M&O contract. These amendments reflect DOE’s Contracting Officers’ several decades of experience with the current articulation of the policy. They have found the policy satisfactory, have demonstrated a comprehensive understanding of its details, and have reflected their understanding in implementing the policy. Nonetheless, DOE’s Contracting Officers have indicated it would be

efficacious, for many reasons (training new procurement analysts, communicating with other offices, such as program, reviewing, and legal offices, etc.) if DOE’s policy:

- were reorganized and restated in a more straightforward, more “plain English” format;
- was pruned of what has become unnecessary guidance for a number of reasons (for example, guidance covered adequately in the FAR, or DOE’s internal guidance, such as DOE Acquisition Guide chapters);
- reflected Contracting Officers’ current practices in executing the policy;
- included a detailed example of a fee calculation; and
- conformed more tightly to the FAR’s articulation of fee policy, fee constructs, fee definitions, and fee terms, to the extent appropriate.

The amendments provide a clearer articulation of the policy. DOE has: (1) deleted or revised entire sections and large portions of sections of the policy, sometimes without replacement, sometimes replacing the deleted or revised language with much more concise language; (2) reorganized the policy; and (3) added a detailed example. Often when replacing deleted or revised language with more concise language, different aspects of the topic addressed by the deleted or revised language appear more cogently stated in several sections of the policy (sometimes more than once in several sections).

In its amending of its guidance, DOE retained the current fee policy for M&O contracts and clarified it. There are no changes of any significance to the current fee policy, with two exceptions. The two exceptions that DOE has made are: eliminating the special considerations for determining fee for laboratory M&O contracts (which now appears in the current policy at section 970.1504–103); and raising the Classification Factor of for research and development at a laboratory (which now appears in the current policy at section 970.1504–109(e)(4)) from 1.25 to 1.5.

It is worth noting that one minor change to the current fee policy is the suggested order of the steps in determining the maximum total available fee for a one-year period and the use of the “significant factors” (in one of the steps) in calculating the maximum total available fee amount for a one-year period. The revisions—which reflect the current practice and DOE Contracting Officers’ desire to formalize it—establish that suggested order and use. The new suggested order and use and the current suggested order and use both consider the fee base, fee

schedules, classification factors, and significant factors, and both orders and uses produce the same result. The revised suggested order and use require (for each type of effort) calculating an appropriate percentage derived from considering the significant factors (and applying it to the product of the maximum fixed fee and the classification factor). The current fee policy's suggested order and use—implied at sections 970.1504–1–5(c) and 970.1504–1–9(c)—require (for each type of effort) determining an appropriate fixed fee amount for each of the significant factors, summing those appropriate fixed fee amounts, and multiplying that sum by the classification factor.

The revised suggested order and process comprise considering the: magnitude of the effort (reflected by the total fee base for the year); type of effort (reflected by the allocation of the total fee base to the three fee schedules); nature, difficulty, complexity, and importance of the work (reflected by the choice of classification factors); and specific circumstances of the procurement (reflected by the appropriate percentages derived from considering significant factors). This order entails using (for each type of effort) the maximum amount of fixed fee from the fee schedule, multiplying it by the classification factor, and multiplying by the appropriate percentage (derived from considering the significant factors).

The current fee policy's suggested order and process comprise considering the: magnitude of the effort (reflected by the total fee base for the year); type of effort (reflected by the allocation of the total fee base to the three fee schedules); specific circumstances of the procurement (reflected by the determining an appropriate fee amounts for each of the significant factors and summing those amounts); and nature, difficulty, complexity, and importance of the work (reflected by the choice of classification factors). This order entails using (for each type of effort) the fixed fee that would have been calculated for a cost-plus-fixed-fee contract action (using the fee schedules and considering the significant factors) and multiplying that fixed fee by the classification factor.

A second minor change to the current fee policy is deleting cost reduction incentives, which are discussed in the current policy at sections 970.1504–1–4(f), 970.1504–5(c), and 970.5215–4. DOE no longer uses cost reduction incentives, using instead value engineering, which is covered in the DOE Acquisition Guide and the FAR.

A detailed breakdown of the changes to subpart 970.15 is provided below.

- *Section 970.1504–1–1 (970.1504–101)*: DOE has revised this section for clarity.

- *Section 970.1504–1–2 (970.1504–102)*: DOE has revised this section to reorganize and clarify the agency's fee policy for M&O contracts. Additionally, in some cases, this final rule revises and moves its coverage from other sections to this section. In other cases, this final rule revises its coverage in this section and moves it to other sections. In its amendments to this section, among other things, the current numbering of sections 970.1504–1–2(a) through (h) will become sections 970.1504–102(a) through (b).

- *Paragraph (a)(1)*: This final rule adds this paragraph to clarify DOE policy on fee for M&O contracts. DOE's policy on types of contracts and fee arrangements suitable to M&O contracts that was originally located at 48 CFR 970.1504–1–4(a)(1) and 970.1504–1–2(h) is revised for clarity and moved to this paragraph.

- *Paragraph (a)(2)*: This final rule adds this paragraph to reorganize and clarify DOE M&O contract fee policy to: (1) move the policy requiring that a cost-plus-fixed-fee contract only be used if approved in advance by the Senior Procurement Executive (SPE) or designee from current 48 CFR 970.1504–1–4(b) to this paragraph; and (2) add a mention of the limitation on the fee for a cost-plus-fixed-fee contract found at 48 CFR 15.404–4(c)(4)(i), which makes unnecessary the last sentence of current section 970.1504–1–2(d), which is deleted.

- *Paragraph (a)(3)*: This final rule adds this paragraph to reorganize and clarify DOE policy on the approval of base fee in a cost-plus-award-fee M&O contract. The policy requiring that a base fee amount may only be used if approved in advance by the SPE or designee has been revised and moved from 48 CFR 970.1504–1–4(c)(3) to this paragraph.

- *Paragraph (a)(4)*: In this final rule, DOE adds this paragraph to reorganize and clarify DOE policy that incentive fees allocated to evaluation periods under cost-reimbursement type contracts should, to the greatest extent appropriate, be tied to a specific portion of the maximum total available fee. In addition, this final rule revises and moves the policy described herein from 48 CFR 970.1504–1–2(b) to this paragraph.

- *Paragraph (a)(5)*: This final rule adds paragraph (a)(5) to reorganize and clarify DOE policy that: (1) the maximum total available fee amount may not exceed the fee derived from this section unless approved in advance

by the SPE or designee; and (2) a request to allow a higher fee must be in writing and must clearly explain why the situation merits consideration. In addition, this final rule revises and moves the policy described herein from, in part, both 48 CFR 970.1504–1–2(d) and 970.1504–1–10 to this paragraph.

- *Paragraph (a)(5)(i)*: This final rule adds paragraph (a)(5)(i) to reorganize and clarify DOE policy that typically, only a situation where either unusually difficult objective performance incentives would be used or where successful performance would provide extraordinary value would merit consideration for allowing a higher fee. In addition, this final rule revises and moves the policy described herein from 48 CFR 970.1504–1–10 to this paragraph.

- *Paragraph (a)(5)(ii)*: This final rule adds paragraph (a)(5)(ii) to reorganize and clarify DOE policy that when a contract requires a contractor to use its own facilities, equipment, or other resources for contract performance (e.g., when there is no letter-of-credit financing), consideration may be given, subject to approval by the SPE or designee, to allowing a maximum total available fee amount above the amount calculated by this section. In addition, this final rule revises and moves the policy described herein from 48 CFR 970.1504–1–2(g) to this paragraph.

- *Paragraph (a)(6)*: This final rule adds paragraph (a)(6) to reorganize and clarify DOE policy that each M&O contract must set forth in the contract (or in a Performance Evaluation and Measurement Plan (PEMP) or similar document) the methods that will be used to rate the contractor's performance and to determine the fee the contractor's performance will earn. The DOE Contracting Officer must ensure all important areas of contract performance are specified in the contract or in a PEMP (or similar document), even if such areas are not assigned a specific portion of the maximum total available fee the contractor might earn. In addition, this final rule revises and moves the policy described herein from 48 CFR 970.1504–1–9(h) and (j), in part, to this paragraph.

- *Paragraph (a)(6)(i)*: This final rule adds paragraph (a)(6)(i) to reorganize and clarify that an M&O contract is an "incentive contract" as that term is used in 48 CFR part 16, subpart 16.4, and that subpart 16.4 prohibits the use in a contract of other than cost incentives without also providing a cost incentive (or constraint). This paragraph is added to better align with the cost-plus-award-

fee contract policy in subpart 16.4, particularly 48 CFR 16.401(e).

○ *Paragraph (a)(6)(ii)*: This final rule adds paragraph (a)(6)(ii) to clarify: (1) award fee not earned during the award fee cycle shall not be carried over to any future award fee cycle; (2) when the award fee cycle consists of one evaluation period, unearned award fee amounts may not be carried over from one evaluation period to the next; and (3) when the award fee cycle consists of two or more evaluation periods the Contracting Officer may make the decision that unearned award fee amounts may be carried over from one evaluation period to the next, if the periods are within the same award fee cycle. This paragraph is added to better align its cost-plus-award-fee contract policy with the cost-plus-award-fee contract policy in 48 CFR 16.401(e)(4).

○ *Paragraphs (b)(1) and (2)*: This final rule reorganizes, revises, and moves the policy at section 970.1504–1–2(f) to this section to clarify: (1) that before issuing a competitive solicitation, the Head of the Contracting Activity (HCA) must coordinate the maximum total available fee amount with the SPE or designee; (2) a competitive solicitation must identify the greatest maximum total available fee amount the Government will accept and may invite offerors to propose a lower fee amount; and (3) before beginning to negotiate an extension to an existing contract, the HCA must coordinate the greatest maximum total available fee amount the HCA will accept and the maximum total available fee amount targeted for negotiation with the SPE or designee.

• *Section 970.1504–1–3 (970.1504–103)*: First, this final rule deletes the policy describing special considerations for determining fee for laboratory M&O contracts in current sections 970.1504–1–3(a) through (c)(7). That policy required determining whether any fee is appropriate for laboratory M&O contracts; DOE's new policy is that a fee is appropriate. DOE believes, based upon its experience with the current policy, the new policy will encourage a larger potential group of entities to compete for DOE's laboratory M&O contracts, which will result in better outcomes for DOE. (This deletion of the laboratory M&O contracts fee policy is one of the two proposed changes of any significance to the current M&O contracts fee policy mention earlier, the other being the Classification Factor for research and development at a laboratory was increased.) Second, a better articulation of DOE's general policy for fee determination for M&O contracts is now added at sections 970.1504–103(a) through (f). DOE's

general policy for fee determination has been and remains that: all M&O contracts are “incentive fee” contracts as described in 48 CFR part 16, subpart 16.4; and DOE will evaluate (per a contract's performance measures) the contractor's performance to determine the fee the contractor's performance has earned it. This is a long-standing policy, which, in essence, is strewn across several sections of the current fee policy, not necessary in ideal sequential order, or covered by the Federal Acquisition Regulation and not reiterated in the DEAR. Stated in more detail, the long-standing construct of fee policy for M&O contracts has been and will remain:

Objective performance measures are preferred to subjective ones and tying specific fee to specific outcomes should be accomplished whenever feasible. Consequently, fixed-price actions would be ideal (albeit the unlikelihood of their being feasible in M&O contracts) and cost-plus-fixed-fee actions (such as base fee in a cost-plus-award-fee action) are to be avoided whenever practical (and their use requires high level approval). The formula to determine the maximum total available fee is based on annual fee determinations using fees bases, fee schedules, classification factors, and appropriate percentages. More specifically, the maximum total available fee amount for an M&O contract is the sum of the maximum total available fee amounts of the contract's one-year periods. The maximum total available fee amount in a one-year period is based on the fee base of the one-year period. Calculating the maximum total available fee amount for a one-year period requires considering the: magnitude of the effort (reflected by the total fee base for the year); type of effort (reflected by the allocation of the total fee base to the three fee schedules); nature, difficulty, complexity, and importance of the work (reflected by the choice of classification factors); and specific circumstances of the procurement (reflected by the appropriate percentages derived from considering significant factors).

This better articulation of DOE's general policy for fee determination for M&O contracts reflects the construct of (and some pertinent details of) DOE's long-standing general policy for fee determination in more concise terms, in a more logical sequence, and in more congruence with the Federal Acquisition Regulation's articulation of the concept of contract types and fee arrangements. In essence, DOE is pulling and revising (sometimes integrating constructs, sometimes integrating and revising specific

language, sometimes deleting unnecessary language, sometimes revising necessary language) policy guidance from the following sections and placing it in section 970.1504–103:

- 970.1504–7(a) through (e)—Fee base;
- 970.1504–1–6(a) and (b)—Calculating fixed fee;
- 970.1504–1–9(a) through (j)—Special considerations: Cost-plus-award-fee;
- 970.1504–1–5—General considerations and techniques for determining fixed fees;
- 970.1504–1–2(i)—which addresses conditional payment of fee, profit, and other incentives;
- 970.1504–1–4(e)—which addresses requirements if using multiple contract types;
- 970.1504–1–4(f)—which addresses cost reduction incentives; this section is deleted without replacement because DOE determined its policy for value engineering (stated in its Acquisition Guide) was more appropriate;
- 970.1504–1–4(g)—which addresses the responsibilities of operations and field offices in establishing contract types and fee arrangements;
- 970.1504–1–2(c) and (d)—which discuss annual fee determination, maximum amount of annual fee, and the role of the Senior Procurement Executive;
- 970.1504–1–2(b)(3)—which discusses preferences for fixed price awards, objective measures, and tying fee to specific portions of the fee pool;
- 970.1504–1–4(c)(3) and (4)—which discuss risk, base fee, performance fee and its two components, and the preference for the objective fee component; and
- 970.1504–1–4(d)—which addresses performance fee, measures and objectives, the preference for tying fee to outcomes, and the allocation of fee to outcomes.

(It should be noted that some of the pulled and revised language listed above appears more than once, that is, it appears not only in 970.1504–103(a) through (f) but also—for the purpose of improving readability—in other sections of DOE's revised fee policy.)

○ *Paragraphs (a) through (b)(6)*: This final rule reorganizes, revises, and moves the policy currently located at sections 970.1504–7(a) through (e)—Fee base, sections 970.1504–1–6(a) and (b)—Calculating fixed fee, sections 970.1504–1–9(a) through (j)—Special considerations: Cost-plus-award-fee, and section 970.1504–1–5—General considerations and techniques for determining fixed fees to sections 970.1504–103(a) through (b)(6) to clarify

the construct of DOE's long-standing general policy for fee determination for M&O contracts. The guidance in the portions of general policy moved to section 970.1504–103 includes guidance regarding: magnitude of the effort; type of the effort; nature, difficulty, complexity, and importance of the work; specific circumstances of the procurement; maximum total available fee amount for the contract; annual fee bases; allocation of the maximum total available fee amount; the fee base in each of the one-year periods of the contract; allocating that total available fee to the evaluation periods of the contract based upon what best motivates the contractor's superior performance; allocating incentives in a manner that will result in reasonable contractor risk and provide the contractor with the greatest incentive; maximum total available fee amount equaling the sum of the maximum total available fee amounts in the contract's one-year periods; the maximum total available fee amount for a one-year period is based on the fee base for that one-year period; the fee base is an estimate of the allowable costs (with some exclusions) for that one-year period; the fee base is a basic component of the fee schedules, which link the fee base to fee; the amount of the fee base and the amount of fee in the fee schedules are annual amounts; calculating the maximum total available fee amount for a one-year period is based on the contract's one-year periods and their fee bases; usually the maximum total available fee amount for a one-year period is allocated to the same one-year period; when a maximum total available fee amount is established for longer than a year, it is subject to adjustment; the SPE's or designee's approval is required for evaluation periods other than one year; the Government's objective is to allocate incentives in a manner that will provide the contractor with the greatest incentive for efficient and economical performance; and occasions could occur where it would be appropriate to allocate the maximum total available fee amount for a year to a subsequent one-year evaluation period, an evaluation period of greater than a year, or to several evaluation periods.

○ *Paragraph (b)(7)*: To clarify the construct of DOE's long-standing general policy for fee determination for M&O contracts, this final rule: (1) reorganizes and revises the policy currently located at sections 970.1504–1–2(b)(3), (c), and (d), sections 970.1504–1–4(c)(2) through (d), and sections 970.1504–1–9(b) and (h) and moves it to paragraph (b)(7); (2) reorganizes and revises the policy on

some of the M&O contract Total Available Fee contract clause's language and adds it to this paragraph, specifically the clause's language requiring the negotiations to establish the requirements for the year and the maximum total available fee that the contractor can earn for its performance must occur before the contract year begins, and the language requiring the maximum total available fee allocated to an evaluation period be apportioned among a base fee amount and a performance fee amount; and (3) rephrases some of the Federal Acquisition Regulation's discussion at 48 CFR part 16, subpart 16.4, regarding incentives, objective performance requirements, and subjective performance requirements, and award fee and adds it to this paragraph.

○ *Paragraph (b)(8)*: This final rule reorganizes, revises, and moves the policy at currently located at sections 970.1504–1–2(b)(3) and (e) to this paragraph.

○ *Paragraph (c)*: This final rule adds this paragraph because it repeats and emphasizes the fee determining sequence mentioned earlier. Paragraph (a) addressed the general requirements for determining fee, and paragraph (b) addressed the maximum total fee amount for the contract, which necessarily mentioned total available fee for each one-year period of the contract. Therefore, it adds to the readability of DOE's M&O contract fee policy to address determining the maximum total available fee for each one-year period of the contract at this point. (The next paragraph addresses conditional payment of fee, profit, and other incentives, which applies to paragraphs (a), (b), and (c).) Paragraph (c) alludes to base fee, fee schedules, classification factors, appropriate percentages derived from the significant factors, and the specific details for calculating the maximum total available fee one-year period and an example, subjects addressed comprehensively at sections 970.1504–105, 970.1504–106, 970.1504–107, 970.1504–108, and 970.1504–104, respectively.

○ *Paragraph (d)*: This final rule reorganizes and revises the policy currently located at section 970.1504–1–2(i) and moves it to paragraph (d). DOE is taking this action to clarify the significance to the fee determining process of the performance requirements of the contract relating to environment, safety, and health (ES&H) and relating to safeguarding of Restricted Data and other classified information.

○ *Paragraph (e)*: This final rule reorganizes and revises the policy on

multiple contract types and fee arrangements at section 970.1504–1–4(e) and moves it to paragraph (e). This final rule removes the policy on cost reduction incentives at section 970.1504–1–4(f) and the associated clause at section 970.5215–4, which is prescribed at section 970.1504–5(c). DOE no longer uses the types of cost reduction incentives at section 970.1504–1–4(f), using instead value engineering, which is covered in the DOE Acquisition Guide and the Federal Acquisition Regulation.

○ *Paragraph (f)*: This final rule reorganizes and revises the policy at section 970.1504–1–4(g) and moves it to paragraph (f).

• *Section 970.1504–1–4 (970.1504–104)*: This final rule reorganizes and revises this section to simplify and state explicitly the construct underlying, the sequence for calculating, and the step-by-step process for determining the total available fee for an M&O contract and includes a numerical example for determining the total available fee for a one-year period of an M&O contract. While this section articulates the gist of the current fee policy, there is neither an exact parallel to this section in the current fee policy nor a direct link to specific language in the current fee policy. This section is based in large part on the current fee policy's sections on fee base, fee schedules, classification factors, and significant factors, which are found at sections 970.1504–107, 970.1504–106, 970.1504–109, 970.1504–105, respectively.

• *Section 970.1504–1–5 (970.1504–105)*: This final rule revises and reorganizes the section to clarify DOE's policy on the calculation of fee base, which is the estimate of necessary allowable costs, with some exclusions. DOE's policy on fee base is moved here from 48 CFR 970.1504–1–7. In addition, the section was revised to align with the revised section 48 CFR 970.1504–1–4 (48 CFR 970.1504–104).

• *Section 970.1504–1–6 (970.1504–106)*: This final rule revises and reorganizes the section to clarify DOE policy on the calculation of the M&O maximum total available fee amount, for a one-year period once the total fee base for the year is determined, including the use of the DOE M&O fee schedules (section 970.1504–1–6), which list the maximum amount of fixed fee. The DOE fee schedules that are based on three types of efforts (Production, research and development (R&D), environmental management (EM)). The section was revised to align with the revised section 970.1504–1–4 (48 CFR 970.1504–104). In addition, DOE has revised the section to better align the section with DOE

policy that an M&O contract is an “incentive contract” unless otherwise approved by the SPE.

- *Section 970.1504–1–7 (970.1504–107)*: This final rule revises and reorganizes the section to clarify DOE policy on application of the DOE facility classification factors in the calculation of the maximum total available fee, to increase the Classification Factor for research and development conducted at a laboratory from 1.25 to 1.5, to add a Classification Factor (of 1) for efforts performed using a fixed fee, and to relocate the policy on application of facility classification factors from current 48 CFR 970.1504–1–9 to this section. In addition, the section has been revised to align with the revisions to 48 CFR 970.1504–1–4 (48 CFR 970.1504–104). This final rule increases the Classification Factor for research and development conducted at a laboratory because of the increased importance DOE places on such efforts. This final rule adds the Classification Factor for efforts performed using a fixed fee because, despite the rare use of fixed fee, use of a fixed fee is permitted by DOE’s fee policy.

- *Section 970.1504–1–8 (970.1504–108)*: This final rule revises and reorganizes the section to clarify DOE policy on consideration of the specific circumstances of the procurement in the calculation of the maximum total available fee, the application of DOE significant factors for each type of effort, and relocates the DOE policy on the consideration of significant factors from current 48 CFR 970.1504–1–5 to this section.

- *Section 970.1504–1–9 (970.1504–109)*: This final rule revises the section to clarify the sequence for calculating, and the step-by-step process for determining, the maximum total available fee for an M&O contract. In addition, the section is revised to align with revisions to section 970.1504–1–4 (48 CFR 970.1504–104).

- *Section 970.1504–1–10 (970.1504–110)*: This final rule revises the section to reorganize and clarify the policy for calculating the maximum total available fee for an M&O contract, the policy for the length of evaluation periods, the policy for allocating the maximum total available fee amount for a one-year period, and the policy for the use of evaluation periods greater than one year. The policy on the length of evaluation periods and the use of evaluation periods greater than one year is relocated from the current 48 CFR 970.1504–1–2(c) and (d) to this section.

- *Section 970.1504–1–11 (970.1504–111)*: This final rule revises the section, which is simply a repetition of the last

step in calculating the maximum total available fee for a contract. This section is aligned with the revisions in section 970.1504–1–4 (48 CFR 970.1504–104).

- *Section 970.1504–2–1 (970.1504–201)*: This final rule amends this section to maintain its current guidance on cost or pricing data (relocated from current section 970.1504–3–1). This final rule also removes its current guidance: on the documentation of the fee prenegotiation objective (section 970.1504–1–11); and on the price negotiation (section 970.1504–2). The language in the deleted sections is unnecessary either because it is primarily procurement guidance adequately covered elsewhere (among other places, at 48 CFR 15.406–1 and 15.406–3 and internal DOE guidance) or primary funding guidance that should be addressed in the Office of Chief Financial Officer’s guidance.

- *Section 970.1504–3 (970.1504–300)*: This final rule moves the policy currently located at 48 CFR 970.1504–5 to this section. The revisions to the text of section 970.1504–5 include:

- deleting references to the Total Available Fee clause’s Alternates I through IV, currently found at 48 CFR 970.1504–5(a)(1) through (4) because elsewhere DOE is revising the Total Available Fee clause and eliminating its Alternates I through IV;

- deleting the prescription for the Cost Reduction clause (currently found at 970.1504–5(c)) because DOE no longer uses cost reductions incentives (DOE is also eliminating the policy and clause for cost reductions incentives, found at sections 970.1504–1–4(f) and 970.5215–4, respectively, because DOE uses value engineering instead of cost reduction incentives);

- deleting the references to the clause at 970.5215–3’s Alternates I and II, found at 48 CFR 970.1504–5(b)(2) and (3) because elsewhere DOE is revising the clause to eliminate the need for the Alternates; and

- revising for clarity DOE’s policy on using the Limitation on Fee solicitation provision (found at 970.5215–5).

- *Section 970.1706–1*: This final rule amends this section to clarify the DOE policy on the award, renewal, and extension of M&O contracts.

- *Paragraph (a)*: This paragraph is revised to clarify the DOE policy that: (1) effective performance under an M&O contract is facilitated by the use of a relatively long contract term; (2) only the Secretary can authorize the use of an M&O contract; and (3) only the Secretary can renew the original authorization of an M&O contract.

- *Paragraph (a)(1)*: This paragraph is added to reorganize content and clarify

DOE policy that an M&O contract shall provide for a base term not to exceed the lesser of five years or the maximum term the Secretary authorized.

- *Paragraph (a)(2)*: This paragraph is added to reorganize content and clarify DOE policy that: (1) the contract may include option terms provided no option term exceeds the lesser of five years or the maximum term the Secretary authorized; (2) the sum of base term and the option terms does not exceed the lesser of 10 years or the maximum term the Secretary authorized for the contract; (3) in addition to the base term and the option terms just described, an M&O contract for a national laboratory that is competitively awarded may provide for award term incentives provided none exceed the maximum term the Secretary authorized for each; and (4) the sum of base term, option terms, and award terms shall not exceed the lesser of 20 years or the maximum term the Secretary authorized for the contract.

- *Paragraph (a)(3)*: This paragraph is added to reorganize content and clarify DOE policy that after the Secretary’s original authorization of the use of the M&O contract has expired, any continuation of work under an M&O contract must be preceded by the Secretary’s renewal of the authorization for use of an M&O contract.

- *Paragraph (a)(4)*: This paragraph is added to reorganize content and clarify DOE policy that a sole source extension of an M&O contract to the incumbent must be justified under one of the statutory authorities listed in 48 CFR 6.302 and authorized by the Secretary.

- *Paragraph (a)(5)*: This paragraph is added to reorganize content and clarify DOE policy that the specific duration of the base term, option terms, and award terms of an M&O contract must be established concurrent with the Secretary’s authorization (or renewal of his/her authorization) to use an M&O contract (for original use, sole source award to a new contractor, competitive award to a new contractor or to the incumbent, or sole source extension of the contract to the incumbent).

- *Paragraph (b)*: This paragraph is revised to clarify the DOE policy that the contracting officer’s decision to exercise an option must be approved by the Senior Procurement Executive and the cognizant Assistant Secretary(s), and that in deciding to exercise the option, the contracting officer shall make the determinations required by 48 CFR 17.605.

- *Paragraph (b)(1)*: This paragraph is added to clarify DOE policy that for the exercise of an M&O option period, the contracting officer shall consider the

extent to which performance-based management contract provisions are present or can be negotiated into the contract.

○ *Paragraph (b)(2)*: This paragraph is added to reorganize content and clarify DOE policy that for the exercise of an M&O option period, the contracting officer shall make the determinations required by 48 CFR 17.605 in the manner described therein. The content formerly located at paragraph (b) is moved here and provides that as part of the review required by 48 CFR 17.605(b), the contracting officer shall assess whether competing the contract will produce a more advantageous offer than exercising the option; the incumbent contractor's past performance under the contract; the extent to which performance-based management contract provisions are present, or can be negotiated into, the contract; and the impact of a change in a contractor on the Department's discharge of its programs. The contracting officer shall address the considerations in 48 CFR 17.605 in the decision that the exercise of the option is in the Government's best interest. The new paragraph adds that the determination described in 48 CFR 17.207(d) and (e)(2) is not required, and because of the way in which the evaluation of cost to the Government is performed in the award of an M&O contract that includes options, the contracting officer need only determine the option was evaluated as part of the initial competition and contains a maximum fee. The contracting officer need not, for example: issue a new solicitation; informally analyze prices; or determine the option is the more advantageous offer.

• *Sections 970.1707–1, 970.1707–3, and 970.1707–4*: This final rule amends these sections to make minor editorial changes to update references and update policy to reflect the Department of Energy Research and Innovation Act (Pub. L. 115–246). In addition to referencing the Economy Act (31 U.S.C. 1535), 42 U.S.C. 7259a has been added as the authority for the Secretary to allow work to be performed at DOE laboratories “on behalf of other departments and agencies of the Government, agencies of State and local governments, and private persons and entities”.

• *Sections 970.1708, 970.1708–1, 970.1708–2, and 970.1708–3*: This final rule adds these sections to integrate a new DOE policy on Agreements for Commercializing Technology (ACT) and prescribe a new clause at 48 CFR 970.5217–2. The rule adds new regulatory coverage that provides

authorization for M&O contractors to conduct third party-sponsored research at the M&O contractor's risk under Agreements for Commercializing Technology. Whereas the requirements and policy for Agreements for Commercializing Technology are currently contained in DOE guidance and in special provisions included in contracts, this final rule will establish regulatory coverage and incorporate the requirements into a new clause at 48 CFR 970.5217–2. DOE is adding the new policy and clause to allow M&O contractors to engage with industry more flexibly on research and technology transfer projects. Through ACT, an M&O contractor can negotiate and accept financial and performance risks and accept terms and conditions more consistent with industry practice that are not permitted under Cooperative Research and Development Agreements and SPP agreements to advance technology transfer and the commercialization of technologies.

• *Section 970.1907–8*: This final rule adds this section to clarify that Contracting Officers should insert the clause at 48 CFR 5219–9, Small Business Subcontracting Plan, in all M&O solicitations and contracts and to prescribe a new clause that supplements the FAR clause at 48 CFR 970.5219, “Small Business Subcontracting Plan”. The new clause incorporates a DOE policy concerning “Management and Operating Contractor Subcontract Reporting Capability (MOSRC)” to collect key information about M&O contractor first tier subcontracts for reporting to the Small Business Administration.

• *Subpart 970.22*: This final rule redesignates sections 970.2201–1 through 970.2201–2–2 as provided by the table in section II of this document to conform with the FAR numbering system. Cross references in sections 970.5222–1, 970.5222–2, and 970.5244–1 have been updated to reflect the new numbering.

• *Section 970.2201–1–1 (970.2201–110)*: This final rule amends this section to identify situations with non-management and operating contracts where the applicability of management and operating contractor basic labor policies may apply.

• *Section 970.2201–1–2 (970.2201–120)*: This final rule amends this section in several places to identify the basis for the policies presented by adding a citation to the underlying regulations. The amendments also include minor textual edits for clarity, including applicability to certain non-M&O contracts as described in section 970.2201–1–1 and limit the scope of this

section to wages, salaries, and employee benefits under the collective bargaining agreement process. The final rule also transfers more general matters from this section to section 970.2201–140.

• *Section 970.2201–1–3 (970.2201–130)*: This final rule revises this section to add language to expand the applicability of section 970.5222–1, Collective Bargaining Agreements—Management and Operating Contracts to certain non-M&O contracts (as described in section 970.2201–110) and require that it be flowed down to subcontracts for protective services or other services performed at a DOE-owned site that affect continuity of operations.

• *Section 970.2201–140*: This final rule adds this section to incorporate policy on critically skilled employees initially established in DOE Acquisition Letter 94–19 and to emphasize the connection to a contractor's compensation system and policies in the recruitment and retention of a critically skilled workforce. This section also emphasizes that costs in support of this policy must be reasonable and meet allowability requirements. Lastly, the discussion of wages, salaries, and employee benefits removed from section 970.2201–1–2 is relocated to this section.

• *Sections 970.2204, 970–2204–1, and 970–2204–1–1*: This final rule revises section 970.2204 to clarify that both non-management and operating contracts and management and operating contracts are subject to the same subpart 922.4 governing labor standards involving construction. Accordingly, the reader is pointed to the policy in subpart 922.4, and section 970.2204–1 is removed as duplicative. Section 970.2204–1–1 is relocated to subpart 922.4 as well.

• *Section 970.2210*: This final rule revises this section to update the reference to the Service Contract Act of 1965. The section heading is revised to read “Service contract labor standards” and the section text updates the reference to read “The Service Contract Labor Standards, historically referred to as the Service Contract Act of 1965”.

• *Section 970.2270*: This final rule revises this section regarding unemployment compensation to better comport with existing federal and state unemployment compensation laws and eliminate inconsistencies.

• *Section 970.2270–2*: This final rule adds this prescription to ensure Contracting Officers include the clause at section 970.5222–4, Unemployment Compensation, in applicable solicitations and contracts and that fill-in data are also identified by the Contracting Officer.

- *Section 970.2301-1*: This final rule removes this section as its contents include an out-of-date hyperlink, reference to the requirements of a rescinded Executive order, and internal procedures that are not necessary to set forth in regulation.

- *Section 970.2301-2*: This final rule revises this section to: (1) add a prescription for the inclusion of the clause at section 952.223-78, “Sustainable Acquisition Program”; (2) remove prescriptions for clauses that are proposed for removal (section 970.5223-6, which is removed because the Executive order that is its basis has been revoked and section 970.5223-7 which duplicates the clause at section 952.223-78); and (3) remove prescriptions for various FAR clauses as they are already prescribed in 48 CFR chapter 1 and it is unnecessary to prescribe them here.

- *Section 970.2303-2-70*: This final rule redesignates this section as section 970.2303-2 in order to conform with FAR numbering and revises the text of the section to update the office name in paragraph (c)(2)(ii).

- *Section 970.2305*: This final rule redesignates section 970.2305 consisting of sections 970.2305-1 through 970.2305-4 as 970.2605 consisting of sections 970.2605-1 through 970.2605-4 respectively. These changes are necessary to align with recent FAR restructuring which moved “Drug Free Workplace” coverage from FAR 23.5 to FAR 26.5. Conforming changes are also made as necessary to update references to the associated FAR coverage as well as to the referenced DEAR clauses which are appropriately redesignated.

- *Section 970.2306*: This final rule redesignates section 970.2306 as 970.2606. These changes are necessary to align with recent FAR restructuring which moved “Drug Free Workplace” coverage from FAR 23.5 to FAR 26.5. Conforming changes are also made as necessary to update references to the associated FAR coverage as well as to the referenced DEAR clauses which are appropriately redesignated.

- *Section 970.2672-3*: This final rule revises the section to clarify the applicability of 48 CFR 952.226-74 “Workforce Restructuring and Displaced Employee Hiring Preference” to both non-management and operating contracts and management and operating contracts pursuant to section 3161 of the National Defense Authorization Act for Fiscal Year 1993.

- *Section 970.2673-2*: This final rule revises the section to change the prescription for the clause at section 970.5226-3, “Community

Commitment”, making it optional rather than mandatory.

- *Section 970.2701-1*: This final rule revises the section to clarify that subpart 970.27 applies to contracts for decontamination and decommissioning activities.

- *Sections 970.2702 and 970.2702-70*: This final rule makes several amendments to sections 970.2702 through 970.2702-6. Specifically, the rule: (1) revises the heading to section 970.2702 and section numbering to conform to the FAR subpart 27.2 which this subpart supplements; and (2) consolidates clause prescriptions formerly located in sections 970.2702-2 through 970.2702-6 into new section 970.2702-70.

- *Section 970.2703-1*: This final rule revises the section to streamline content by removing paragraphs (b)(1) through (5) as its content is adequately addressed elsewhere, and redesignating paragraph (c) as paragraph (b).

- *Section 970.2703-2*: This final rule revises the section to address more clearly when each of the patent clauses should be used based on the type of Contractor and patent waivers granted. In addition, paragraph (a)(2) addresses “privately funded technology transfer” activities that are authorized under Alternate I of 48 CFR 970.5227-3. Although there is no specific language prescribed by an Alternate in this clause, the instructions allow further changes to the patent clause if DOE or the Contractor requests to further define use of royalty funds, cost restrictions and liability related to privately funded licensing activities. Since DOE has replaced a DEAR clause for subcontracts to non-profit organization or small business firms with the FAR provision at 37 CFR 401.14, a new paragraph (h) is added to address the use of appropriate Alternates I or II for 48 CFR 952.227-11 to add agency implementing regulations and, if applicable, DOE’s Declaration of Exceptional Circumstance for substantial U.S. manufacture.

- *Section 970.2704-2*: This final rule revises this section to: (1) add a sentence at the end of paragraph (a) that, in compliance with Government-wide mandates to make research results publicly available, references section 935.010 for R&D results conveyed in scientific and technical information and DOE Order 241.1B which addresses requirements for scientific and technical information that are stored in the Office of Scientific and Technical Information (OSTI); and (2) revises the last sentence of paragraph (e) to reflect the new standard of not requiring the Contractor to renew copyright exclusivity every

five years, which was administratively burdensome and hampered long-term licensing activity, but to notify Patent Counsel and OSTI when commercial activity ceases.

- *Section 970.2704-3*: This final rule revises the section to add more clarity as to when to use either of the Rights in Data clauses in M&O Contracts.

- *Section 970.2770-2*: This final rule revises this section to reflect the addition of the new clause at section 970.5217-2, Agreements for Commercializing Technology (ACT), and require its inclusion in new awards for or extensions of existing DOE laboratory or weapon production facility M&O contracts. By authorizing the use of ACT, the Contractor may engage with third parties with more flexibility in terms, but the Contractor accepts greater risks in advance funding and liability.

- *Section 970.2803-1*: This final rule revises this section by updating the office name in paragraph (b)(1). Additionally, in paragraph (b)(3), this final rule establishes the Head of Contracting Activity as the official responsible for approving management and operating contractor employees’ benefit plans because that individual is better situated to make these determinations.

- *Section 970.2803-2*: This section is revised to update the reference in the last sentence from “(f)(3)(C)” to “(f)(1)(iii)(C)”.

- *Subpart 970.31*: This final rule redesignates sections 970.3101-00-70 through 970.3102-05-70 as provided by the table in section II of this document to conform with the FAR numbering system.

- *Section 970.3101-2*: This section is added to clarify that the cost principles of 48 CFR 31.2 and subpart 970.31 apply to M&O contracts, regardless of entity type.

- *Section 970.3102-3-70 (970.3102-370)*: This section is revised to remove the parenthetical reference in paragraph (a)(3)(i) because DOE’s fee policy no longer distinguishes between a contract for the management and operation of a laboratory and a contract for the management and operation of a non-laboratory.

- *Section 970.3102-05-6 (970.3102-506)*: This final rule revises this section by removing the last sentence of paragraph (a)(6) which states “For purposes of designating the threshold, total compensation includes only the employee’s salary and cash bonus or incentive compensation.” Removing this sentence increases DOE flexibility in this area to account for other things which should be included in the definition of total compensation, such

as deferred compensation. In addition, paragraph (p)(1) which references the Office of Federal Procurement Policy senior executive compensation benchmark is removed because that information is covered in the FAR. This final rule also adds a pointer to that coverage at the end of paragraph (a)(7)(ii).

- *Section 970.3200-1*: This final rule revises the section, in paragraph (c), by removing the words “remedy coordination official” and adding in their place “Head of the Contracting Activity”. This change is intended to improve clarity since “remedy coordination official” is an undefined term that is not widely used whereas “Head of the Contracting Activity” is universally used and understood in the acquisition community.

- *Section 970.3200-1-1*: This final rule redesignates section 970.3200-1-1 as section 970.3200-11 to conform with the FAR numbering system. A cross reference in section 970.5232-1 is updated to reflect the new numbering.

- *Section 970.3270*: This section is revised by removing section 970.5203-1, “Management Controls,” from the list of standard financial management clauses at paragraph (a)(4) and redesignating paragraphs (a)(5) through (8) as paragraphs (a)(4) through (7). The management controls clause is prescribed elsewhere and does not need to be prescribed here as well.

- *Section 970.3501-1*: This section is revised to remove an obsolete reference.

- *Section 970.3501-2*: This final rule revises this section to update references and clarify that only a federal Contracting Officer can obligate the Government to place work on the contract and obligate the Government to reimburse the contractor under the contract.

- *Section 970.4102-1*: This final rule revises this section to update office names, remove references to a rescinded DOE Order, clarify that Federal Energy Management Program (FEMP) concurrence is not necessary for NNSA programs, and make minor editorial changes.

- *Subpart 970.42*: This final rule redesignates sections 970.4207-03-02, 970.4207-03-70, and 970.4207-05-01 as provided by the table in section II of this document to conform with the FAR numbering system. Cross references in sections 970.3101-10 and 970.5242-1 are updated to reflect the new numbering.

- *Section 970.4207-05-01(970.4207-501)*: This section is revised, in paragraph (b)(4)(ii) to add the words “if such costs have been the subject of a DOE audit” to the end of the sentence.

This change is made in order to clarify that the contracting officer cannot resolve any questioned costs that have been the subject of a DOE audit without first obtaining the opinion of the DOE’s auditor on the allowability of such costs.

- *Section 970.4401-1*: This section is revised to remove Balanced Scorecard metrics as a means of evaluating purchasing systems and allow for other metrics to be used. This change is made because the Balanced Scorecard program does not include metrics for evaluating M&O contractor purchasing systems.

- *Section 970.4402-1*: This final rule revises this section to add a new paragraph (c) which states that the M&O contractor’s purchasing performance, including compliance with its approved system and methods, will be evaluated against the performance criteria and measures set forth in 48 CFR part 44, subpart 44.3, using the procedures articulated in DOE policies including DOE guidance on oversight of M&O Contractor’s Purchasing Systems.

- *Section 970.4501-1*: This final rule amends this section by revising the section heading to read “Applicability” and replacing the existing section text (moved to new section 970.4501-2) with language that clarifies the applicability of this subpart to M&O contractors and on-site environmental management and other major prime contractors as designated by the SPE. A reference to 41 CFR chapter 109 is also added.

- *Section 970.4501-2*: This final rule adds this section with text taken from the former section 970.4501-1. Paragraph (a) is modified by adding “and environmental management, and other major prime contractors located at DOE sites” to the end of the first sentence; removing the second sentence; and updating the reference to managerial personnel in the third sentence from “paragraph (j)” to “paragraph (k)”.

- *Section 970.5203-1*: This final rule amends the “Management Controls” clause, in the introductory text, by removing the words “and 970.3270(a)(4)” before the words “insert the following clause:”. It is only necessary to prescribe this clause in one location, and the second prescription located at section 970.3270(a)(4) was therefore removed (as described above).

- *Section 970.5204-1*: This final rule removes the “Counterintelligence” clause from part 970 and relocates it to section 952.204-74, as this requirement pertains to both M&O and non-M&O contractors.

- *Section 970.5204-3*: This final rule revises the “Access to and Ownership of

Records” clause to incorporate a class deviation. Paragraph (b) is revised to delete the parenthetical instruction to Contracting Officers in the second sentence as well as the last sentence of paragraph (b)(1), which lists examples of employee-related systems of record. Paragraph (g) is revised to replace the automatic flow down requirement based on the presence of the “Integration of environment, safety, and health into work planning and execution” clause currently at section 970.5223-1 with language that requires the contractor to flow down the clause (or maintain the applicable records themselves) whenever the subcontract scope of work could result in potential exposure to radioactive or other toxic substances that can cause long term health impacts.

- *Section 970.5215-1*: This final rule revises the “Total available Fee: Base Fee Amount and Performance Fee Amount” clause to make minor editorial revisions throughout to improve clarity.

- *Section 970.5215-3*: This final rule revises the “Conditional Payment of Fee, Profit, and other Incentives—Facility Management Contracts” clause to: update references; make revisions for clarity; remove Alternate I (it addressed contracts without security requirements; its requirements are now combined with the basic clause); and remove Alternate II (it addressed contracts awarded on a cost plus award fee basis; it is no longer necessary).

- *Section 970.5215-4*: This final rule removes the “Cost Reduction” clause. Because the Department has a value engineering policy for M&O contracts, a cost reduction clause is not necessary.

- *Section 970.5215-5*: This final rule revises the “Limitation on Fee” clause by updating the reference for the clause prescription in the introductory text and making minor editorial changes for clarity in paragraph (b).

- *Section 970.5217-1*: This final rule revises the “Strategic Partnership Projects Program (Non-DOE Funded Work)” clause to incorporate the Research and Innovation Act and Master Scope of Work requirements, which reduce the transactional approvals by DOE for previously approved groups of projects. In paragraph (d)(3), DOE has modified its requirements for requiring intellectual property indemnity to allow the contractor to reserve the provision when the sponsor is a federally-funded entity (DOE accepting liability to promote Government funded research) or a state or local government or public university, which may be prohibited from indemnifying others by state law. Minor editorial changes have also been made, to include consistently

referencing “SPP projects” rather than “agreement package”.

- *Section 970.5217–2*: This final rule adds a new “Agreements for Commercializing Technology” clause in order to integrate a new DOE policy that was developed to allow M&O contractors to engage with industry more flexibly on research and technology transfer projects. Through ACT, an M&O contractor can negotiate and accept financial and performance risks and accept terms and conditions more consistent with industry practice that are not permitted under Cooperative Research and Development Agreements and SPP agreements. Whereas the requirements and policy for Agreements for Commercializing Technology are currently contained in DOE guidance and in special provisions included in contracts, this final rule will establish regulatory coverage and incorporate the requirements into this new clause.

- *Section 970.5219*: This final rule adds a new “Small Business Subcontracting Plan” clause, in order to integrate a new DOE policy concerning the “Management and Operating Contractor Subcontract Reporting Capability (MOSRC)”, a DOE system, and associated processes to collect key information about M&O contractor first tier subcontracts for reporting to the Small Business Administration.

- *Section 970.5222–4*: This final rule adds a new “Unemployment Compensation” clause to address situations where a contractor, under federal and state unemployment rules are permitted to opt out of paying the state unemployment insurance tax and permitted to instead reimburse the state for actual claims paid out to its former employees. This section requires notification to the Government of its election and asserts governments right to review such changes to assess budgetary and programmatic risks when opting out.

- *Section 970.5223–3*: This final rule redesignates the provision entitled “Agreement regarding Work-place Substance Abuse Programs at DOE sites” as 970.5226–4 and makes conforming changes to the prescription in the introductory text. These changes are necessary to align with recent restructuring of FAR Part 23 which moved the corresponding “Drug Free Workplace” coverage from FAR 23.5 to FAR 26.5.

- *Section 970.5223–4*: This final rule redesignates the “Workplace Substance Abuse Programs at DOE sites” clause as 970.5226–5 and makes conforming changes to the prescription in the introductory text. These changes are

necessary to align with recent restructuring of FAR Part 23 which moved the corresponding “Drug Free Workplace” coverage from FAR 23.5 to FAR 26.5.

- *Section 970.5223–6*: This final rule removes the “Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management” clause because Executive Order 13423 has been rescinded.

- *Section 970.5223–7*: This final rule removes the “Sustainable Acquisition Program” clause on the basis that it duplicates the clause at section 952.223–78, which is prescribed in section 923.172.

- *Section 970.5226–1*: This final rule revises the “Diversity Plan” clause to incorporate the more current terminology of “Diversity, Equity, Inclusion, and Accessibility” (DEIA) and make minor editorial revisions. This update will better align the DOE clause with current Administration initiatives and will clarify the broader scope of recent DEIA initiatives.

- *Section 970.5227–1*: This final rule revises the “Rights in Data-Facilities” clause to add new definitions of Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, and Patent Counsel for clarity. The revisions also add a new paragraph (b)(4) requiring the Contractor to deposit technical data at the Office of Scientific and Technical Information per the DOE Order 241.1. Paragraph (c)(3) is added to allow the Government to instruct the Contractor to assert copyright in technical data or software and transfer title to the Government for licensing and distribution if necessary. Paragraph (d) is modified to allow Patent Counsel to determine what Alternates are appropriate to data rights clauses in subcontracts. In order to allow for competitive solicitations, Alternate II is added to include a provision in the Limited Rights Notice to allow for the use of contractor’s proprietary data in solicitations for government facilities being constructed, modified or decontaminated and decommissioned.

- *Section 970.5227–2*: This final rule revises the “Rights in Data-Technology Transfer” clause to add several new definitions of Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Open Source Software, and Patent Counsel for clarity. Paragraph (b) was broadened to allow the lab to assert copyright from just articles to “works” such as drawings, chapters in books, workshop documents, datasets, etc. that are released to the public. This allows control of the content when the public

uses or references this copyright work, but still satisfies DOE’s duty to disseminate the results of its research. Also, Office of Scientific and Technical Information requirements are updated in this section to comply with DOE Order 241.1. Added paragraph (c)(3) allows the government to direct the Contractor to assert copyright and transfer title to the Government for further control and distribution of technical data and software. As part of the broadening of copyright assertion without DOE Patent Counsel approval, paragraph (d) expands the type of data that the Contractor can protect for control without commercializing and adds a shorter notice to the publisher if necessary. Since paragraph (d) expanded the type of data, paragraph (e) is revised to require DOE Patent Counsel approval when the Contractor needs to control distribution to advance the goals of the technology transfer mission through commercialization. When the Contractor is granted permission to assert copyright, the five-year renewal periods have been changed to a period of commercialization activities since software can be useful for decades and licensees are reluctant to commercialize for only five years if DOE Patent Counsel rejected any extensions of time. The government may distribute copies to the public of the copyrighted work after the period of commercialization has ended. Paragraph (f) is added to address copyright assertion and distribution in open source software (OSS). The Contractor must notify the funding program that the Contractor intends to distribute the software as OSS and the program has two weeks to object. DOE Patent Counsel can supply that approval if a funding program doesn’t exist. This section also provides the requirements that the Contractor to retain records, distribute OSS such as the type of OSS licenses used and allow the public free access to software. Paragraph (g), Subcontracting, has been revised to allow DOE Patent Counsel to approve the use of 48 CFR 52.227–14, Rights in Data-General, or 48 CFR 52.227–17, Rights in Data-Special Works. The definitions in section 927.409(a) have been removed to use Alternate I of 48 CFR 52.227–14. The paragraph (d)(3) in section 927.409 has been replaced with Alternate VIII of 48 CFR 952.227–14 to allow DOE Patent Counsel to approve copyright requests. Similarly, Alternate I of 48 CFR 952.227–17 permits DOE Patent Counsel to direct a subcontractor to assert copyright in technical data and transfer to the Government or a third party such as the Contractor. This will allow the

Laboratory to consolidate copyright title if portions are generated by subcontractors. Alternate II of this clause is added to include a provision for Limited Rights Data in the Notice for government facilities being constructed, modified or decontaminated and decommissioned.

- *Section 970.5227-3*: This final rule revises the “Technology Transfer Mission” clause to address the M&O Contractor’s use of Trademark and Service marks with regards to the Laboratory names and facilities. In paragraph (a), statutory updates are included to comply with the Laboratory Modernization and Technology Transfer Act. Paragraph (b) includes, for clarity, new definitions for Bailment, Assignment, Strategic Partnership Projects (SPP), Agreements for Commercializing Technology (ACT), Master Scope of Work, and Joint Work Statement. Paragraph (d), Conflicts of Interest—Technology Transfer, has been modified in paragraph (d)(8) to include more information when the Contractor requests for approval of some exclusive licenses or assignments of technology to third parties. In addition, paragraph (d)(10) is revised to better define when the DOE is to be notified of potential conflicts when evaluating proposals on behalf of the program. In paragraph (f), U.S. Industrial Competitiveness, DOE has narrowed that applicability of this clause from intellectual property to only subject inventions. The Exceptional Circumstance Determination for U.S. Competitiveness (substantial U.S. manufacturing) when licensing contractor technology is added to this clause. After many years of experience, DOE has determined that a less cumbersome procedure, which involves relying on information available from United States Trade Representative (USTR) websites, can be utilized for obtaining the relevant information to assist in the consideration by the M&O contractor in determining whether the potential foreign licensee or assignee of laboratory inventions has similar protections for intellectual property in that foreign country. Paragraph (g), Indemnity-Product Liability, was amended to exclude CRADA (Cooperative Research and Development Agreements) and SPP requirements for product liability indemnity because it is covered under guidance for those agreements. Paragraph (l) was amended to allow the annual technology transfer plan to be included in the Annual Laboratory Plan. Paragraph (n)(3)(iii) was added to require the CRADA Final Report required in DOE Order 483.1 to be submitted to OSTI. Paragraph (n)(5)

conflict of interest was changed from “preparation, negotiation, or approval” to “negotiation, approval or performance” of CRADAs since preparing the agreements would include support staff with no control over the content and performance is added to capture the principal investigator’s role. When requirements for providing a Technology Partnership Ombudsman was added to the Contract, it was accidentally added to Alternate I. To correct this error, paragraph (p) was added to move the Technology Partnership Ombudsman from Alternate I into the contract clause. Alternate I was revised to remove the ombudsman provision.

- *Section 970.5227-4*: This final rule revises the “Authorization and Consent” clause in paragraphs (c)(1) through (3) to replace \$100,000 with “simplified acquisition threshold” so that when the simplified acquisition threshold limit is increased, this clause does not have to update the dollar value.

- *Section 970.5227-5*: This final rule revises the “Notice and Assistance Regarding Patent and Copyright Infringement” clause, in paragraph (c) to replace \$100,000 with “simplified acquisition threshold” so that when the simplified acquisition threshold limit is increased, this clause does not have to update the dollar value.

- *Sections 970.5227-6 through 970.5227-9*: This final rule revises the introductory text of each of these sections to reflect a new cross reference to 970.2702-70.

- *Sections 970.5227-10 and 970.5227-12*: This final rule revises the clauses at section 970.5227-10, “Patent Rights-Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor,” and section 970.5227-12, “Patent Rights-Management and Operating Contracts, For-Profit Contractor,” in order to reflect statutory changes and addition of approved determinations of exceptional circumstance (DEC). Paragraph (a) of both clauses adds definitions of Initial Patent Application and Statutory Period for clarity. Paragraph (b)(3) of the clause at section 970.5227-10 (previously located at paragraph (b)(2)) and paragraph (b)(6) of the clause at section 970.5227-12 (previously located at paragraph (b)(5)) have been modified to clarify when the Contractor may elect title to inventions that are covered under a DEC. Paragraph (c) of both clauses has been revised to allow electronic reporting using the Government’s iEdison or similar system along with certain information such as award numbers. Both clauses have

changed the requirement for “publication approval” to “publication review” requiring the Contractor Invention Identification Procedures to address notification to DOE instead of approval. In paragraph (g) of both clauses, the reference to 48 CFR 925.227-11 has been replaced with 37 CFR 401.14 because 48 CFR 925.227-11 has been revised with Alternates I and II for agency implementation of the DEC. In paragraph (j), March-in Rights, both clauses were modified to remove the four reasons where DOE can exercise this right by referencing the statute (for nonprofit organization or small business firm contractors) or patent waiver (for For-Profit Contractors.) Both clauses have added paragraph (t), U.S. Competitiveness, in compliance with the Determination of Exceptional Circumstance for Domestic Manufacture of DOE Science and Energy Technologies. Lastly, both clauses added a final paragraph on Unauthorized Access to require the Contractor to adequately protect materials related to inventions and notify DOE of a breach.

- *Section 970.5227-11*: This final rule revises the “Patent Rights-Management and Operating Contracts, For-profit Contractor Non-Technology Transfer” clause in a few ways. First, the clause title is changed to remove “Non-Technology Transfer” and add “No Patent Waiver” in its place. Second the final rule adds a definition of Department of Energy to paragraph (a) for clarity. Additional changes are made to reflect statutory changes. Furthermore, paragraph (c)(2)(vii) requires not only the B&R code but related information such as funding announcements or SPP/CRADA numbers to make it easier to identify inventions from other sources and paragraph (c)(5) is modified to include reporting inventions to Government electronic reporting systems instead of the contracting officer or patent counsel. Finally, this final rule adds an “Unauthorized Access” paragraph (o) to require the Contractor to adequately protect materials related to inventions and notify DOE of a breach.

- *Section 970.5232-2*: This final rule revises the “Payments and Advances” clause to: (1) re-organize and re-number the paragraphs; (2) make editorial changes to streamline and simplify content to improve clarity and update references; and (3) add a paragraph concerning “provisional fee,” which DOE has never addressed in the DEAR, to Alternate II. Although DOE has issued internal guidance that defines provisional fee, articulates when it might be useful, and specifies how to

use it, neither the FAR nor the DEAR define or addresses it. Consequently, DOE has concluded it would be prudent to heighten awareness of DOE's view of provisional fee by including some discussion of it in DEAR.

- *Section 970.5232-3*: This final rule revises the "Accounts, Records, and Inspection" clause to clarify (in paragraph (c)) the contractor's responsibility to either perform a sufficient amount of audit work of its subcontractors' incurred costs or arrange for an audit of its subcontractors' incurred costs. Minor editorial changes for clarity are also made.

- *Section 970.5232-5*: This final rule revises the "Liability with Respect to Cost Accounting Standards" clause, in the introductory text, by updating the citation for the clause prescription.

- *Section 970.5232-6*: This final rule revises the "Strategic Partnership Project Funding Authorization" clause, in the introductory text, by updating the citation for the clause prescription.

- *Section 970.5232-7*: This final rule revises the "Financial Management System" clause to: (1) reorganize and number the paragraphs; (2) clarify that contractors must maintain and administer a financial management system that is in accordance with Generally Accepted Accounting Principles (GAAP) for Federal Entities as defined by the Federal Accounting Standards Advisory Board and implemented by the DOE Financial Management Handbook and other implementing policies; and (3) make minor editorial changes for clarity.

- *Section 970.5235-1*: This final rule revises the "Federally Funded Research and Development Center Sponsoring Agreement" clause to make minor editorial revisions and to clarify that only the Contracting Officer can place work on the contract and obligate the Government to reimburse the Contractor for the work.

- *Section 970.5244-1*: This final rule revises the "Contractor Purchasing System" clause to: (1) clarify the Contractor's obligations regarding: maintaining documentation; providing audit or a sufficient amount of audit work; and for which subcontracts the Contractor must provide audit or a sufficient amount of audit work; (2) change the approval level for subcontractor indemnification requests from the SPE to the HCA in consultation with local legal counsel in paragraph (l) in order to give flexibility for local level approval of routine, low risk indemnity; (3) add seven clauses to the list of required subcontract flowdown requirements in paragraph (x); and (4)

update references and make minor editorial changes for clarity.

- *Section 970.5245-1*: This final rule revises the "Property" clause to add references to 41 CFR chapters 102 and 109 and make minor editorial changes for clarity.

V. Regulatory Review

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

Executive Order (E.O.) 12866, "Regulatory Planning and Review," as supplemented and reaffirmed by E.O. 13563, "Improving Regulation and Regulatory Review," 76 FR 3821 (Jan. 21, 2011), and amended by E.O. 14094, "Modernizing Regulatory Review," 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. Section 6(a) of E.O. 12866 also requires agencies to submit "significant regulatory actions" to the Office of Information and Regulatory Affairs (OIRA) for review. This final rule has been determined to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this rule was reviewed under that Executive order by OIRA of the Office of Management and Budget (OMB).

Consistent with Executive Orders 12866, 13563 and 14094, DOE issues this final rule only on a reasoned determination that the benefits of the rule justify its costs, and, in choosing among alternative regulatory approaches, DOE has selected those

approaches that maximize net benefits. DOE is undertaking a broad but largely procedural revision of its acquisition regulation to update and streamline the policies, procedures, provisions, and clauses that are currently applicable to its contracts.

This final rule updates, clarifies, and eliminates coverage that is unclear, obsolete, or unnecessarily duplicates the FAR; incorporates class deviations into the coverage; streamlines the coverage's policies and procedures where appropriate (taking into account DOE's and its contractors' actual experiences); and adds several new minor clauses in order to standardize local clause language throughout the department by eliminating the multiple versions of local clauses in current use. While this final rule does include several minor policy revisions, none of the revisions are substantial and in total they will have negligible impact on DOE's operations, its contractors, or the economy. The revisions do not in any specific case, or in total, substantially change the existing DEAR or how DOE and DOE contractors adhere to the DEAR. Most of these proposed changes will not generate any additional costs.

Nonetheless, DOE is highlighting several changes to the DEAR that raise potential cost burden concerns and discuss the expected impacts of these changes.

First, this final rule includes a revision of the Facility Clearance clause and associated policy coverage to incorporate a pre-award Interim Access procedure and allow for final Facility Clearance post-award. This change is not expected to result in any increased costs and is intended to benefit the Government by leveraging interim access authorizations for key contractor personnel and improving efficiencies in the timeliness of contract awards, and in contract management.

Additionally, DOE is revising the M&O fee policy to simplify the explanation of fee calculations, delete outdated requirements, and raise the classification factor for R&D laboratory from 1.25 to 1.5. These changes should not result in any increased costs. Most of the changes are editorial in nature, and are internal procedures directed to DOE contracting officers who will benefit from the simplified explanation of fee calculations. The change in classification factor is not expected to result in any cost increase since DOE expects no change to the total available fees under these contracts. The revisions are intended to reduce the administrative burden associated with routine requests to the SPE to exceed

the total available fees calculated using the existing classification factor.

Furthermore, DOE is adding several new contract clauses. Four of these (Agreements for Commercializing Technology; Small Business Subcontracting Plan; Conditional Payment of Fee, Profit, and Other Incentives; Identification of Contractor Employees) are substantially similar to clauses already widely used in DOE contracts. As a result, these four changes will not result in any added burden or costs but would benefit the Department and its contractors by standardizing these clauses across contracts.

The entirely new clauses are:

- A clause to address situations where a M&O contractor is permitted under federal and state unemployment rules to opt out of paying the state unemployment insurance tax and instead reimburse the state for actual claims paid out to its former employees. The new clause requires notification to the government of the contractor's election and asserts the government's right to review such changes to assess budgetary and programmatic risks when opting out. This clause only applies to M&O contracts and the notification required poses no significant burden or cost.

- A clause to clarify the policy and procedures for integrating DOE Directives into non-M&O contracts. Contractor requirements documents (CRDs), attached to DOE Directives, have been integrated into non-M&O contracts as needed for a long time. The addition of the new clause, along with the general information section and clause prescription is simply intended to codify the existing process of integrating the requirements of DOE Directives into non-M&O contracts on a bilateral basis and imposes no additional burden or cost.

Finally, many of the changes included in this final rule will result in benefits to the public. Because the DEAR has not had a comprehensive update in decades, it contains outdated and unused content. Additionally, it has citations to outdated laws and regulations and contains sections that are duplicative of the FAR or that are more appropriate for internal procedures and policies. The new changes will streamline the DEAR, make it easier to read, and reflect current practice and requirements.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public

comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's website: www.energy.gov/gc/office-general-counsel.

The DEAR governs all DOE acquisitions which obligate appropriated funds. Using data from its Integrated Data Warehouse, DOE estimates that it currently has approximately 3,200 prime contractors whose contracts are governed in part by the DEAR and that approximately 2,000 of those contractors are small entities under the RFA. Due to limitations in subaward reporting it is difficult to accurately estimate the number of small entity subcontractors. However, based on data from the Federal Subaward Reporting System (FSRS) and DOE's M&O Subcontract Reporting Capability (MOSRC) system, DOE estimates that it has approximately 15,300 subcontractors. Of those, approximately 9,000 were designated as small businesses. Therefore, DOE has reason to believe that this final rule, which is a comprehensive update of the DEAR, could affect a substantial number of small entities.

However, DOE expects that this rule will not have a significant economic impact on those small entities. In fact, DOE expects that the overall impacts of the rule will benefit small entities because the rule revises or removes outdated information and citations, removes extraneous procedural information that applies only to DOE's internal procedures, and removes policy or procedures duplicative of FAR requirements.

Moreover, the changes that are not merely technical or procedural primarily apply to DOE's twenty-three M&O contracts. An M&O contract is an agreement by which a private sector entity operates a DOE facility, such as a national laboratory. None of DOE's M&O contracts are held by small entities, and therefore changes to those contracts do not directly impact small entities.

Furthermore, even if M&O contractors could be considered small entities under the RFA, the changes in the rule

that will only pact M&O contracts are not economically significant.

- DOE's changes to the M&O fee policy sections will simplify and state explicitly the methodology Contracting Officers are to utilize for determining the total available fee for an M&O contract. The revisions are primarily intended to reduce the administrative burden for Contracting Officers. For instance, this rule clarifies that the maximum total available fee amount for an M&O contract may not exceed the fee derived from calculations included in the policy unless approved in advance by the SPE or designee. Additionally, the rule includes an increase in the classification factor for R&D laboratory from 1.25 to 1.5. This change will impact 16 M&O contractors who currently operate national laboratories (all of which are managed and operated by large entities) but should not have a significant economic impact because DOE does not anticipate an increase in the total available fees approved for these contracts.

- DOE is adding a clause at section 970.5222-4 to address situations where a M&O contractor is permitted under Federal and state unemployment rules to opt out of paying the state unemployment insurance tax and instead reimburse the state for actual claims paid out to its former employees. The clause requires notification to the government of the contractor's election and asserts the government's right to review such changes to assess budgetary and programmatic risks when opting out. DOE does not believe that the notification will result in any economic impact.

- DOE is adding two clauses specific to M&O contractors: Agreements for Commercializing Technology at section 970.5217-2 and Small Business Subcontracting Plan at section 970.1907-8. These clauses are substantially similar to clauses already widely used in DOE contracts and will therefore not have a significant economic impact.

Finally, the remaining substantive revisions in the rule that are applicable to non-M&O contracts will not have a significant economic impact.

- The rule includes a revision of the Facility Clearance provision at section 952.204-73, which is required in all solicitations for which the contract work is anticipated to require access to classified information or special nuclear material. The current provision requires a full Facility Clearance prior to the award of a contract requiring access to classified information, and prior to granting any Interim Access Authorizations to key management

personnel. The revision provides a process that permits contract award prior to granting a full Facility Clearance, and permit contract award prior to granting Interim Access Authorizations to key management personnel. There is no change to the processes themselves, only to the timing of the processes.

- DOE adds a clause to clarify the policy and procedures for integrating DOE Directives into non-M&O contracts. Contractor requirements documents (CRDs), attached to DOE Directives, have been integrated into non-M&O contracts as needed for a long time. The addition of the clause, along with the general information section and clause prescription is intended to codify the existing process of integrating the requirements of DOE Directives into non-M&O contracts on a bilateral basis and imposes no additional burden or cost to the contractors.

- The rule includes two new clauses: Conditional Payment of Fee, Profit, and Other Incentives at section 952.242–71 and Identification of Contractor Employees at section 952.203–1. These clauses are substantially similar to clauses already widely used in DOE contracts and will therefore not have a significant economic impact.

Accordingly, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for the Office of Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This rulemaking imposes no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*) Existing information collections imposed by the Department of Energy Acquisition Regulation are covered by OMB Control Number 1910–4100.

D. Review Under the National Environmental Policy Act of 1969

DOE analyzed this final rule in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that the rule fits within the following categorical exclusion listed in appendix A to subpart D of part 1021: A6

(Procedural rulemakings, including rulemaking under 48 CFR chapter 9 establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services). Therefore, this rule does not require the preparation of either an environmental impact statement or environmental assessment pursuant to NEPA.

E. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has determined that this final rule does not limit the policymaking discretion of the States. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity

and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (This policy is also available at: www.energy.gov/gc/guidance-opinions under “Guidance & Opinions” (Rulemaking)). DOE examined this final rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

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

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

I. Review Under Executive Order 12630

The Department has determined, under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 18, 1988), that this final rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (February 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (October 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at: www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.

DOE has reviewed this rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined

as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final rule, which revises and updates DOE’s acquisition regulation, would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that the rule does not meet the criteria set forth in 5 U.S.C. 804(2).

VI. Approval of the Office of the Secretary

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

List of Subjects

48 CFR Parts 901, 902, 909, 912, 915, 916, 926, and 951

Government procurement.

48 CFR Part 903

Antitrust, Conflict of interest, Government procurement.

48 CFR Part 904

Classified information, Government procurement.

48 CFR Part 908

Government procurement, Motor vehicles, Printing, Utilities.

48 CFR Part 917

Government procurement, Reporting and recordkeeping requirements, Research.

48 CFR Part 922

Equal employment opportunity, Government procurement, Labor, Reporting and recordkeeping requirements.

48 CFR Part 923

Drug abuse, Government procurement, Radiation protection.

48 CFR Part 925

Foreign trade, Government procurement.

48 CFR Part 927

Copyright, Government procurement, Inventions and patents.

48 CFR Part 931

Accounting, Government procurement.

48 CFR Part 932

Accounting, Government procurement, Loan programs—energy, Loan programs—National defense.

48 CFR Part 933

Administrative procedure and practice, Government procurement.

48 CFR Part 935

Government procurement, Research.

48 CFR Parts 936 and 952

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 941

Government procurement, Utilities.

48 CFR Part 942

Accounting, Government procurement.

48 CFR Part 945

Government procurement, Government property.

48 CFR Part 970

Accounting, Classified information, Drug abuse, Government procurement, Insurance, Labor, Minority businesses, Reporting and recordkeeping requirements, Small businesses, Surety bonds, Taxes, Whistleblowing, Women.

Signing Authority

This document of the Department of Energy was signed on October 9, 2024, by William J. Quigley, Deputy Associate Administrator, Partnership and Acquisition Services, National Nuclear Security Administration, pursuant to delegated authority from the Administrator, National Nuclear Security Administration, and Berta L. Schreiber, Director, Office of Acquisition Management, Department of Energy, pursuant to delegated authority from the Secretary of Energy. These documents with the original signature and date are maintained by DOE/NNSA. 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 October 10, 2024.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends chapter 9 of title 48 of the Code of Federal Regulations as set forth below:

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for part 901 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 2. Section 901.103 is revised to read as follows:

901.103 Authority.

The DEAR and amendments thereto are issued by the Senior Procurement Executives (SPEs) of the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA). The SPEs may also approve deviations from the DEAR, together and individually. The DOE SPE delegation is pursuant to a delegation from the Secretary of Energy in accordance with the authority of section 644 of the Department of Energy Organization Act (42 U.S.C. 7254), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 121(c)(2)), and other applicable laws. The NNSA SPE delegation is pursuant to a delegation from the Administrator of the NNSA, in accordance with section 3212 of the National Nuclear Security Administration Act (50 U.S.C. 2402), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 121(c)(2)), and other applicable laws. Except for the authorities designated as non-delegable, the SPEs are delegated the authorities assigned to the Agency Head in the FAR. A reference to the SPE refers to the DOE SPE and the NNSA SPE, unless otherwise indicated.

901.301.70 [Redesignated as 901.301–70]

■ 3. Section 901.301.70 is redesignated as section 901.301–70.

■ 4. Newly redesignated section 901.301–70 is revised to read as follows:

901.301–70 Other issuances related to acquisition.

In addition to the FAR and DEAR, there are other issuances which deal with acquisition. Among these are the Federal Property Management Regulation (41 CFR chapter 101), the Federal Management Regulation (41 CFR chapter 102), the DOE Property Management Regulation (41 CFR chapter 109), and DOE Directives. The Department also maintains the DOE Acquisition Guide (“the Guide”), which has procedural guidance for the acquisition community. The DOE Acquisition Guide serves this purpose by identifying relevant internal standard operating procedures to be followed by both procurement and program personnel who are involved in various aspects of the acquisition process. The Guide also is intended to be a repository of best practices found throughout the agency that reflect specific illustrations of techniques which might be helpful to all readers. The Guide is at <https://www.energy.gov/management/articles/departement-energy-acquisition-guide>.

■ 5. Subpart 901.4 is added to read as follows:

Subpart 901.4—Deviations from the DEAR

Sec.

- 901.401 Definition.
- 901.403 Individual deviations.
- 901.404 Class deviations.

Subpart 901.4—Deviations From the DEAR

901.401 Definition.

A deviation from the DEAR is defined as the issuance or use of a policy, procedure, solicitation provision, contract clause, method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the DEAR.

901.403 Individual deviations.

Requests for individual deviations from the FAR or the DEAR shall be submitted to the cognizant Senior Procurement Executive (SPE), that is DOE or NNSA, (or designee) for approval. Requests shall cite the specific part of the FAR or DEAR from which it is desired to deviate, shall set forth the nature of the proposed deviation(s), and shall give the reasons for the action requested.

901.404 Class deviations.

Requests for class deviations from the FAR or the DEAR shall be submitted to the cognizant SPE, that is DOE or NNSA, (or designee) for processing in accordance with FAR 1.404 and this section. Requests shall include the same

information prescribed in 901.403 for individual deviations.

■ 6. Amend section 901.602–3 by revising paragraph (b)(3) to read as follows:

901.602–3 Ratification of unauthorized commitments.

(b) * * *

(3) The ratification authority of the DOE and NNSA Senior Procurement Executives in paragraph (b)(2) of this section is delegated to the Head of the Contracting Activity (HCA) for individual unauthorized commitments of \$250,000 or under. The ratification authority of the HCA is nondelegable.

901.603–1 [Amended]

■ 7. Amend section 901.603–1 by removing the text “DOE Order 361.1B” and adding in its place “DOE Order 361.1”.

901.603–70 [Amended]

■ 8. Amend section 901.603–70 by removing the text “DOE Order 541.1B” and adding in its place “DOE Order 541.1”.

PART 902—DEFINITIONS OF WORDS AND TERMS

■ 9. The authority citation for part 902 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 10. Amend section 902.101 by revising the definition of “Senior Procurement Executive” to read as follows:

902.101 Definitions.

* * * * *

Senior Procurement Executive means for the Department of Energy, the Director, Office of Acquisition Management and for the National Nuclear Security Administration, the Deputy Associate Administrator for the Office of Partnership and Acquisition Services.

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 11. The authority citation for part 903 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 12. Section 903.104–7 is revised to read as follows:

903.104–7 Violations or possible violations.

(a) Except for Headquarters activities, the individual within DOE responsible for fulfilling the requirements of FAR

3.104–7(a)(1) and (2), relative to contracting officer conclusions on the impact of a violation or possible violation of subsections 27 (a), (b), (c) or (d) of the Office of Federal Procurement Policy Act, shall be the individual who has procurement authority and is one supervisory level above the Contracting Officer. The legal counsel is the Chief Counsel for the Operations Offices or the Federal Energy Technology Center; the Counsel, or the Chief Counsel, for the Support Offices or the Naval Reactors Offices; the General Counsel for National Nuclear Security Administration (NNSA), and the General Counsel for the Power Administrations. For Headquarters activities, the individual designated to perform the responsibilities in FAR 3.104–7(a)(1) and (2) regarding questions of disclosure of proprietary or source selection information is the Assistant General Counsel for Procurement and Financial Assistance. The designated individual for other questions regarding FAR 3.104–7(a)(1) and (2) for Headquarters activities, or for any other office that does not have authority through procurement operations, is the Agency Ethics Official (Designated Agency Ethics Official).

■ 13. Section 903.1003 is added to read as follows:

903.1003 Requirements.

In accordance with FAR subpart 7.5, DOE does not contract for inherently governmental functions. However, DOE may contract for services that can require contractors to perform duties that require regular contact with DOE and the public related to DOE's mission. To ensure that all parties know the status of individuals as contractor personnel, contractors and their employees must properly identify themselves as contractors in all DOE internal and external communications and meetings.

■ 14. Section 903.1004 is revised to read as follows:

903.1004 Contract clauses.

(a) The Contracting Officer shall insert the DOE website address <https://www.energy.gov/sites/prod/files/2017/05/f34/HotlinePoster.pdf> in paragraph (b)(3)(ii) of the clause at FAR 52.203–14, Display of Hotline Poster(s).

(b) The Contracting Officer shall insert the clause at 952.203–1, Identification of Contractor Employees, in all solicitations and contracts for services over the micro-purchase threshold.

PART 904—ADMINISTRATIVE MATTERS

■ 15. The authority citation for part 904 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 16. Amend section 904.401 by:

■ a. Revising the definition of “Access authorization”;

■ b. Removing the definition of “Classified information” and adding the definition “Classified information or Classified National Security Information” in its place; and

■ c. Adding in alphabetical order a definition for “Counterintelligence”.

The revision and additions read as follows:

904.401 Definitions.

Access authorization means an administrative determination that an individual is eligible for access to classified information or is eligible for access to, or control over, special nuclear material under the Atomic Energy Act of 1954; Executive Order 12968, Access to Classified Information, dated August 2, 1995; or 10 CFR part 710.

* * * * *

Classified information or Classified National Security Information mean information officially determined to be Restricted Data, Formerly Restricted Data, or Transclassified Foreign Nuclear Information under the Atomic Energy Act of 1954, as amended, or information determined to require protection under Executive Order 13526, Classified National Security Information, dated December 29, 2009.

Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communication security programs.

* * * * *

■ 17. Section 904.402 is revised to read as follows:

904.402 General.

(b) The basis of Department of Energy's (DOE) industrial security requirements is the Atomic Energy Act of 1954, as amended, the DOE Organization Act of 1977, as amended, and Executive Orders 13526 and 12829.

(3) DOE has established a counterintelligence program. All DOE elements and contractors managing DOE-owned or leased facilities that

require access authorizations, should undertake the necessary precautions to ensure that DOE and covered contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities.

(4) DOE security regulations concerning restricted data are codified at 10 CFR part 1045.

(5) Section 234B of the Atomic Energy Act (42 U.S.C. 2282b) requires that DOE contracts include a clause providing for appropriate reductions in fees or amounts paid to the contractor under the contract in the event of violations of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information. The clause is required for all DOE prime contracts that involve any possibility of contractor access to Restricted Data or other classified information. The clause specifies various degrees of violations and the amount of reduction attributable to each degree. The clause at 952.242–71, Conditional Payment of Fee, Profit, or Other Incentives, shall be used to comply with 42 U.S.C. 2282b (unless the clause at 970.5215–3, Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts is used). See 942.71(d) for the clause's prescription.

(e) Part 927 contains policies and procedures for safeguarding classified information in patent applications and patents.

■ 18. Amend section 904.404 by revising paragraphs (d)(1), (3), (6), and (7) to read as follows:

904.404 Solicitation provision and contract clause.

(d) * * *

(1) *Security, 952.204–2.* This clause is required in contracts and subcontracts, the performance of which involves or is likely to involve classified information, access to special nuclear materials or the provision of protective services. This includes contracts awarded under simplified acquisition procedures, as well as National Security Program contracts, under which access to proscribed information is required. Although DOE utilizes the National Industrial Security Program, DOE's security authority is derived from the Atomic Energy Act which contains specific language not found in other agencies' authorities. For this reason, DOE contracts must contain the clause at 952.204–2 rather than the clause at FAR 52.204–2 and Contracting Officers must incorporate DOE Form 470.1 or equivalent.

* * * * *

(3) *Sensitive foreign nation controls*, 952.204–71. This clause is required in unclassified research contracts which may involve sharing unclassified information about nuclear technology with certain sensitive foreign nations. The contractor shall be provided at the time of award the listing of nations referenced in DOE Order 142.3, Unclassified Foreign Visits and Assignments Program, or its successor. (The attachment referred to in the clause shall set forth the applicable requirements of the DOE regulations on dissemination of unclassified published and unpublished technical information to foreign nations.)

* * * * *

(6) *Computer Security*, 952.204–77. This clause is required in contracts in which the contractor may have access to computers owned, leased or operated on behalf of the Department of Energy.

(7) *Counterintelligence*. The Contracting Officer shall include the clause at 952.204–74, Counterintelligence, in all contracts that include the clauses at 952.204–2, Security Requirements, and 952.204–70, Classification/Declassification.

■ 19. Amend section 904.7004 by revising the first sentence of paragraph (a) to read as follows:

904.7004 Findings, determination, and contract award or termination.

(a) Based on the information disclosed by the offeror(s) or contractor, and after consulting with the DOE Office of Environment, Health, Safety and Security, the contracting officer must determine that award of a contract to an offeror(s) or continued performance of a contract by a contractor will not pose an undue risk to the common defense and security. * * *

* * * * *

■ 20. Amend section 904.7102 by revising paragraph (e) to read as follows:

904.7102 Waiver by the Secretary.

* * * * *

(e) Any request for a waiver under this subpart shall be accompanied by the information required by the clause at 952.204–73, Facility Clearance.

■ 21. Subpart 904.73 is added to read as follows:

Subpart 904.73—Department of Energy Directives

Sec.
904.7300 General.
904.7301 Contract clause.

904.7300 General.

The contractor is required to comply with the requirements of applicable

Federal, State, and local laws and regulations, unless relief has been granted by the appropriate authority. Additionally, the Department of Energy (DOE) Directives Program is a system of instructions, including orders, notices, manuals, guides, and standards, for DOE elements. In certain circumstances, DOE will apply requirements contained in these directives to a contract. In these circumstances, program and requirements personnel will be responsible for identifying the requirements that are applicable to the contract and for providing a list of applicable requirements to the Contracting Officer for inclusion in the contract.

904.7301 Contract clause.

The Contracting Officer shall insert the clause at 952.204–78, DOE Directives, in non-management and operating contracts where the work will be performed on a DOE site and the contract will be subject to the requirements of DOE Directives. This includes information technology or cybersecurity work, as well as other work program officials identify as requiring the clause.

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 22. The authority citation for part 908 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

908.7103 and 908.7115 through 908.7117 [Removed and Reserved]

■ 23. Sections 908.7103 and 908.7115 through 908.7117 are removed and reserved.

PART 909—CONTRACTOR QUALIFICATIONS

■ 24. The authority citation for part 909 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

909.104–1 [Amended]

■ 25. Amend section 909.104–1 in paragraph (h) by removing the phrase “accordance with 970.5223–3” and adding the phrase “accordance with 970.5226–4” in its place.

■ 26. Amend section 909.403 by revising the definition of “Debarring and suspending official” to read as follows:

909.403 Definitions.

* * * * *

Debarring and suspending official, for the DOE, the designees are:

(1) *Debarring Official* means the Debarring Official for DOE contracts is the Director, Office of Acquisition Management, DOE, or designee. The debarring Official for NNSA contracts is the Deputy Associate Administrator for the Office of Partnership and Acquisition Services, or designee.

(2) *Suspending Official* means the Suspending Official for DOE contracts is the Director, Office of Acquisition Management, DOE, or designee. The suspending Official for NNSA contracts is the Deputy Associate Administrator for the Office of Partnership and Acquisition Services, or designee.

■ 27. Amend section 909.405 by revising paragraphs (f), (g), and (h) to read as follows:

909.405 Effect of listing.

* * * * *

(f) DOE or NNSA may disapprove or not consent to the selection (by a contractor) of an individual to serve as a principal investigator, as a project manager, in a position of responsibility for the administration of Federal funds, or in another key personnel position, if the individual is listed in the System for Award Management (SAM) exclusions.

(g) DOE or NNSA shall not conduct business with an agent or representative of a contractor if the agent’s or representative’s name has an active exclusion in SAM.

(h) DOE or NNSA shall review SAM before conducting a pre-award survey or soliciting proposals, awarding contracts, renewing or otherwise extending the duration of existing contracts, or approving or consenting to the award, extension, or renewal of subcontracts.

909.407–3 [Amended]

■ 28. Amend section 909.407–3 in paragraph (e)(1)(vii) by removing the text “EPLS” and adding in its place the text “SAM exclusion”.

PART 912—ACQUISITION OF COMMERCIAL ITEMS

■ 29. The authority citation for part 912 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 30. Section 912.301 is added to read as follows:

912.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

(f) The Contracting Officer shall supplement the clauses prescribed at FAR 12.301—

(1) In all cases, with 952.232–7, Electronic Submission of Invoices/ Vouchers; and

(2) In appropriate cases, following prescriptions elsewhere in this chapter, with the following:

- (i) 952.204–74, Counterintelligence.
- (ii) 952.204–77, Computer Security.
- (iii) 952.211–71, Priorities and allocations for energy programs (clause).

PART 915—CONTRACTING BY NEGOTIATION

■ 31. The authority citation for part 915 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

915.404–2 [Redesignated as 915.404–2000]

■ 32. Section 915.404–2 is redesignated as section 915.404–2000.

915.404–2000 [Amended]

■ 33. Newly redesignated section 915.404–2000 is amended in paragraph (c)(1) by removing “915.404–2–70” and adding in its place “915.404–2700”.

915.404–2–70 [Redesignated as 915.404–2700]

■ 34. Section 915.404–2–70 is redesignated as section 915.404–2700.

915.404–4 [Redesignated as 915.404–4000]

■ 35. Section 915.404–4 is redesignated as section 915.404–4000.

915.404–4–70 [Redesignated as 915.404–4700]

■ 36. Section 915.404–4–70 is redesignated as section 915.404–4700.

■ 37. Newly redesignated section 915.404–4700 is revised to read as follows:

915.404–4700 DOE structured profit and fee system.

(a) This section implements FAR 15.404–4(b) and (d).

(b) DOE’s structured profit and fee system for non-management and operating contracts comprises two approaches: a weighted guidelines system for all but construction contracts, construction management contracts, and special equipment purchases; and a fee schedules-based system for construction contracts, construction management contracts, and special equipment purchases. The

former is covered at 915.404–4720 through 915.404–4780; the latter is covered at 915.404–4800 through 915.404–4860. Both approaches use the procedures at 915.404–4900 for cost-plus-award-fee contracts.

915.404–4–70–1 [Redesignated as 915.404–4710]

■ 38. Section 915.404–4–70–1 is redesignated as section 915.404–4710.

915.404–4–70–2 [Redesignated as 915.404–4720]

■ 39. Section 915.404–4–70–2 is redesignated as section 915.404–4720.

■ 40. Amend newly redesignated section 915.404–4720 as follows:

■ a. In paragraph (a), remove “915.404–4–70–8” and add in its place “915.404–4780”;

■ b. In paragraph (b) remove “915.404–4–70–4” and add in its place “915.404–4740”; and

■ c. In the table in paragraph (d) revise entries II, IV.b., V, and VI to read as follows:

915.404–4720 Weighted guidelines system.

* * * * *

(d) * * *

Profit factors						Weight ranges (percent)
II. Contract Risk (type of contract-weights applied to total cost of items I.a. thru I.e.)						0 to 8.
IV. * * *						
b. Developed items employed (Weights applied to total of profit \$ for items I.a. thru I.e.)						0 to 20.
V. Special Program Participation (Weights applied to total of Profit \$ for items I.a. thru I.e.)						– 5 to +5.
VI. Other Considerations (Weights applied to total of Profits \$ for items I.a. thru I.e.)						– 5 to +5.
* * * * *						

915.404–4–70–3 [Redesignated as 915.404–4730]

■ 41. Section 915.404–4–70–3 is redesignated as section 915.404–4730.

915.404–4–70–4 [Redesignated as 915.404–4740]

■ 42. Section 915.404–4–70–4 is redesignated as section 915.404–4740.

915.404–4–70–5 [Redesignated as 915.404–4750]

■ 43. Section 915.404–4–70–5 is redesignated as section 915.404–4750.

915.404–4–70–6 [Redesignated as 915.404–4760]

■ 44. Section 915.404–4–70–6 is redesignated as section 915.404–4760.

915.404–4–70–7 [Redesignated as 915.404–4770]

■ 45. Section 915.404–4–70–7 is redesignated as section 915.404–4770.

■ 46. Amend newly redesignated section 915.404–4770 as follows:

■ a. In paragraph (a) remove “915–404–4–71” and add in its place “915.404–4800”; and

■ b. In paragraph (b) remove “915–404–4–70–2(d)” and add in its place “915.404–4720(d)”.T

915.404–4–70–8 [Redesignated as 915.404–4780]

■ 47. Section 915.404–4–70–8 is redesignated as section 915.404–4780.

915.404–4–71 [Redesignated as 915.404–4800]

■ 48. Section 915.404–4–71 is redesignated as section 915.404–4800.

915.404–4–71–1 [Redesignated as 915.404–4810]

■ 49. Section 915.404–4–71–1 is redesignated as section 915.404–4810.

915.404–4–71–2 [Redesignated as 915.404–4820]

■ 50. Section 915.404–4–71–2 is redesignated as section 915.404–4820.

915.404–4–71–3 [Redesignated as 915.404–4830]

■ 51. Section 915.404–4–71–3 is redesignated as section 915.404–4830.

915.404–4830 [Amended]

- 52. Amend newly redesignated section 915.404–4830 as follows:
 - a. In paragraph (a) remove “915.404–4–71–1(a) and add in its place “915.404–4810(a)”;
 - b. In paragraph (d) remove “915.404–4–71–3(a), (b), and (c)” and add in its place “paragraphs (a), (b), and (c) of this section”.

915.404–4–71–4 [Redesignated as 915.404–4840]

- 53. Section 915.404–4–71–4 is redesignated as section 915.404–4840.

915.404–4840 [Amended]

- 54. Amend newly redesignated section 915.404–4840 in paragraph (a) by removing “915.404–4–71–3 of this section” and adding in its place “915.404–4840”.

915.404–4–71–5 [Redesignated as 915.404–4850]

- 55. Section 915.404–4–71–5 is redesignated as section 915.404–4850.

915.404–4850 [Amended]

- 56. Amend newly redesignated section 915.404–4850 as follows:
 - a. In the first sentence of paragraph (a) remove “915.404–4–71–6” and add in its place “915.404–4860”;
 - b. In the last sentence of paragraph (a) remove “915.404–4–71–6(c) and 915.404–4–71–6(d)” and add in its place “915.404–4860(c) and (d)”;
 - c. In the last sentence of paragraph (e)(1) remove “915.404–4–71–4(b)” and add in its place “915.404–4840(b)”;
 - d. In paragraph (e)(3) remove “915.404–4–71–4(c)” in the first and last sentences and add in their place in both instances “915.404–4840(c)”.

915.404–4–71–6 [Redesignated as 915.404–4860]

- 57. Section 915.404–4–71–6 is redesignated as section 915.404–4860.

915.404–4860 [Amended]

- 58. Amend newly redesignated section 915.404–4860 in paragraph (c) by removing “915.404–4–71–5(h)” and adding in its place “915.404–4850(h)”.

915.404–4–72 [Redesignated as 915.404–4900]

- 59. Section 915.404–4–72 is redesignated as section 915.404–4900.

915.404–4900 [Amended]

- 60. Amend newly redesignated section 915.404–4900 as follows:
 - a. In the second sentence of paragraph (a) remove “915.404–4–71–5” and “970.15404–4–8”, and add in their place “915.404–4850” and “970.1504–

101 through 970.1504–300”, respectively;

- b. In the first sentence of paragraph (a)(1) remove “915.404–4–71” and add in its place “915.404–4800”; and
- c. In paragraph (b) remove “915.404–4–72(a)(3)” and add in its place “paragraph (a)(3) of this section”.

- 61. Section 915.408–70 is revised to read as follows:

915.408–70 Key personnel clause.

The Contracting Officer shall insert the clause at 952.215–70, Key Personnel, in solicitations and contracts under which successful performance is largely dependent on the expertise of specific key personnel.

- 62. Section 915.606 is revised to read as follows:

915.606 Agency procedures.

(b) Unless otherwise specified in a notice of program interest, all unsolicited proposals must be submitted to the Unsolicited Proposal Manager at *DOEUSP@netl.doe.gov*. If the proposer has ascertained the cognizant program office through preliminary contacts with program staff, the proposal may be submitted directly to that office. In such instances, the proposer should separately send a copy of the proposal cover letter to the unsolicited proposal coordinator to assure that the proposal is logged in the Department’s automated tracking system for unsolicited proposals.

PART 916—TYPES OF CONTRACTS

- 63. The authority citation for part 916 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

- 64. Section 916.307 is revised to read as follows:

916.307 Contract clauses.

When using the clause at FAR 52.216–7, Allowable Cost and Payment, supplement the clause with 952.216–7, Allowable Cost and Payment.

916.504 [Amended]

- 65. Amend section 916.504 by redesignating paragraph (c) as paragraph (a)(1).

916.505 [Amended]

- 66. Amend section 916.505 by:
 - a. Redesignating paragraph (b)(6) as paragraph (b)(8); and
 - b. In newly redesignated paragraph (b)(8)(i):
 - i. Removing the words “Office of Procurement and Assistance Management” and adding in their place

the words “Office of Acquisition Management”; and

- ii. Removing “48 CFR 16.505(b)(6)” and adding in its place “FAR 16.505(b)(8)”.

PART 917—SPECIAL CONTRACTING METHODS

- 67. The authority citation for part 917 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

- 68. Amend section 917.600 by revising paragraph (b) to read as follows:

917.600 Scope of subpart.

* * * * *

(b) The requirements of this subpart apply to any Department of Energy management and operating contract.

917.601 [Removed]

- 69. Section 917.601 is removed.
- 70. Amend section 917.602 by revising paragraphs (b) and (c) to read as follows:

917.602 Policy.

* * * * *

(b) It is the policy of the Department of Energy to provide for full and open competition in the award of management and operating contracts.

(c) A management and operating contract may be extended at the completion of its term without providing for full and open competition only when such extension is justified under one of the statutory authorities identified in FAR 6.302 and only when authorized by the Secretary.

917.7402 [Amended]

- 71. Amend section 917.7402 in paragraphs (b) and (c)(4) by removing “DOE Order 430.1B” and adding in its place “DOE Order 430.1C”.

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

- 72. The authority citation for part 922 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

- 73. Section 922.101–70 is added to read as follows:

922.101–70 General (applicability of Management and Operating contractor basic labor policies to certain non-Management and Operating contracts).

(a) The policies and associated contract clauses in 970.2201 apply to the award and administration of non-Management and Operating contracts if:

(1) The contract work had been previously performed under a DOE

Management and Operating contract; and/or

(2) The Contractor is required to employ all or part of the former Contractor's workforce; or

(3) The contract has been specifically designated by the Senior Procurement Executive.

(b) The non-M&O contracts described by paragraph (a) of this section may include, but are not limited to, contracts whose work is for:

- (1) Environmental remediation;
- (2) Decontamination and decommissioning;
- (3) Environmental restoration;
- (4) Infrastructure services for the site;
- (5) Site closure at a current or former M&O contract site or facility; or
- (6) Protective forces that provide physical security of sites at a current or former M&O contract site.

■ 74. Subpart 922.4 is added to read as follows:

Subpart 922.4—Labor Standards for Contracts Involving Construction

Sec.

922.406 Administration and enforcement.
922.406-1 Policy.

922.406 Administration and enforcement.

922.406-1 Policy.

This section sets forth additional controls and criteria for the application of the Construction Wage Rate Requirements Statute (40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), formerly known as the Davis-Bacon Act) (Statute) in the Department of Energy's operational or maintenance activities. The policy included in this subpart applies to M&O contracts.

(c) *Categorical exemptions.* The two categories of work discussed in paragraphs (c)(1) and (2) of this section would normally be covered by the Statute. However, in limited circumstances, these types of work will be classified as non-covered by the Statute. These exceptions are to be narrowly construed and used only when clearly applicable. Any decision on the two categorical exemptions from Statute coverage shall be made by the Head of the Contracting Activity, without power of delegation.

(1) Work for which continuity of operations is mission-essential (*i.e.*, when life, property, or DOE operating requirements are confronted with material risks).

(2) Emergency work to combat the effects of fire, flood, earthquake, military or terrorist attacks, technological emergencies, infectious disease/pandemic influenza threats, equipment failure, accident, or other

casualties, and to restart the operational activity following the casualty. This exemption will generally apply only to work directly related to restarting the activity or work.

(d) *Particular exemptions.* Work items meeting one of the following criteria normally will be classified as non-covered by the Statute:

(1) *Individual work items estimated to cost \$2,000 or less.* The total dollar amount of a contract is not the determining factor; rather, consider the cost of individual work items classified as construction, alteration and/or repair, including painting and decorating. However, no item of work, the cost of which is estimated to be in excess of \$2,000, shall be artificially divided into portions less than \$2,000 for the purpose of avoiding the application of the Statute.

(2) *General operational and maintenance activities.* Service-type work that is a part of general operational and maintenance activities, including cyclic, routine, and recurring programs, or which, being very closely and directly involved therewith, are more in the nature of operational activities than construction, alteration, and or repair work.

(3) *Assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment.* Note: If these activities are a logical part of the construction of a facility, or where there is more than incidental construction work, relative to the overall effort involved, they are Statute covered.

(4) *Experimental development of equipment, processes, or devices, including assembly, fitting, installation, testing, reworking, and disassembly.* This refers to equipment, processes, and devices that are assembled and/or set in place and interconnected for the purpose of conducting a test or experiment. The nature of the test or experiment may be such that the professional personnel who are responsible for the test or experiment and/or data to be derived therefrom must, by necessity, participate in the assembly and interconnections. The following types of experiments are not Statute covered:

(i) *Set-up of devices and processes associated with the experiment, within established facilities, usually require utility connections.* Such set-ups are generally not covered by the Statute. (However, set-up requiring structural changes or modifications of basic utility services, as distinguished from connections thereto, is covered by the Statute.)

(ii) *Assembly of piping and equipment, including adaptation and modification within existing hot cell facilities.* Assembly of piping and equipment, including adaptation and modification thereof, within existing hot cell facilities to prove out conceptual designs of chemical processing units or remotely controlled machining equipment.

(iii) *Assembly of materials and equipment for thermonuclear experiments.* Assembly of materials and equipment for particular aspects of thermonuclear experiments to explore feasibility and to study other ramifications of the concept of high energy and to collect data thereon.

(iv) *Assembly, erection, modification, and disassembly of a loop set-up.* A loop facility differs from a loop set-up in that it is of a more permanent character. (Note that preparatory work for a loop set-up or facility requiring structural changes or modifications of basic utility services, as distinguished from connections thereto, is covered by the Statute. Similarly, material and equipment that are installed for a loop set-up that is a permanent part of the facility, or used for a succession of experimental programs are similarly covered by the Statute.)

(v) *Reactor component experiments involving the insertion of experimental components within reactor systems without the use of a loop assembly.* Such a facility may consist of a reactor vessel, pressurizing tank, coolant loops, pumps, heat exchangers, and other auxiliary equipment as needed. The facility also may include sufficient shielding to permit work on the reactor to proceed following a short period of power interruption. (Note: Although the erection and on-site assembly of such a reactor facility is covered by the Statute, the set-up of components whose characteristics are under study are excluded from Statute coverage.)

(5) *Decontamination.* Decontamination includes washing, scrubbing, and scraping to remove contamination; removal of contaminated soil or other material (except asbestos); and painting or other resurfacing, provided that such painting or resurfacing is an integral part of the decontamination activity. Except to the extent section 1804 of the Atomic Energy Act of 1954 (as amended by Title XI of the Energy Policy Act of 1992), 42 U.S.C. 2297g-3, applies to the work at issue. Section 1804 requires all laborers and mechanics performing decontamination or decommissioning of DOE uranium enrichment facilities are paid prevailing wages.

(6) *Burial of contaminated soil waste or contained liquid.* Note, however, that the initial preparatory work readying the burial ground for use (e.g., any grading or excavating that is a part of initial site preparation, fencing, drilling wells for continued monitoring of contamination, construction of guard or other office space) is covered by the Statute. Work performed subsequent to burial that involves the placement of concrete or other like activity is also covered by the Statute.

(e) *Statute-covered experimental development work.* Notwithstanding the exceptions in paragraph (d)(4) of this section, the following experimental development work is Statute covered: building construction, structural changes, drilling, tunneling, excavation, back-filling, modifications to utility services, as distinguished from temporary connections thereto, and set-up of equipment to be used for continuous testing (e.g., a machine to be continuously used for testing the tensile strength of structural members).

(f) *Different work categories may have differing Statute coverage.* For instance, a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are classifiable as not Statute covered, since it may be necessary to separate work that should be classified as Statute covered. Therefore, the Contracting Officer shall establish and maintain controls for the careful scrutiny of proposed work assignments under such contracts.

(1) Contractors whose contracts do not contemplate the performance of work covered by the Statute with the contractor's employees are not authorized to perform such work within the scope of the Statute, unless the Contracting Officer, in compliance with FAR subpart 22.4, modifies the contract.

(2) Determinations of Statute applicability are the responsibility of the HCA on a case-by-case basis. However, the HCA may delegate to the Contracting Officer, if consistent with DOE's responsibilities as described in this subsection, the authority to prescribe, from time to time, classes of work as to which applicability or non-applicability of the Statute is clear.

(g) *Contracting Officer responsibilities.* The Contracting Officer shall comply with the procedures for requesting wage determinations set forth in FAR 22.404, as necessary.

(h) *Construction site contiguous to an established manufacturing facility.* As DOE-owned property sometimes encompasses several thousand acres of real estate, a number of separate

facilities may be located in areas contiguous to each other on the same property. These facilities may be built over a period of years, and established manufacturing activities may be regularly carried on at one site at the same time that construction of another facility is underway at another site. On occasion, the regular manufacturing activities of the operating contractor at the first site may include the manufacture, assembly, and reconditioning of components and equipment that in other industries would normally be done in established commercial plants. While the manufacture of components and equipment in the manufacturing plant is not covered by the Statute, the installation of any such manufactured items on a construction job is covered by the Statute if the installation includes more than incidental construction work relative to the overall effort involved.

PART 923—ENVIRONMENT, SUSTAINABLE ACQUISITION, AND MATERIAL SAFETY

■ 75. The authority citation for part 923 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 76. Revise the heading for Part 923 to read as set forth above.

923.002 [Removed]

■ 77. Section 923.002 is removed.

923.101 [Redesignated as 923.170]

■ 78. Section 923.101 is redesignated as section 923.170.

■ 79. Newly redesignated section 923.170 is revised to read as follows:

923.170 Policy.

The Department of Energy's (DOE) policy is to promote sustainable acquisition by acquiring products and services that are energy-efficient, contain recycled or biobased content, and have other environmentally preferable attributes, as specified in applicable statutory, regulatory, and Executive Order based requirements. See FAR 2.101 for applicable definitions. More information on environmentally preferable products and services is available from the DOE Sustainable Acquisition Program.

923.102 [Redesignated as 923.171]

■ 80. Section 923.102 is redesignated as section 923.171.

923.103 [Redesignated as 923.172]

■ 81. Section 923.103 is redesignated as section 923.172.

■ 82. Newly redesignated section 923.172 is revised to read as follows:

923.172 Contract clauses.

Insert the clause at 952.223–78, Sustainable Acquisition Program, in all contracts under which the contractor operates Government-owned facilities or motor vehicle fleets, or significant portions thereof, or performs construction at a Government-owned facility.

Subpart 923.5 [Redesignated as Subpart 926.5]

■ 83. Redesignate subpart 923.5, consisting of sections 923.500, 923.570, 923.570–1, 923.570–2, and 923.570–3 as Subpart 926.5, consisting of sections 926.500, 926.570, 926.570–1, 926.570–2, and 926.570–3 respectively.

Subpart 923.9 [Redesignated as Subpart 923.4]

■ 84. Redesignate subpart 923.9, consisting of section 923.903, as subpart 923.4, consisting of section 923.404.

■ 85. In newly redesignated section 923.404, remove “52.223–XX” and add “52.223–19” in its place wherever it appears.

■ 86. Section 923.7002 is revised to read as follows:

923.7002 Worker safety and health.

(a) The Atomic Energy Act mandates that DOE shall either pursue civil penalties, as implemented at 10 CFR part 851, for a violation under 42 U.S.C. 2282c, or a contract fee reduction, but not both. For a contract fee reduction—

(1) The clause prescribed at §§ 942.71(d) and 923.7003(f), which is 952.242–71, Conditional Payment of Fee, Profit, or Other Incentives, addresses contract fee reductions (for both non-management and operating contracts and management and operating contracts; for the latter, §§ 942.71(d) and 923.7003(f) refer to clause prescribed in 970.1504–3(b)).

(2) The clause provides, among other things, for an appropriate reduction to the fee, profit, or other incentives under the contract in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker safety and health concerns.

(3) When reviewing performance failures that would warrant a reduction of otherwise earned fee, the Contracting Officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. The mitigating factors are specified in the clause.

(4) The Contracting Officer must obtain the concurrence of the Head of the Contracting Activity: prior to effecting any reduction of fee, profit or other incentives otherwise payable under the clause at 952.942–71, Conditional Payment of Fee, Profit, or Other Incentives; and prior to determining that no reduction is warranted for performance failure(s) that would otherwise warrant a reduction.

(b) In the event of a violation by the contractor or any contractor employee of any Department regulation relating to worker safety and health concerns, before deciding to pursue a contract fee reduction, the Contracting Officer must coordinate with the Office of Nuclear Safety within the Office of Enforcement in the Office of Enterprise Assessments (or designated successor office).

- 87. Amend section 923.7003 by:
- a. Revising paragraphs (a), (f), and (g); and
- b. Removing paragraph (h).

The revisions read as follows:

923.7003 Contract clauses.

(a) A decision to include or not include environmental, safety and health clauses in DOE contracts shall be made by the contracting officer in consultation with appropriate personnel within the Office of Environment, Health, Safety and Security (or designated successor office). For M&O contracts see 970.2303–3 and insert the clause at 970.5223–1.

* * * * *

(f) Unless the clause for management and operating contracts is prescribed (see § 970.1504–3(b)), insert the clause at 952.242–71, Conditional Payment of Fee, Profit, and Other Incentives, in all contracts that contain the clause at 952.204–2, Security Requirements, the clause at 952.250–70, Nuclear Hazards Indemnity Agreement, or both clauses.

(g) The contracting officer shall insert the clause at 952.223–75, Preservation of Individual Occupational Radiation Exposure Records, in contracts containing 952.223–71, Integration of Environment, Safety, and Health into Work Planning and Execution, or 952.223–72, Radiation Protection and Nuclear Criticality.

PART 925—FOREIGN ACQUISITION

- 88. The authority citation for part 925 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

- 89. Amend section 925.1001 by revising paragraph (b) to read as follows:

925.1001 Waiver of right to examination of records.

(b) *Determination and findings.* A determination and findings required by FAR 25.1001(b) shall be forwarded to either the Director, Office of Contract Management, Office of Acquisition Management, or for the National Nuclear Security Administration (NNSA), to the Deputy Associate Administrator for the Office of Partnership and Acquisition Services, for coordination of the Secretary's approval.

PART 926—OTHER SOCIOECONOMIC PROGRAMS

- 90. The authority citation for part 926 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

- 91. Newly redesignated section 926.500 is revised to read as follows:

926.500 Scope of subpart.

For contracts performed at DOE sites, in lieu of subpart 26.5 of this title, contracting activities shall use 926.570, Workplace Substance Abuse Programs at DOE sites.

- 92. Newly redesignated section 926.570–2 is revised to read as follows:

926.570–2 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 970.5226–4, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 926.570–1, Applicability.

(b) The contracting officer shall insert the clause at 970.5226–5, Workplace Substance Abuse Programs at DOE Sites, in contracts where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 926.570–1, Applicability.

926.570–3 [Amended]

- 93. Newly redesignated section 926.570–3 is amended by:

- a. Removing “FAR 23.506” and adding “FAR 26.505” in its place wherever it appears;
- b. Removing “970.5223–4” and adding “970.5226–5” in its place wherever it appears.

- 94. Amend section 926.7001 by revising paragraphs (a) and (b) to read as follows:

926.7001 Policy.

(a) Section 3021(a) of the Energy Policy Act of 1992, as amended, specifies that the Department of Energy (DOE) shall, to the extent practicable, provide that not less than 10 percent of the total combined amounts obligated for competitively awarded contracts and subcontracts under the Energy Policy Act be expended with—

(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women;

(2) Historically Black colleges and universities;

(3) Colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans; or

(4) Qualified HUBZone small business concerns, as defined at FAR 2.101.

(b) The four groups in paragraph (a) of this section are collectively referred to in this section as “Energy Policy Act target groups.”

* * * * *

- 95. Section 926.7004 is revised to read as follows:

926.7004 Size standard for Energy Policy Act procurements.

The size standard for Energy Policy Act engineering services procurements shall be Exception 2 under North American Industry Classification System code 541330, Engineering Services.

- 96. Section 926.7005 is revised to read as follows:

926.7005 Preferences under the Energy Policy Act.

Solicitations for all competitive Energy Policy Act procurements not for 8(a) firms and in excess of the simplified acquisition threshold shall provide for an evaluation preference for offers received from entities from among the Energy Policy Act target groups. The evaluation criteria shall provide that in instances in which two or more proposals being considered for final selection are ranked as essentially equal after consideration of all technical and cost evaluation factors, and if one of these proposals is from an offeror from among an Energy Policy Act target group that offeror will be selected for award.

- 97. Amend section 926.7006 by revising paragraph (a) to read as follows:

926.7006 Goal measurement and reporting requirements.

(a) *General.* The following types of contract awards for Energy Policy Act procurements shall be counted toward

achievement by DOE of the 10 percent goal—

(1) Any award set-aside for small, disadvantaged business;

(2) Any competitive section 8(a) award;

(3) Any competitive award to one of the four target groups under an unrestricted procurement;

(4) Any award to one of the four target groups conducted under simplified acquisition procedures in excess of the micro-purchase threshold; and

(5) Any competitively awarded subcontract to one of the four target groups under a prime award.

* * * * *

■ 98. Amend section 926.7007 by revising paragraph (c) to read as follows:

926.7007 Solicitation provisions and contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 952.226–72, Energy Policy Act Subcontracting Goals and Reporting Requirements, in contracts for Energy Policy Act requirements with an award value in excess of \$750,000 (\$1,500,000 in the case of construction).

* * * * *

926.7101 [Amended]

■ 99. Amend section 926.7101 by removing the word “Section”, wherever it appears, and the phrase “42 U.S.C. 7474h(c)(2)” and adding in their places the word “section” and the phrase “50 U.S.C. 2704(c)(2)”, respectively.

926.7103 [Amended]

■ 100. Amend section 926.7103 in paragraph (a) by removing the phrase “42 U.S.C. 7474h” and adding in its place the phrase “50 U.S.C. 2704(c)(2)”.

■ 101. Section 926.7104 is revised to read as follows:

926.7104 Contract clause.

The contracting officer shall insert the clause at 952.226–74, Workforce Restructuring and Displaced Employee Hiring Preference, in contracts (both non-management and operating contracts and management and operating contracts), except for contracts for commercial items, pursuant to 41 U.S.C. 403, that exceed \$500,000.

PART 927—PATENTS, DATA, AND COPYRIGHTS

■ 102. The authority citation for part 927 continues to read as follows:

Authority: Atomic Energy Act of 1954, as amended (42 U.S.C. 2168, 2182, 2201); Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); Department of Energy National Security and

Military Applications of Nuclear Energy Authorization Act of 1987 (42 U.S.C. 7261a.); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); National Nuclear Security Administration Act (50 U.S.C. 4201 *et seq.*)

927.200 [Removed]

■ 103. Section 927.200 is removed.

■ 104. Section 927.201–1 is revised to read as follows:

927.201–1 General.

For the purposes of this subpart, “research and development (R&D)” includes “research, development, and demonstration.” In certain contracting situations, such as those involving research, development, or demonstration projects, consideration should be given to the impact of third party-owned patents covering technology that may be incorporated in the project if the patents may ultimately affect widespread commercial use of the project results. In such situations, Patent Counsel shall be consulted to determine what modifications, if any, are to be made to the utilization of the Patent and Copyright Infringement Liability and Patent Indemnity provisions or clauses or what other action might be deemed appropriate.

927.206 [Removed]

■ 105. Section 927.206 is removed.

927.206–1 [Redesignated as 927.202]

■ 106. Section 927.206–1 is redesignated as section 927.202.

927.202 Royalties.

■ 107. Amend newly redesignated section 927.202 by revising the section heading to read as above.

927.206–2 [Redesignated as 927.202–5]

■ 108. Section 927.206–2 is redesignated as section 927.202–5.

927.202–5 Solicitation provisions and contract clause.

■ 109. Amend newly redesignated section 927.202–5 by revising the section heading to read as above.

927.207 [Redesignated as 927.203]

■ 110. Section 927.207 is redesignated as section 927.203.

927.207–1 [Redesignated as 927.203–1]

■ 111. Section 927.207–1 is redesignated as section 927.203–1.

■ 112. Newly redesignated section 927.203 is revised to read as follows:

927.203 Security requirements for patent applications containing classified subject matter.

927.302 [Redesignated as 927.302–70]

■ 113. Section 927.302 is redesignated as section 927.302–70.

927.300 [Redesignated as 927.302]

■ 114. Section 927.300 is redesignated as section 927.302.

■ 115. Newly redesignated section 927.302 is revised to read as follows:

927.302 Policy.

(a) *Introduction.* (1) A primary mission of the Department of Energy (DOE) is to conduct research, development, and demonstration leading to the ultimate commercialization of efficient sources of energy. To accomplish this mission, DOE must work in cooperation with industry in the development of new energy sources and achieve the ultimate goal of widespread commercial utilization of those energy sources in the shortest practicable time. To this end, Congress has provided DOE with the authority to invoke an array of incentives to secure the commercialization of new technologies developed for DOE. One such important incentive is provided by the patent system.

(2) Another primary mission of DOE is to manage the Nation’s nuclear weapons programs and other classified programs, where research and development procurements are directed toward processes and equipment not available to the public. To support DOE programs for bringing private industry into these and other special programs to the maximum extent permitted by national security and policy considerations, the technology developed in these programs should be made available for use in the particular fields of interest and under controlled conditions by properly cleared industrial and scientific research institutions. To ensure such availability and control, the granting of waivers in these programs may be more limited, either by the imposition of field of use restrictions or national security measures, than in other DOE programs.

(b) *Government right to receive title.* Pursuant to 42 U.S.C. 2182 and 5908, DOE takes title to all inventions conceived or first actually reduced to practice in the course of or under contracts with large, for-profit companies, foreign organizations, and other entities that are not beneficiaries of 35 U.S.C. 200 *et seq.* Regulations dealing with Department’s authority to waive its title to subject inventions,

including the relevant statutory objectives, exist at 10 CFR part 784. Pursuant to that section, DOE may waive the Government's patent rights in appropriate situations at the time of contracting to encourage industrial participation, foster commercial utilization and competition, and make the benefits of DOE activities widely available to the public. In addition to considering the waiver of patent rights at the time of contracting, DOE will also consider the incentive of a waiver of patent rights upon the reporting of an identified invention when requested by such entities or by the employee-inventor with the permission of the contractor. These requests can be made whether or not a waiver request was made at the time of contracting. Waivers for identified inventions will be granted where it is determined that the patent waiver will be a meaningful incentive to achieving the development and ultimate commercial utilization of inventions. Where DOE grants a waiver of the Government's patent rights, either at the time of contracting or after an invention is made, certain minimum rights and obligations will be required by DOE to protect the public interest.

■ 116. Newly redesignated section 927.302–70 is revised to read as follows:

927.302–70 Additional policy.

(a) In this section and 927.303, *background patent* means a U.S. patent covering an invention or discovery that is not a subject invention (as defined at 35 U.S.C. 201(e)) and that is owned or controlled by the Contractor at any time through the completion of the contract:

(1) Which the Contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon; and

(2) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(b) Except for contracts with organizations that are beneficiaries of Public Law 96–517, the United States, as represented by DOE, shall normally acquire title in and to any invention or discovery conceived or first actually reduced to practice in the course of or under the contract, allowing the contractor to retain a nonexclusive, revocable, paid-up license in the invention and the right to request permission to file an application for a patent and retain title to any ensuing patent in any foreign country in which

DOE does not elect to secure patent rights. DOE may approve the request if it determines that such approval would be in the national interest. The contractor's nonexclusive license may be revoked or modified by DOE only to the extent necessary to achieve expeditious practical application of the invention pursuant to any application for and the grant of an exclusive license in the invention to another party.

(c) Normally, contracts will not include background patent and background data provisions. Under special circumstances, however, to provide heightened assurance of commercialization, a provision providing for a right to require licensing to third parties of background inventions, limited rights data or restricted computer software may be included (see 927.303(d)(5)). Inclusion of such a provision will be done only with the written concurrence of the DOE program official setting forth the need for such assurance. A contract may include the right to license the Government and third-party contractors for special Government purposes when future availability of the technology would also benefit the Government. The scope of any such background patent or data licensing is subject to negotiation.

(d) The Assistant General Counsel for Technology Transfer and Intellectual Property shall:

(1) Determine whether reported inventions are subject inventions under the patent rights clause of the contract;

(2) Determine whether and where patent protection will be obtained on inventions;

(3) Represent DOE before domestic and foreign patent offices;

(4) Accept assignments and instruments confirmatory of the Government's rights to inventions; and

(5) Represent DOE in patent, trademark, technical data, copyright, and other intellectual property matters not specifically reserved to the Head of the Agency or designee under this part.

■ 117. Section 927.303 is revised to read as follows:

927.303 Contract clauses.

(a)(1) Insert a patent rights clause in all solicitations and contracts for experimental, research, developmental, or demonstration work as prescribed in this section.

(2) [Reserved]

(3) [Reserved]

(4) For M&O contracts, certain decontamination and decommissioning activities and the building and/or operation of other DOE facilities, see subpart 970.27.

(d) The Contracting Officer shall use the clause at 952.227–13, Patent Rights—Ownership by the Government, except for—

(1) *Contracts for construction work or architect-engineer services.* When the services can be expected to involve only “standard types of construction” such as involving previously developed equipment, methods, and processes as described in FAR 27.303(a)(3), the Contracting Officer shall not include a patent clause;

(2) *Contracts with domestic small business firms or nonprofit organizations (see FAR 27.301).* In such cases, the Contracting Officer shall use the clause at 37 CFR 401.14, Standard Patent Rights, and Alternate I of 952.227–11 that includes the agency implementing regulations specific for DOE, suitably modified to identify the parties, in all contracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, unless the work is subject to an Exceptional Circumstances Determination by DOE or another exception (see 37 CFR 401.3(a)). If the Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies executed by DOE on June 7, 2021 (S&E DEC) or any other Determination of Exceptional Circumstances under the Bayh-Dole Act (DEC) is applicable, the Contracting Officer shall include the clause at 37 CFR 401.14 and Alternate II of 952.227–11;

(3) *Waivers of rights.* In cases where DOE grants an advance waiver or waives its rights in an identified invention pursuant to 10 CFR part 784, Contracting Officers shall consult with patent counsel on appropriate clauses;

(4) *Contracts for the design, construction, operation, or management (or the integration of a collection of contracts for the same purpose) of a Government-owned research, development, demonstration or production facility.* In such cases, the Government must be accorded certain rights, applicable to further use of the facility by or on behalf of the Government after contract termination or completion. For such contracts, the Contracting Officer shall include Alternate II with the clause at 952.227–13;

(5) *Background patent rights.* For contracts involving DOE background patent rights, the Contracting Officer shall use Alternate I to the clause at 952.227–13. Alternate I may be modified with the concurrence of Patent

Counsel in order to reflect the equities of the contracting parties in particular situations; or

(6) *U.S. Competitiveness*. If the funding program is subject to the S&E DEC, then the Contracting Officer shall use Alternate II to the clause at 952.227–13 when Patent Counsel has determined that the S&E DEC applies to the Contractor's funding and should be included in the contract.

■ 118. Amend section 927.304 by:

■ a. In the first sentence, removing “952.227–11” and adding in its place “37 CFR 401.14”; and

■ b. Revising the second sentence.

The revision reads as follows:

927.304 Procedures.

* * * This section supplements FAR 27.304–1(c).

Subpart 927.4—Rights in Data and Copyrights

■ 119. The heading for subpart 927.4 is revised to read as above.

■ 120. Section 927.401 is added to read as follows:

927.401 Definitions.

Technical data means data (other than computer software) of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer database (see appendix A to subpart D of 2 CFR part 910).

927.402 and 927.402–1 [Removed]

■ 121. Sections 927.402 and 927.402–1 are removed.

927.402–2 [Redesignated as 927.402]

■ 122. Section 927.402–2 is redesignated as section 927.402.

■ 123. Amend newly redesignated section 927.402 by revising the introductory text to read as follows:

927.402 Policy.

The technical data and scientific and technical information (STI) policies are directed toward achieving the following objectives:

* * * * *

927.403 [Removed]

■ 124. Remove section 927.403.

927.404 and 927.404–70 [Redesignated as 927.404–70 and 927.404–71]

■ 125. Sections 927.404 and 927.404–70 are redesignated as sections 927.404–70 and 927.404–71, respectively.

■ 126. Newly redesignated section 927.404–70 is revised to read as follows:

927.404–70 Rights in technical data in subcontracts.

(a) Prime contractors and higher-tier subcontractors, in meeting their obligations with respect to contract data, must obtain from their subcontractors the rights in, access to, and delivery of such data on behalf of the Government. Accordingly, subject to the policy set forth in this subpart and subject to the approval of the Contracting Officer, where required, prime contractors or higher-tier subcontractors must select appropriate technical data provisions for their subcontracts.

(1) In many, but not all instances, use of the clause at FAR 52.227–14, Rights in Data—General, as supplemented pursuant to this subpart, in a subcontract will provide for sufficient Government rights in and access to technical data. The inspection rights afforded in Alternate V to the clause at FAR 52.227–14 normally should be obtained only in first-tier subcontracts for research, development, or demonstration work or the furnishing of supplies for which there are substantial technical data requirements as reflected in the prime contract.

(2) If a subcontractor refuses to accept technical data provisions affording rights in and access to technical data on behalf of the Government, the Contractor shall so inform the Contracting Officer in writing and not proceed with the subcontract award without written authorization of the Contracting Officer.

(3) In prime contracts or higher-tier subcontracts that contain the clause at FAR 52.227–16, Additional Data Requirements, the Contractor or higher-tier subcontractor must determine whether inclusion of such clause in a subcontract is required to satisfy technical data requirements of the prime contract or higher-tier subcontract.

(b) As is the case for DOE in its determination of technical data requirements, the clause at FAR 52.227–16, Additional Data Requirements, should not be used at any subcontracting tier where the technical data requirements are fully known. Normally, the clause will be used only in subcontracts having as a purpose the conduct of research, development, or demonstration work. Prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the subcontractor's limited rights data or restricted computer software for their private use, and they shall not acquire rights to limited rights data or restricted computer software on behalf of the Government for standard commercial

items without the prior approval of Patent Counsel.

■ 127. Amend newly redesignated section 927.404–71 by revising the fourth sentence to read as follows:

927.404–71 Statutory programs.

* * * Generally, such clauses will be based upon the clause at FAR 52.227–14, Rights in Data—General, with appropriate modifications to define and protect the “protected data” in accordance with the applicable statute.
* * *

■ 128. Sections 927.406 and 927.406–4 are added to read as follows:

927.406 Acquisition of data.

927.406–4 Acquisition and use of technical data.

To meet the objectives stated in 927.402, DOE has extensive technical data needs.

(a) Section 982 of the Energy Policy Act of 2005 (EPAct 2005, 42 U.S.C. 16352) mandates that the Secretary of Energy, through the Office of Scientific and Technical Information, shall maintain within the Department publicly available collections of STI resulting from research, development, demonstration, and commercial-applications activities supported by DOE.

(b) Section 105 of the DOE Energy Research and Innovation Act (Pub. L. 115–246) further mandates that DOE establish and maintain a public database populated with information on unclassified research and development projects, as well as relevant literature and patents.

(c) The legal rights in technical data acquired by the Government through DOE contracts, other than management and operating (M&O) contracts (see 970.2704), or contracts involving the production of data necessary for DOE sites/facilities management or operations, are set forth in the clause at FAR 52.227–14, Rights in Data—General, as supplemented in accordance with this subpart. However, those clauses do not obtain for the Government delivery of any data whatsoever. Rather, known technical data delivery requirements shall be set forth as part of the contract. For Research and Development contracting, requirements for results (conveyed as STI) are addressed in 935.010 and should be set forth in the contract.

(d) Contracting Officers shall contact Patent Counsel assisting their contracting activity or the Assistant General Counsel for Technology Transfer and Intellectual Property for assistance in selecting, negotiating, or

approving appropriate data and copyright clauses in accordance with the procedures set forth in this subpart and FAR subpart 27.4. In particular, Contracting Officers shall seek the advice of Patent Counsel regarding any situation not in conformance with this subpart, including the inclusion or modification of alternate paragraphs of the clause at FAR 52.227–14, as supplemented pursuant to this subpart, the exclusion of specific items from that clause, the exclusion of the clause at FAR 52.227–16, Additional Data Requirements, and the inclusion of any special provisions in a particular contract. Deviations shall follow the requirements in FAR subpart 1.4 and subpart 901.4.

(e) Contractors are required by Alternate VIII of the clause at 952.227–14, as supplemented pursuant to this subpart, to acquire permission from DOE Patent Counsel to assert copyright in any data including computer software first produced in the performance of the contract. This requirement reflects DOE's established software distribution program, and DOE's statutory dissemination obligations. When a contractor requests permission to assert copyright, Patent Counsel shall predicate its decision on the considerations reflected in paragraph (e) of the clause at 970.5227–2, Rights in Data—Technology Transfer.

(f) In many situations the achievement of DOE's objectives would be frustrated if the Government, at time of award, did not obtain on behalf of responsible third parties and itself limited license rights in and to limited rights data or restricted computer software, or both. Such rights are necessary for the practice of subject inventions or data first produced or delivered under the contract. When the contract is for research, development, or demonstration, Contracting Officers should consult with program officials and Patent Counsel to determine whether such rights should be acquired. No such rights should be obtained from a small business or non-profit organization, unless similar rights in background inventions of such organizations have been authorized in accordance with 35 U.S.C. 202(f). In all cases when the Contractor has agreed to include a provision assuring commercial availability of background patents, consideration should be given to securing for the Government and responsible third parties at reasonable royalties and under appropriate restrictions, co-extensive license rights for data, which are limited rights data and restricted computer software.

■ 129. Section 927.409 is revised to read as follows:

927.409 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at FAR 52.227–14, Rights in Data-General, and supplement it with Alternates I and V of FAR 52.227–14 and Alternate VIII of FAR 952.227–14, Rights in Data-General, in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract. Generally, a contract should contain only one data rights clause. However, where more than one is needed as prescribed in paragraph (b) of this section, the contract should distinguish the portion of contract performance to which each pertains.

(b)(1) However, the rights in data in specific situations will be treated as described, where the contract is—

(i) For the production of special works of the type set forth in FAR 27.405–1, the Patent Counsel shall insert the clause at FAR 52.227–17, Rights in Data-Special Works, including Alternate I. The clause at FAR 52.227–14, Rights in Data-General, may be included in the contract and made applicable to data other than special works, as appropriate (see paragraph (e) of FAR 27.409);

(ii) For the acquisition of existing data works, as described in FAR 27.405–2 (see paragraph (f) of FAR 27.409);

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case agencies may prescribe different clauses (see paragraph (i) of FAR 27.409);

(iv) For architect-engineer services or construction work, in which case the Patent Counsel shall utilize the clause at FAR 52.227–17, Rights in Data-Special Works, including Alternate I;

(v) A Small Business Innovation Research contract (see paragraph (h) of FAR 27.409);

(vi) For management and operation of a DOE facility (see 970.2704) or other contracts involving the production of data necessary for the management or operation of DOE facilities or a DOE site, certain decontamination and decommissioning activities, or the building and/or operation of other DOE facilities, after consultation with Patent Counsel (see 927.402–1(b));

(vii) Awarded pursuant to a statute expressly providing authority for the protection of data first produced thereunder from disclosure or dissemination. (see 927.404–70);

(viii) For basic or applied research with educational institutions (other than those in which software is specified for delivery unless the software will be

released as open source software or other special circumstances exist), the Patent Counsel may use the clause at FAR 52.227–14 with its Alternate IV instead of Alternate VIII of the clause at FAR 952.227–14, Rights in Data-General;

(ix)(A) Requiring license rights that are deemed necessary, the Patent Counsel should supplement the clause at FAR 52.227–14, Rights in Data—General, with Alternate VI, as provided at 952.227–14, Rights in Data—General, which will normally be sufficient to cover limited rights data and restricted computer software for items and processes used in the contract and necessary to ensure widespread commercial use or practical utilization of a subject of the contract. The phrase “subject of the contract” in Alternate VI is intended to limit licensing to the fields of technology specifically contemplated under the contract; the phrase may be replaced by a more specific statement of the fields of technology intended to be covered in the manner described in the clause at 952.227–13, Patent Rights—Ownership by the Government.

(B) Where limited rights data and restricted computer software are the main purpose or basic technology of the research, development, or demonstration effort of the contract (rather than subcomponents, products, or processes ancillary to the contract effort), the limitations in paragraphs (k)(1) through (4) of Alternate VI of the clause at 952.227–14 should be supplemented or deleted. Paragraph (k) of Alternate VI further provides that limited rights data or restricted computer software may be specified in the contract as being excluded from or not subject to the licensing requirements. This exclusion is implemented by limiting the applicability of the provisions of paragraph (k) of Alternate VI to only those classes or categories of limited rights data and restricted computer software determined essential for licensing. Although contractor licensing may be required under paragraph (k) of Alternate VI, the final resolution of questions regarding the scope of such licenses and the terms thereof, including provisions for confidentiality, and reasonable royalties, is left to the negotiation between the contractor and the Contracting Officer; or

(x) Where the contractor has access to certain categories of DOE-owned Category C–24 restricted data, as set forth in 10 CFR part 725, Alternate VII of 952.227–14, Rights in Data-General, shall be used. DOE has reserved the right to receive reasonable

compensation for the use of its inventions and discoveries, including its related data and technology. In addition, in any other types of contracting situations in which the contractor may be given access to restricted data owned by DOE, appropriate limitations on the use of such data must be specified.

(d) The contracting officer shall insert the clause at FAR 52.227–16, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less.) See FAR 27.406–2. Patent Counsel may use the clause at FAR 52.227–16, Additional Data Requirements, along with the clause at FAR 52.227–14, Rights in Data—General, to require the contractor to furnish additional technical data, in instances where technical data requirements were not known at the time of award. There is, however, a built-in limitation on the kind of technical data that a contractor may be required to deliver under either the contract or the Additional Data Requirements clause. This limitation is in the withholding provision of paragraph (g) of FAR 52.227–14, Rights in Data—General, which provides that the contractor need not furnish limited rights data or restricted computer software. Unless Alternate II or III to the clause at FAR 52.227–14 is used, the Additional Data Rights clause is specifically intended that the contractor may withhold limited rights data or restricted computer software even though a requirement for technical data specified in the contract or called for delivery (pursuant to the clause at FAR 52.227–16) would otherwise require the delivery of such data.

(m) Contracting officers shall incorporate the solicitation provision at FAR 52.227–23, Rights to Proposal Data (Technical), in all requests for proposals.

(n) Contracting officers shall include the solicitation provision at 952.227–84 in all solicitations involving research, developmental, or demonstration work.

PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 130. The authority citation for part 931 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 131. Section 931.205–18 is revised to read as follows:

931.205–18 Independent research and development and bid and proposal costs.

(c)(1) Independent research and development (IR&D) costs are recoverable under DOE contracts to the extent they are reasonable, allocable, not otherwise unallowable, and they have potential benefit or relationship to the DOE program. The term “DOE program” encompasses the DOE total mission and its objectives. Bid and proposal (B&P) costs are recoverable under DOE contracts to the extent they are reasonable, allocable, and not otherwise unallowable.

(2) [Reserved]

931.205–47 [Amended]

■ 132. Amend section 931.205–47 in paragraph (h)(1), in the definition of “Employee whistleblower action”, by removing “42 U.S.C. 7239” and adding in its place “50 U.S.C. 2702”.

PART 932—CONTRACT FINANCING

■ 133. The authority citation for part 932 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 134. Amend section 932.970 by revising paragraph (b) to read as follows:

932.970 Implementing DOE policies and procedures.

* * * * *

(b) *Accelerated payments to limit contractor working capital requirements.* Contracting Officers may specify payment due dates that are less than the standard under the Prompt Payment Act when a determination is made, in writing, on a case-by-case basis, that a shorter contract financing payment cycle will be beneficial to the Government by reducing the contractor’s working capital requirements. In such cases, the Contracting Officer should coordinate with the finance and program officials that will be involved in the payment process to ensure that the contract payment terms to be specified in solicitations and resulting contract awards will provide sufficient time for officials to perform an appropriate review of the invoices before they are paid. Consideration should be given to geographical separation, workload, contractor ability to submit a proper request, and other factors that could affect timing of payment. However, payment due dates that are less than 7 days for progress payments or less than 14 days for interim payments on cost-type contracts are not authorized. In all cases whereby the contract specifies payment due dates that are sooner than those required under the relevant

prompt payment requirements, the contract will permit the Contracting Officer to unilaterally authorize additional time for review of invoices if needed to perform an adequate review of those invoices prior to payment.

■ 135. Section 932.971 is added to read as follows:

932.971 Electronic submission of invoices/vouchers.

In general, Contracting Officers should insert the clause at 952.232–7, Electronic Submission of Invoices/Vouchers, in contracts. However, after consultation with the Office of the Chief Financial Officer, the Contracting Officer may approve alternate methods of submission.

Subpart 932.70 [Removed]

■ 136. Subpart 932.70, consisting of 932.7002 through 932.7004–3, is removed.

PART 933—PROTESTS, DISPUTES, AND APPEALS

■ 137. The authority citation for part 933 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 138. Section 933.103 is revised to read as follows:

933.103 Protests to the agency.

(a) *Reference.* The Department of Energy (DOE) does not accept or adjudicate protests from prospective subcontractors.

(c) The Department of Energy encourages direct negotiations between an offeror and the contracting officer, including alternative dispute resolution (ADR) techniques. A protest requesting a decision at the Headquarters level shall state whether the protester is willing to utilize ADR techniques such as mediation or nonbinding evaluation of the protest by a neutral party. Both the protester and the Department must agree that the use of such techniques is appropriate. If the parties do not mutually agree to utilize ADR techniques to resolve the protest, the protest will be processed in accordance with the procedures set forth in paragraphs (f) and (g) of this section.

(f)(5) Upon receipt of a protest filed against DOE, the contracting officer shall prepare a report similar to that discussed in FAR 33.104(a)(3)(iv).

(6) Protests filed with the contracting officer before or after award shall be decided by the HCA except for the following cases, which shall be decided by the Senior Procurement Executive:

(i) The protester requests that the protest be decided by the Senior Procurement Executive;

(ii) The HCA is the contracting officer of record at the time the protest is filed, having signed either the solicitation where the award has not been made, or the contract, where the award or nomination of the apparent successful offeror has been made;

(iii) The HCA concludes that one or more of the issues raised in the protest have the potential for significant impact on Department of Energy (DOE) acquisition policy; or

(iv) The SPE elects to decide the protest.

(g) The official identified in paragraph (f)(6) of this section will render a decision on a protest within 35 calendar days, unless a longer period of time is deemed necessary.

■ 139. Section 933.104 is revised to read as follows:

933.104 Protests to GAO.

The GAO does not have jurisdiction over protests from subcontractors.

(a)(2) The contracting officer shall provide the notice of protest.

(b)(1) The finding required under FAR 33.104(b)(1) shall be concurred upon by the local DOE counsel with cognizance over the underlying procurement and the Senior Program Official, and approved by the SPE before the HCA authorizes a contract award. The finding shall also address the likelihood that the protest will be sustained by the GAO.

(c)(2) The finding required by FAR 33.104(c)(2) shall be concurred upon by the local DOE counsel with cognizance over the underlying procurement and the Senior Program Official, and approved by the SPE before the HCA authorizes contract performance.

(g) *Notice to GAO.* DOE's policy is to comply promptly with the recommendations in Comptroller General decisions unless compelling reasons exist. Any decision to not comply shall be substantiated by the HCA making the award, after approval by the SPE. The report to the GAO regarding a decision to not comply with the GAO's recommendation shall be transmitted to the GAO by the HCA making the award or, if a DOE-wide policy issue is involved, the report shall be provided by the SPE.

■ 140. Section 933.106 is revised to read as follows:

933.106 Solicitation provisions and contract clauses.

(a) When using the provision at FAR 52.233-2, Service of Protest, the Contracting Officer shall insert the

provision at 952.233-2, Service of Protest.

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

■ 141. The authority citation for part 935 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 142. Section 935.010 is revised to read as follows:

935.010 Scientific and technical reports.

(c) For purposes of section 982 of the Energy Policy Act of 2005 (42 U.S.C. 16322), the research results, referred to as scientific and technical information (STI), are derived from management and operation (M&O), research and development (R&D), facility management, and non-major site/facility management type contracts. STI must be documented, managed, and electronically submitted to the Department of Energy (DOE), Office of Scientific and Technical Information (OSTI), using the DOE Energy Link System. DOE Order 241.1B, Scientific and Technical Information Management, or successor, sets forth requirements for STI management and the types of STI products to be announced and submitted to DOE OSTI. STI products identified in DOE Order 241.1B are reportable to OSTI whether publicly releasable, controlled unclassified information or classified.

(d) The Contracting Officer shall ensure that the requirements for STI management, as prescribed in DOE Order 241.1B, or its successor version, are included in accordance with the attendant Contractor Requirements Document or in the statement of work.

■ 143. Section 935.070 is revised to read as follows:

935.070 Research misconduct.

The policy on research misconduct, set forth at 10 CFR part 733, applies to individuals who propose, perform or review research of any kind for the Department of Energy pursuant to a contract. The regulations in 10 CFR part 733 apply regardless of where the research or other activity is conducted or by whom.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 144. The authority citation for part 936 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

936.202-71 [Removed]

■ 145. Section 936.202-71 is removed.

PART 941—ACQUISITION OF UTILITY SERVICES

■ 146. The authority citation for part 941 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 147. Section 941.201-70 is revised to read as follows:

941.201-70 Policy.

Utility services shall be acquired in accordance with part 41 of this title and the Energy Policy Act of 2005 (EPA 2005) (25 U.S.C. 3502). Pursuant to EPA 2005, the requirement must be publicized appropriately, and pricing may not exceed prevailing market prices for energy. For Department of Energy (DOE) programs, Acquisition Plans for utility services shall be submitted to DOE's Federal Energy Management Program (FEMP) for review, technical input, and concurrence. For NNSA programs, FEMP review and technical input may be obtained, but FEMP concurrence is not required.

PART 942—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 148. The authority citation for part 942 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

942.705-1 [Amended]

■ 149. Amend section 942.705-1 by removing paragraph (a)(3).

942.705-3 through 942.705-5 [Removed]

■ 150. Sections 942.705-3 through 942.705-5 are removed.

■ 151. Subpart 942.71 is added to read as follows:

Subpart 942.71—Conditional Payment of Fee, Profit, and Other Incentives

Sec.

942.7100 Conditional payment of fee, profit, and other incentives.

942.7100 Conditional payment of fee, profit, and other incentives.

(a) If the contractor does not meet the contract's requirements relating to environment, safety and health (ES&H) (see subpart 923.70), or security or safeguarding of Restricted Data and other classified information (see subpart 904.4), the Contracting Officer may unilaterally reduce otherwise earned fee, fixed fee, profit, or other incentives in accordance with the clause at 952.242-71, Conditional Payment of Fee, Profit, and Other Incentives.

(b) When reviewing performance failures that would warrant a reduction

of otherwise earned fee, the Contracting Officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. The mitigating factors are specified in the clause. The Contracting Officer must obtain the concurrence of the Head of the Contracting Activity—

(1) Prior to effecting any reduction of fee, profit or other incentives otherwise payable under the clause at 952.242–71, Conditional Payment of Fee, Profit, or Other Incentives; and

(2) Prior to determining that no reduction is warranted for performance failure(s) that would otherwise warrant a reduction.

(c) Before pursuing a reduction in the event of a violation by the contractor or any contractor employee of any Department regulation relating to worker safety and health concerns, the Contracting Officer must coordinate with the Office of Enforcement within the Office of Enterprise Assessments (or designated successor office).

(d) Unless the clause for management and operating contracts is prescribed (see 970.1504–3(b)), insert the clause at 952.242–71, Conditional Payment of Fee, Profit, and Other Incentives, in all contracts that contain the clause at 952.204–2, Security Requirements, the clause at 952.250–70, Nuclear Hazards Indemnity Agreement, or both clauses.

PART 945—GOVERNMENT PROPERTY

■ 152. The authority citation for part 945 continues to read as follows:

Authority: 42 U.S.C. 7101, *et seq.*; 50 U.S.C. 2401, *et seq.*

■ 153. Section 945.000 is revised to read as follows:

945.000 Scope of part.

This part and FAR part 45 are not applicable to the management of property by management and operating contractors or other on-site contractors designated in 41 CFR chapter 109, unless otherwise stated in the applicable contract.

945.101, 945.102–70, and 945.102–71 [Removed]

■ 154. Sections 945.101, 945.102–70, and 945.102–71 are removed.

945.570–1 [Amended]

■ 155. Amend section 945.570–1 in paragraph (g) by removing the words “Personal Property Policy Division” and adding in their place the words “Office of Asset Management”.

945.602, 945.602–3, 945.602–70, and 945.603 [Removed]

■ 156. Sections 945.602, 945.602–3, 945.602–70, and 945.603 are removed.

945.670–1 [Amended]

■ 157. Amend section 945.670–1 by removing “48 CFR 45.606–3” and adding in its place “FAR 2.101”.

945.670–3 [Removed]

■ 158. Section 945.670–3 is removed.

945.671 [Amended]

■ 159. Amend section 945.671 by removing “41 CFR 109–43.5 and 45.41, or its successor and 48 CFR 45.302” and adding in its place “41 CFR chapter 109 and FAR 45.302”.

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

■ 160. The authority citation for part 951 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 161. Amend section 951.102 by revising paragraph (c)(1) to read as follows:

951.102 Authorization to use Government supply sources.

* * * * *

(c)(1) The DOE central point of contact for the assignment, correction, or deletion of activity address codes is the Systems Division, within the Office of Acquisition Management.

* * * * *

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 162. The authority citation for part 952 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

■ 163. Section 952.203–1 is added to read as follows:

952.203–1 Identification of contractor employees.

As prescribed at 903.1004, insert the following clause:

Identification of Contractor Employees [December 2024]

Contractors and their employees shall be properly identified in communications (*e.g.*, email communications, texts, video and teleconference calls, etc.) and in meetings so that all participants can differentiate between Federal employees and contractor employees.

(End of clause)

■ 164. Section 952.204–2 is revised to read as follows:

952.204–2 Security requirements.

As prescribed in 904.404(d)(1), insert the following clause:

Security Requirements [December 2024]

(a) *Definitions. Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data or Transclassified Foreign Nuclear Information under the Atomic Energy Act of 1954, or information identified as National Security Information and therefore determined to require protection against unauthorized disclosure under E.O. 13526, Classified National Security Information, as amended, or prior or successive Executive orders.

Contracting Officer means the DOE Contracting Officer.

Contract, when this clause is used in a subcontract, means subcontract.

Contractor, when this clause is included in a subcontract, means subcontractor.

Cyber system means any combination of facilities, equipment, personnel, procedures, and communications integrated to provide cyber services; examples include business systems, control systems, and access control systems (National Infrastructure Protection Plan, 2009).

Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954 (42 U.S.C. 2162).

Formerly Restricted Data means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense (DoD) that the information—

(1) Relates primarily to the military utilization of atomic weapons; and

(2) Can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

National Security Information means information that has been determined, pursuant to E.O. 13526, Classified National Security Information, as amended, or any predecessor or successor order, to require protection

against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

Special Access Program means any program that is established to control access, distribution, and to provide protection for particularly sensitive classified information beyond that normally required for RESTRICTED DATA, TOP SECRET, SECRET, or CONFIDENTIAL information.

Special nuclear material means—

(1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material that, pursuant to section 51 of the Atomic Energy Act of 1954 (42 U.S.C. 2071) has been determined to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing, but does not include source material.

(b) *Responsibility.* The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(c) *Regulations.* The Contractor shall comply with all security and classification regulations and contract requirements of DOE.

(d) *Access authorizations of personnel.* (1) The Contractor shall not permit any individual to have access to any classified information, special nuclear material, or Special Access Program (SAP) information, except in accordance with the Atomic Energy Act of 1954, as amended, and the DOE's

regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material.

(2) The Contractor shall conduct a thorough review or background review, as defined at 48 CFR 904.401, of any uncleared applicants or employees, and must test individuals for illegal drugs prior to selecting them for positions requiring DOE access authorizations.

(i) The review must—(A) Verify applicant's or employee's educational backgrounds, including any high school diplomas obtained within the past five years, and degrees or diplomas granted by an institution of higher learning;

(B) Contact listed employers for the last three years and listed personal references;

(C) Conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and

(D) Conduct a credit check and other checks as appropriate.

(ii) For DOE access authorization, contractor reviews are not required for applicants who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968 of August 2, 1995, as amended, Access to Classified Information, sections 3.3(c) and (d).

(iii) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive orders, including those—

(A) Governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act Amendments Act of 2008 (ADAAA), and Health Insurance Portability and Accountability Act; and

(B) prohibiting discrimination in employment, such as under the Genetic Information Nondiscrimination Act of 2008, ADAAA, Title VII and the Older Workers Benefit and Protection Act of 1990, including with respect to pre- and post-offer of employment disability related questioning.

(iv) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal

drug, as defined in 10 CFR 707.4. All positions requiring access authorizations are deemed *testing designated positions* in accordance with 10 CFR part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.

(v) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local DOE security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.

(vi) The Contractor must maintain a record of information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization. Upon request only, the following information will be furnished to the head of the cognizant local DOE Security Office:

(A) The date(s) each Review was conducted;

(B) Each entity that provided information concerning the individual;

(C) A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive orders, including those governing the processing and privacy of an individual's information collected during the review;

(D) A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and

(E) The results of the test for illegal drugs.

(vii) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to

criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794).

(e) *Foreign ownership, control, or influence (FOCI)*. (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of FOCI over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this contract. The Contractor will submit the FOCI information in the format directed by DOE. When completed, the Contractor must sign the SF 328 and submit it to the Contracting Officer. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer and to the cognizant security office.

(2) If a Contractor has changes involving FOCI, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to FOCI, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

(4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

(f) *Employment announcements*. When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal Government may be required to obtain an access authorization prior to

employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR part 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

(g) *Flow down to subcontracts*. The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph and related DOE policies, in all subcontracts that will require subcontractor employees to possess access authorizations.

Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in title 48 of the CFR consistent with the clause at 48 CFR 952.204–73, Facility Clearance, and obtain a foreign ownership, control and influence determination prior to award of a subcontract. Facility clearance may be granted prior to award or after award of a subcontract in accordance with the clause at 48 CFR 952.204–73, Facility Clearance. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer.

(End of clause)

■ 165. Section 952.204–70 is revised to read as follows:

952.204–70 Classification/Declassification.

As prescribed in 904.404(d)(2), the following clause shall be included in all contracts which involve classified information:

Classification/Declassification
[December 2024]

(a) *Definitions*. *Classified information* means information that is classified as Restricted Data, Formerly Restricted Data or Transclassified Foreign Nuclear Information under the Atomic Energy Act of 1954, or information identified as National Security Information and therefore determined to require protection against unauthorized disclosure under E.O. 13526, Classified National Security Information, as amended, or prior or successive Executive orders.

Contractor, as used in this clause, includes subcontractors.

Document means any recorded information, regardless of the nature of the medium or the method or circumstances of recording (e.g., email).

Information means facts, data, or knowledge itself.

Material means a product or substance that contains or reveals information, regardless of its physical form or characteristics.

(b) The Contractor shall comply with all provisions of DOE's regulations and DOE directives applicable to work involving the classification and declassification of information, documents, or material. (Note: The decision to classify or declassify information is considered an inherently Governmental function. As such, only Government personnel may serve as Federal Government original classifiers. Both Government and Contractor personnel may serve as derivative classifiers; this involves making decisions based upon classification guidance and, where authorized by DOE directives, portion marked source documents that reflects the decisions of Federal Government. Both Government and Contractor personnel may also serve as derivative declassifiers; this involves making decisions based only on classification guidance).

(c) The Contractor shall ensure that any document or material that may contain classified information is reviewed by either a derivative classifier, or in the case of documents intended for public release, a classification officer or a specifically designated DC, in accordance with classification regulations, and DOE directives. In accordance with DOE directives DCs must use classification/declassification guidance furnished to the Contractor by the DOE or a portion marked source document, when authorized to determine whether it contains classified information prior to dissemination. For information not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the Contractor shall ensure it is reviewed by a Federal Government original classifier or the Director, Office of Classification in accordance with classification directives or regulations.

(d) The Contractor shall ensure that existing classified documents (containing either Restricted Data, Formerly Restricted Data, Transclassified Foreign Nuclear Information, or National Security Information) in its possession or under its control are periodically reviewed by a Federal Government or Contractor derivative declassifier in accordance with classification regulations, DOE directives and classification/declassification guidance furnished to the Contractor by DOE to determine if

the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents that no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents that are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access while minimizing security costs.

(e) *Subcontracts*. The Contractor shall insert this clause in any subcontract that involves or may involve access to classified information.

(End of clause)

■ 166. Section 952.204–73 is revised to read as follows:

952.204–73 Facility clearance.

As prescribed in 904.404(d)(5), insert the following provision in all solicitations and contracts which require the use of Standard Form 328, Certificate Pertaining to Foreign Interests, for contracts or subcontracts subject to the provisions of subpart 904.70:

Facility Clearance [December 2024]

Notices to Offerors and the Contract Requirements of the Successful Offeror (Contractor) Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

An offeror who has either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership, control and influence information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office that issued this solicitation.

(a) *Use of Certificate Pertaining to Foreign Interests, Standard Form 328.*

(1) The contract work to be performed

by the successful offeror anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor's (that is, the successful offeror's) organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the Contractor must submit the Standard Form 328, Certificate Pertaining to Foreign Interests, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package. The Contractor must submit the FOCI Package in the format directed by DOE. After the FOCI Package is completed, the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

(2) Information submitted by the offeror in the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328 and prior to contract award, the successful offeror/Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI information it submitted that could affect its answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI information it submitted that could affect its answers to the questions in Standard Form 328. Notice of changes in FOCI information that are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be reported concurrently to the cognizant security office.

(b) *Definitions.* (1) *Foreign Interest* means any of the following—

(i) A foreign government, foreign government agency, or representative of a foreign government;

(ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and

(iii) Any person who is not a citizen or national of the United States.

(2) *Foreign Ownership, Control, or Influence (FOCI)* means the situation where the degree of ownership, control,

or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) *Facility Clearance* means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon—

(1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;

(2) A contract or proposed contract containing the appropriate security clauses;

(3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;

(4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;

(5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;

(6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and

(7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and who possess or are in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

(d) *Facility Clearance and Employees Requiring Access Authorizations Prior to DOE's Granting Facility Clearance.*

(1) A Facility Clearance is required for this contract, although not necessarily prior to contract award. A favorable FOCI determination for this contract is required prior to contract award. It must

be rendered by the responsible cognizant security office. The Contracting Officer may require the offeror to submit additional information as deemed pertinent to this determination.

(i) The DOE must determine that awarding this contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.

(ii) Before contract award, after obtaining a favorable FOCI determination, the successful offeror/ Contractor may be eligible to obtain a Facility Clearance.

(iii) If the successful offeror/ Contractor does not obtain a Facility Clearance before contract award, after contract award the Contractor shall submit the necessary information to obtain a Facility Clearance and to obtain personnel Interim Access Authorizations in accordance with Departmental policies and procedures.

(2) The DOE may grant certain of the Contractor's Key Management Personnel and the Contractor's Facility Security Officer Interim Access Authorization. If granted Interim Access Authorization, the Contractor's Key Management Personnel and the Contractor's Facility Security Officer will have access to classified information or special nuclear material.

(e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but that require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type of facility is identified as a non-possessing facility.

(f) Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders (or vendors for purchase orders) requiring access authorizations for access to classified information or special nuclear material. Subcontractors shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime Contractor or the Contracting Officer for the prime contract.

Notice to Offerors—Contents Review (Please Review Before Submitting)

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

(1) The Standard Form 328 has been signed and dated by an authorized official of the offeror;

(2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;

(3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents are provided;

(4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and

(5) A summary FOCI data sheet is provided.

Note: A FOCI submission must be attached for each tier parent organization (*i.e.*, ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

(End of provision)

■ 167. Section 952.204–74 is added to read as follows:

952.204–74 Counterintelligence.

As prescribed in 904.404(d)(7), insert the following clause:

Counterintelligence [December 2024]

(a) The Contractor shall take all reasonable precautions in performing the work under this contract to protect Department of Energy (DOE) programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with the current version of DOE Order 475.1, Counterintelligence Program; E.O. 12333 of December 4, 1981, U.S. Intelligence Activities; and other

applicable national and DOE counterintelligence requirements.

(b) The Contractor shall appoint qualified employees to function as contractor counterintelligence officers. A contractor counterintelligence officer is responsible for conducting defensive counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of counterintelligence interest; immediately reporting targeting, suspicious activity and other counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in E.O. 12333, DOE Order 475.1, and other applicable national and DOE counterintelligence requirements.

(End of clause)

952.204–76 [Removed]

■ 168. Section 952.204–76 is removed.

■ 169. Section 952.204–77 is amended by revising the introductory text to read as follows:

952.204–77 Computer security.

As prescribed in 904.404(d)(6), insert the following clause:

* * * * *

■ 170. Section 952.204–78 is added to read as follows:

952.204–78 DOE Directives.

As prescribed in 904.7301, insert the following clause:

DOE Directives [December 2024]

(a) In performing work under this contract, the Contractor shall comply with the requirements of Department of Energy Directives, or parts thereof, identified in the List of Applicable Directives appended to this contract, identified in the Statement of Work or identified in a special clause within this contract. The Contracting Officer may revise the list of applicable Directives by bilateral modification to the contract. Prior to the modification, the Contracting Officer shall notify the Contractor in writing of DOE's intent and provide the contractor with the opportunity to: assess the impact on cost, funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days of being notified, the Contractor shall advise the Contracting Officer in writing of the potential impact of the modification.

The Contracting Officer and Contractor shall decide whether or not to proceed with the modification. Before executing the modification, they must agree to any appropriate changes to other contract terms and conditions, including cost and schedule, pursuant to the clause of this contract entitled “Changes.”

(b) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

(End of clause)

■ 171. Section 952.215–70 is revised to read as follows:

952.215–70 Key personnel.

As prescribed in 915.408–70, the contracting officer shall insert the following clause:

Key Personnel [December 2024]

(a) The personnel listed below or elsewhere in this contract [Insert cross-reference, if applicable] are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:

(1) Notify the Contracting Officer reasonably in advance and submit justification including resumes for any proposed substitutions; and

(2) Obtain the Contracting Officer's written approval. Notwithstanding the foregoing, the Contractor may immediately remove or suspend any key person if necessary to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203–3, Contractor's Organization, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel. The Contractor must provide written notice to the cognizant security office if changes to the list of personnel affect key personnel connected to a facility clearance.

[Insert List of Key Personnel by position/title, reflecting the actual position title of the top-level key personnel, such as Program Manager, Laboratory Director, Project Manager, etc. unless listed elsewhere in the contract]

(End of clause)

952.216–15 [Removed]

■ 172. Section 952.216–15 is removed.

■ 173. Section 952.223–71 is revised to read as follows:

952.223–71 Integration of environment, safety, and health into work planning and execution.

As prescribed in 923.7003, insert the following clause:

Integration of Environment, Safety, and Health Into Work Planning and Execution [December 2024]

(a) *Definitions.* “Employees” means both contractor and subcontractor employees.

“Safety” encompasses environment, safety and health, including pollution prevention and waste minimization.

(b) In performing work under this contract, the Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Contractor and subcontractor employees who manage or supervise employees.

(2) Clear lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established that, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards

are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the Contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the Contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The Contractor shall manage and perform work in accordance with a documented Safety Management System that, at a minimum, fulfills all conditions in paragraph (b) of this clause. Documentation of this system shall describe how the Contractor will—

(1) Define the scope of work;

(2) Identify and analyze hazards associated with the work;

(3) Develop and implement hazard controls;

(4) Perform work within controls; and

(5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The system shall describe how the Contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the system. The system shall also describe how the Contractor will measure system effectiveness.

(e) The Contractor shall submit to the Contracting Officer documentation of its system for review and approval. Dates for submittal, discussions, and revisions to the system will be established by the Contracting Officer. Guidance on the preparation, content, review, and approval of the system will be provided by the Contracting Officer. On an annual basis, the Contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the system shall be integrated with the Contractor's business processes for work planning,

budgeting, authorization, execution, and change control.

(f) The Contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives in accordance with the DOE Directives clause. The Contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(g) The Contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Contracting Officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the Contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the Contracting Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the Contractor is responsible for compliance with the ES&H requirements applicable to this contract. The Contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

(i) *Subcontracts.* The Contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Contractor may choose not to require the subcontractor to submit a Safety Management System for the Contractor's review and approval.

(End of clause)

952.223–75 [Amended]

■ 174. Amend section 952.223–75 in the introductory text by removing “923.7003(h)” and adding in its place “923.7003(g)”.

952.223–76 and 952.223–77 [Removed]

■ 175. Sections 952.223–76 and 952.223–77 are removed.

■ 176. Section 952.223–78 is revised to read as follows:

952.223–78 Sustainable acquisition program.

As prescribed in 923.172, insert the following clause:

Sustainable Acquisition Program [December 2024]

(a) Pursuant to DOE policy, as specified in 48 CFR 923.170, the Contractor shall maintain a sustainable acquisition program that ensures procurement of environmentally preferable products and services as required of DOE by statute, regulation and Executive order. This program shall apply to all products and services acquired in performance of this contract, including first-tier subcontracts, which have reasonable opportunities for environmentally preferable purchasing, consistent with the requirements specified above.

(b) The Contractor shall coordinate its sustainable acquisition activities and submit any required annual reports at the end of the Government fiscal year, through their Sustainability Coordinator (or equivalent), or as otherwise directed by the Contracting Officer. Reporting under this paragraph is only required if the contract offers subcontracting opportunities exceeding the simplified acquisition threshold in any contract year.

(c) *Subcontracts.* These provisions shall be flowed down only to first-tier subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant subcontracting opportunities for energy-efficient or environmentally sustainable products or services. When this clause is included in a subcontract, the word “Contractor” will be understood to mean “Subcontractor.”

(End of clause)

■ 177. Section 952.226–70 is revised to read as follows:

952.226–70 Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992.

As prescribed in 926.7008(b)(1), insert the following provision:

Subcontracting Goals Under Section 3021(A) of the Energy Policy Act of 1992 (Pub. L. 102–486) [December 2024]

(a) *Definition.* Energy Policy Act (EPAAct 1992) target groups, as used in this provision, has the meaning conveyed in 48 CFR 926.7002.

(b) Section 3021 of the EPAAct 1992 establishes a goal of award of 10 percent of the contract dollar value for prime and subcontract EPAAct 1992 awards to EPAAct 1992 target groups.

(c) The Offeror, if other than one of the three groups specified in paragraph (a) of this clause, shall submit, as part of its business management proposal or, if this solicitation requires the submission of a Small Business Subcontracting Plan, then as part of that plan, unless otherwise stated in the proposal preparation instructions, individual subcontracting goals for each of the EPAAct 1992 target groups. Individual goals shall be expressed in terms of a percentage of the Offeror's proposed contract dollar value. In addition, the Offeror shall provide a description of the nature of the effort to be performed by each of the three groups, and, if possible, the identity of the contemplated subcontractor(s).

(d) Unless otherwise stated, such goals shall be considered in the evaluation of the Business Management Proposal as discussed in Section M of this solicitation or, if applicable, as part of the evaluation of the Small Business Subcontracting Plan.

(End of provision)

■ 178. Section 952.226–71 is revised to read as follows:

952.226–71 Utilization of Energy Policy Act target entities.

As prescribed in 926.7008(b)(2), insert the following clause:

Utilization of Energy Policy Act 1992 Target Entities [December 2024]

(a) *Definition.* Energy Policy Act (EPAAct 1992) target groups, as used in this clause, has the meaning conveyed in 48 CFR 926.7002.

(b) *Obligation.* In addition to its obligations under the clause of this contract entitled Utilization of Small Business Concerns (48 CFR 52.219–8), the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts to entities from among the EPAAct 1992 target groups.

(End of clause)

■ 179. Section 952.226–72 is revised to read as follows:

952.226–72 Energy Policy Act subcontracting goals and reporting requirements.

As prescribed in 926.7008(c), insert the following clause:

Energy Policy Act 1992
Subcontracting Goals and Reporting
Requirements [December 2024]

(a) *Definition.* Energy Policy Act (EPA 1992) target groups, as used in this clause, has the meaning conveyed in 48 CFR 926.7002.

(b) *Goals.* The Contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities—

(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women: * * * percent;

(2) Historically Black colleges and universities: * * * percent;

(3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: * * * percent;

(4) Qualified HUBZone small business concerns: * * * percent.

[* * * These goals are stated in a percentage reflecting the relationship of estimated award value of subcontracts to the value of this contract and appear elsewhere in this contract.]

(c) *Reporting requirements.* (1) The Contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12-month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the Contracting Officer (or designee) not later than 45 days after the end of the reporting period.

(2) If the contract includes reporting requirements under 48 CFR 52.219–9, Small Business Subcontracting Plan, the Contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to the Individual Subcontract Report and/or the Summary Subcontract Report using the Electronic Subcontracting Reporting System (available at <https://www.esrs.gov/>) for the period that corresponds to the end of the Federal Government fiscal year.

(End of clause)

■ 180. Amend section 952.226–73 by revising the section heading, introductory text, clause heading and date, and paragraph (a) to read as follows:

952.226–73 Energy Policy Act target group representation.

As prescribed in 926.7008(a)(1), insert the following provision:

Energy Policy Act of 1992 Target Group
Representation [December 2024]

(a) The Offeror is:

(1) _____ An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent—

(i) Hispanic Americans, *i.e.*, students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof; or

(ii) Native Americans, *i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) _____ An institution of higher learning determined to be a Historically Black College and University by the Secretary of Education pursuant to 34 CFR 608.2; or

(3) _____ A small business concern, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that is owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women; or

(4) Qualified HUBZone small business concerns, as defined at 48 CFR 2.101.

* * * * *

■ 181. Amend section 952.226–74 by revising the section heading and clause heading and date to read as follows:

952.226–74 Workforce restructuring and displaced employee hiring preference.

* * * * *

Workforce Restructuring and Displaced
Employee Hiring Preference [December
2024]

* * * * *

■ 182. Amend section 952.227–9 by:

■ a. Revising the introductory text and clause date;

■ b. In paragraph (b), adding a heading and revising the first sentence; and

■ c. Adding a sentence at the end of paragraph (c).

The revisions and addition read as follows:

952.227–9 Refund of royalties.

As prescribed in 927.202–5, insert the following clause:

Refund of Royalties [December 2024]

* * * * *

(b) *Definition.* “Royalties” means any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the

use of or for rights in patents and patent applications in connection with performing this contract or any subcontract here-under. * * *

(c) * * * For contracts greater than five years in duration, the contractor shall furnish the statement to the Contracting Officer every five years.

* * * * *

■ 183. Section 952.227–11 is revised to read as follows:

952.227–11 Patent rights—retention by the contractor.

Alternate I [December 2024] As prescribed at 970.2703–2(a), insert the most recent Standard Patent Rights clause at 37 CFR 401.14 with the following modifications:

Replace the heading (“Standard Patent Rights”) with “37 CFR 401.14 Standard Patent Rights with Alternate I of 48 CFR 952.227–11 Patent rights—retention by the contractor”.

Replace paragraphs (g)(1) and (2) with the following:

(g) Subcontracts

(1) The contractor will include this clause, suitably modified to identify the parties, in all subawards, regardless of tier, for experimental, developmental or research work to be performed by a domestic small business firm or nonprofit organization. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subaward, obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subawards, regardless of tier, for experimental developmental or research work the patent rights clause directed by the Contracting Officer.

Replace paragraph (l), Communications, with the following:

(l) Communication

Unless otherwise directed by DOE Patent Counsel, all reports and notifications required by this clause shall be submitted via the iEdison invention management system.

(End of alternate)

Alternate II [December 2024] As prescribed at 970.2703–2(a), insert the most recent Standard Patent Rights clause at 37 CFR 401.14 with the following modifications when the Determination of Exceptional Circumstances (DEC) under 35 U.S.C. 202(a) applies:

Replace the heading (“Standard Patent Rights”) with “37 CFR 401.14 Standard Patent Rights with Alternate II of 48 CFR 952.227–11 Patent Rights—Retention by the Contractor

(DETERMINATION OF EXCEPTIONAL CIRCUMSTANCES)”.

Add the following paragraph:

(d)(3) Upon breach of paragraph (n) of this Patent Rights clause.

Replace paragraphs (g)(1) and (2) with the following:

(g) Subcontracts

(1) The contractor will include this clause, suitably modified to identify the parties, in all subawards, regardless of tier, for experimental, developmental or research work to be performed by a domestic small business firm or nonprofit organization. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subaward, obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subawards, regardless of tier, for experimental developmental or research work the patent rights clause directed by the Contracting Officer.

Replace paragraph (l),

Communications, with the following:

(l) Communication

Unless otherwise directed by DOE Patent Counsel, all reports and notifications required by this clause shall be submitted via the iEdison invention management system.

Add the following paragraphs (n) and (o):

(n) The Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., alternative binding commitments to provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. In the event that the Contractor or other such entity receiving rights in the Subject Invention undergoes a change in ownership amounting to a controlling interest, the Contractor or other such entity receiving rights shall ensure continual compliance with the requirements of this paragraph (n) and shall inform DOE, in writing, of the change in ownership within six months of the change. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to

any subject invention, upon a breach of this paragraph (n). The Contractor will include this paragraph (n) in all subawards/contracts, regardless of tier, for experimental, developmental or research work.

(o) The requirements, rights and administration of paragraph (n) are further clarified as follows:

1. Waivers. The Contractor (or any entity subject to paragraph (n)) may request a waiver or modification of paragraph (n). Such waivers or modifications may be granted when DOE determines that (1) the Contractor (or any entity subject to paragraph (n)) has demonstrated, with quantifiable data, that manufacturing in the United States is not commercially feasible and (2) a waiver or modification would best serve the interests of the United States and the general public.

2. Final determination of breach of paragraph (n). If DOE determines the Contractor is in breach of paragraph (n), the Department may issue a final written determination of such breach. If such determination includes a demand for title to the subject inventions under the award, the demand for title will cause an immediate conveyance and assignment of all rights to all subject inventions under the award to the United States Government, including all pending U.S. and foreign patent applications and all U.S. and foreign patents that cover any subject invention, without compensation. Any such final determination shall be signed by the cognizant DOE Contracting Officer with the concurrence of the Assistant General Counsel for Technology Transfer & Intellectual Property. Advanced notice will be provided for comment to the Contractor before any final written determination by DOE is issued.

3. Pursuant to Contractor's agreement in paragraph (n) to not license, assign or otherwise transfer rights to subject inventions at any tier unless the entity agrees to paragraph (n): any such license, assignment, or other transfer of right to any subject invention developed under the award shall contain paragraph (n) suitably modified to properly identify the parties. If a licensee, assignee, or other transferee of rights to any subject invention is finally determined by DOE in writing to be in breach of paragraph (n), the applicable license, assignment or other transfer shall be deemed null and void. Advanced notice will be provided for comment to the non-complying party before any final written determination by DOE is made.

4. For clarity, if the forfeiture of title to any subject invention is due to a breach of paragraph (n), the Contractor

shall not be entitled to any compensation, or to a license to the subject invention including the reserved license in paragraph (e)(1), unless DOE grants a license through a separately agreed upon licensing agreement.

5. Authority. The requirements and administration of paragraph (n) is in accordance with the Determination of Exceptional Circumstances (DEC) under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies executed by DOE on June 7, 2021, or any other applicable DEC. A copy of the DEC is available at <https://www.energy.gov/gc/determination-exceptional-circumstances-decs>. By accepting or acknowledging the award, the Contractor is also acknowledging that it has received a copy of the DEC through the foregoing link. As set forth in 37 CFR 401.4, any nonprofit organization or small business firm as defined by 35 U.S.C. 201 affected by any DEC has the right to appeal the imposition of the DEC within thirty (30) working days from the Contractor's acceptance or acknowledgement of this award.

(End of alternate)

■ 184. Amend 952.227–13 by:

■ a. Revising the introductory text, clause date, and paragraphs (b)(2)(iii), (e)(2), (e)(3)(i), and (h)(1);

■ b. Removing paragraph (k);

■ c. Redesignating paragraphs (l) and (m) as paragraphs (k) and (l);

■ d. Revising the introductory text of newly redesignated paragraph (l)(2) and the last sentence of newly redesignated paragraph (l)(3); and

■ e. Adding Alternates I and II at the end of the section following “(End of clause)”.

The revisions and additions read as follows:

952.227–13 Patent rights—acquisition by the Government.

As prescribed at 927.303(d), insert the following clause:

Patent Rights—Acquisition by the Government [December 2024]

* * * * *

(b) * * *

(2) * * *

(iii) Not less than sixty (60) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

* * * * *

(e) * * *

(2) Unless otherwise directed by DOE Patent Counsel, the Contractor shall disclose each subject invention to DOE

through the iEdison invention management system within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with paragraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.

(3) * * *

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.

* * * * *

(h) * * *

(1) The contractor shall include the clause at 37 CFR 401.14 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is

subject to an Exceptional Circumstances Determination by DOE or another exception in 37 CFR 401.3(a). In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

* * * * *

(l) * * *

(2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in paragraph (l)(1) of this clause, the Contractor:

* * * * *

(3) * * * The forfeiture provision of this paragraph (l) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

* * * * *

Alternate I [December 2024]. As prescribed in 927.303(d)(5), insert Alternate I under special circumstances to provide for a right to require licensing of third parties to background inventions:

(m) *Background patents.* (1) *Background patent* means a domestic patent covering an invention or discovery which is not a subject invention, and which is owned or controlled by the Contractor at any time through the completion of this contract:

(i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

(3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve

expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(4) Notwithstanding paragraph (m)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(i) A competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) The Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(End of alternate)

Alternate II [December 2024]. As prescribed in 927.303(d), the following modifications must be made when the "Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies" applies:

The Contracting Officer shall insert the phrase "or upon a breach of paragraph (n) of this clause" after "fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause" in the first sentence of paragraph (d)(1).

The Contracting Officer shall insert the following paragraph (n):

(n) *U.S. Competitiveness.* With regard to the license granted in paragraph (d)(1) of this clause, the Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., alternative binding commitments to provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention(s):

(1) Undergo a change in ownership amounting to a controlling interest, or

(2) Sell, assign, or otherwise transfer title or exclusive rights in the invention(s), then the assignment, license, or other transfer of rights in the subject invention(s) is/are suspended until approved in writing by DOE. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph. The Contractor will include this paragraph in all subawards/contracts, regardless of tier, for experimental, developmental or research work.

(End of alternate)

■ 185. Section 952.227–14 is revised to read as follows:

952.227–14 Rights in data-general.

Alternate VI [December 2024] As prescribed at 927.409(b)(1)(ix), insert Alternate VI to require the contractor to license data regarded as limited rights data or restricted computer software to the Government and third parties at reasonable royalties upon request by the Department of Energy.

(k) *Contractor licensing.* Except as may be otherwise specified in this contract as data not subject to this paragraph, the contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purposes of practicing a subject of this contract, a nonexclusive license in any limited rights data or restricted computer software on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the contractor shall not be obliged to license any such data if the contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternate available or readily introducible from one or more other sources;

(3) Such data, in the form of results obtained by their use, are being supplied by the contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or

(4) Such data, in the form of results obtained by their use, can be furnished

by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

(End of alternate)

Alternate VII [December 2024] As prescribed in 927.409(b)(1), substitute the following for paragraph (b)(2)(i) of the clause at FAR 52.227–14:

(b)(2)(i) Assert copyright in data first produced in the performance of this contract (except Restricted Data in category C–24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology) to the extent provided in paragraph (c)(1) of this clause.

(End of alternate)

Alternate VIII [December 2024] As prescribed in 927.409(a), substitute the following for paragraph (c)(1)(i) of the clause at FAR 52.227–14:

(c) *Copyright*—(1) Data first produced in the performance of this contract. (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the DOE Patent Counsel is required to assert copyright in all other data first produced in the performance of this contract. When such permission is granted, the DOE Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(End of alternate)

■ 186. Section 952.227–17 is added to read as follows:

952.227–17 Rights in data-special works.

Alternate I [December 2024] As prescribed at 927.409(b)(1), substitute the following for paragraph (c)(1)(ii) of the clause at FAR 52.227–17:

(c)(1)(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause,

the DOE Patent Counsel may direct the Contractor to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.

(End of alternate)

952.227–82 [Removed]

■ 187. Section 952.227–82 is removed.

■ 188. Amend section 952.227–84 by revising the introductory text, clause date, and third sentence of the clause to read as follows:

952.227–84 Notice of right to request patent waiver.

As prescribed in 927.409(n), insert this provision:

Right To Request Patent Waiver
[December 2024]

* * * Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at 37 CFR 401.14 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities. * * *

■ 189. Amend section 952.231–71 by revising the introductory text, clause date, and paragraph (f)(2) to read as follows:

952.231–71 Insurance-litigation and claims.

As prescribed in 931.205–19(f), insert the following clause in applicable non-management and operating contracts:

Insurance—Litigation and Claims
[December 2024]

* * * * *

(f) * * *

(2) The term “contractor’s managerial personnel” is defined in the Property clause in 970.5245–1 in this contract.

* * * * *

■ 190. Section 952.232–7 is added to read as follows:

952.232–7 Electronic submission of invoices/vouchers.

As prescribed at 932.971, insert the following clause:

Electronic Submission of Invoices/
Vouchers [December 2024]

Contractors shall submit vouchers electronically through the Oak Ridge Financial Service Center’s (ORFSC) Vendor Inquiry Payment Electronic Reporting System (VIPERS). VIPERS allows vendors to submit vouchers, attach supporting documentation and check the payment status of any

voucher submitted to the DOE. Instructions concerning contractor enrollment and use of VIPERS can be found at <https://vipers.doe.gov>.

(End of clause)

■ 191. Section 952.233–2 is revised to read as follows:

952.233–2 Service of protest.

As prescribed in 933.106, insert the following provision:

Service of Protest [December 2024]

(c) Another copy of a protest filed with the Government Accountability Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC–61), 1000 Independence Avenue SW, Washington, DC 20585, or email: gaobidprotest@hq.doe.gov.

(d) *Notice of Protest File Availability.* (1) If a protest of this procurement is filed with the GAO in accordance with 4 CFR part 21, any actual or prospective offeror may request the Department of Energy (DOE) to provide it with reasonable access to the protest file pursuant to 33.104(a)(3)(ii). Such request must be in writing and addressed to the Contracting Officer for this procurement.

(2) Any offeror who submits information or documents to DOE for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective offerors in accordance with the requirements of 48 CFR 33.104(a)(3)(ii). DOE will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, offerors should mark any documents as to which they would assert that an exemption applies (see 10 CFR part 1004).

(e) *Protests to the Agency.* The DOE's agency protest procedures are in 48 CFR 933.103. Potential protesters should discuss their concerns with the Contracting Officer prior to filing a protest. In the event that an interested party believes a protest is necessary, efforts should be made to resolve the protest at the lowest level possible.

(End of provision)

952.233–4 and 952.233–5 [Removed]

■ 192. Sections 952.233–4 and 952.233–5 are removed.

■ 193. Section 952.242–71 is added to read as follows:

952.242–71 Conditional payment of fee, profit, and other incentives.

As prescribed at 923.7003(f) and 942.71(d), insert the following clause: (Note: If the clause at 952.204–2, Security Requirements, is not included in the contract, the security or safeguarding of Restricted Data and other classified information requirements of the clause do not apply; if the clause at 952.250–70, Nuclear Hazards Indemnity Agreement, is not included in this contract, the environment, safety and health requirements of the clause do not apply.)

Conditional Payment of Fee, Profit, and Other Incentives [December 2024]

(a) *Definitions.*

(1) *Amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for a period* means the quantity the Contracting Officer or fee determining official determines the Contractor is due for its performance prior to a separate determination that the Contractor did not comply with a term or condition of the contract or experienced a failure relating to: environment, safety, and health or security or safeguarding of Restricted Data and other classified information.

(i) If the contract includes incentives allocable to more than one period, the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for a period includes the allocable amount of payment for each such incentive for otherwise earned fee, fixed fee, profit, or other incentives. Unless stated otherwise, the allocable amount is the total amount divided by the number of periods the incentive covered.

(2) *Amount actually payable to the Contractor for a period* means: (the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the period) less (the amount of any reduction under this clause and the amount of any reductions under other clauses to the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the period).

(b) *General.*

(1) (Note: If the clause at 952.204–2, Security Requirements, is not included in this contract, the security or safeguarding of Restricted Data and other classified information requirements of this clause do not apply; if the clause at 952.250–70, Nuclear Hazards Indemnity Agreement, is not included in this contract, the environment, safety and health

requirements of this clause do not apply.)

The amount of payment of otherwise earned fee, fixed fee, profit, or other incentives for any period under this contract is dependent upon the Contractor's and the Contractor's employees' compliance during the period with the performance requirements of this contract relating to:

(i) environment, safety and health (ES&H), which includes worker safety and health (WS&H); and

(ii) security or safeguarding of Restricted Data and other classified information.

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including in some cases a DOE approved contractor (Integrated Safety Management System (ISMS) or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) The security or safeguarding of Restricted Data and other classified information performance requirements of this contract are set forth in the clause of this contract entitled, "Security requirements," the clause (if it is included) of this contract entitled "Laws, Regulations, and DOE Directives," and in other terms and conditions.

(4) If the Contractor does not, in any period, meet the performance requirements of this contract relating to ES&H or security or the safeguarding of Restricted Data and other classified information, the Contracting Officer may, per this clause, reduce the amount of payment of otherwise earned fee, fixed fee, profit or other incentives.

(c) *Amount of Reduction.*

(1) If in any period (see paragraph (c)(5) of this clause) the Contractor does not meet the performance requirements of this contract relating to ES&H or security or the safeguarding of Restricted Data and other classified information, the Contracting Officer will unilaterally determine the amount of reduction to the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the period based on the severity of the performance failure pursuant to the degrees of failure specified in paragraphs (e) and (f) of this clause. The percent reduction for each performance failure will be: not less than 26% nor more than 100% for a first degree failure; not less than 11% nor more than 26% for a second degree failure; and no more than 11% for a third degree failure.

(2) For a reduction allocable to more than one period, the Government will make the allocation at the end of the period in which it determines the total amount of the reduction. Unless stated otherwise, the allocable amount is the total reduction amount divided by the number of periods the reduction covered.

(3) The Government will reduce the payment of otherwise earned fee, fixed fee, profit, or other incentives as soon as practicable after the end of the period in which the performance failure occurs. If the Government is not aware of the failure when it occurs, it will make the reduction as soon as practical after becoming aware.

(4) In determining the reduction to the amount of payment and the applicability of mitigating factors, the Contracting Officer must consider the Contractor's overall performance in meeting the ES&H or security or safeguarding of Restricted Data and other classified information performance requirements of the contract. Such consideration must include performance against any specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the Contracting Officer must consider mitigating factors that may warrant a reduction below the reduction that would be appropriate absent mitigating factors. Mitigating factors include, but are not limited to, the following (paragraphs (c)(4)(v), (vi), (vii) and (viii) of this clause apply to ES&H only).

(i) Degree of control the Contractor had over the event or incident.

(ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor's self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas and safeguarding Restricted Data and other classified information and compliance in related areas.

(v) Contractor's demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced.

(vi) Event caused by "Good Samaritan" act by the Contractor (*e.g.*, offsite emergency response).

(vii) Contractor's demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE

corporate decision-making (*e.g.*, policy, ES&H programs).

(viii) Contractor's demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(5) The Contracting Officer will, for purposes of this clause, at the time of contract award or as soon as possible after contract award, allocate the total amount of fee, profit, and other incentives that is available under the contract to equal periods of [insert 6 or 12] months to run sequentially for the term of the contract, including options. The amount to be allocated to each period shall equal: (the average monthly amount available during the term of the contract) multiplied by (the number of months for each period).

(d) *Reductions to the amount of payments the Contractor has received for earned fee, fixed fee, profit, or other incentives under this and other clauses.*

(1) The amount of the reduction under this clause, in combination with the amount of any reduction under any other clause, shall not exceed the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the period.

(2) If at any time during the contract any reductions under this clause or other clauses result in the sum of the amount of payments the Contractor has received for earned fee, fixed fee, profit, or other incentives to exceed the sum of the amounts of actually payable to the Contractor, the Contractor shall immediately return the excess to the Government.

(3) At the end of the contract—

(i) The Government will pay the Contractor the amount by which the sum of amounts actually payable to the Contractor exceeds the sum of the payments the Contractor has received; or

(ii) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of the amounts actually payable to the Contractor.

(e) *Environment, Safety and Health (ES&H).* Performance failures occur if the Contractor does not comply with the contract's ES&H terms and conditions, including applicable ES&H laws, regulations, DOE directives, and DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or other incentives will be determined are:

(1) First Degree: Performance failures that are most adverse to ES&H. They include:

(i) Failure to develop and obtain required DOE approval of an ISMS, if an ISMS is required.

(The Government will perform necessary reviews in a timely manner and not unreasonably withhold approval.)

(ii) Performance failures determined, per applicable ES&H laws, regulations, or DOE directives to have resulted in, or that could reasonably be expected to result in, serious injury or death to a worker.

(iii) Occurrence of any accident or event that meets the criteria of Appendix A of DOE Order 225.1B (or successor Order) and results in a determination to conduct a Federal Accident Investigation Board.

(2) Second Degree: Performance failures that are significantly adverse to ES&H. They include:

(i) Failures to comply with an approved ISMS, if an ISMS is required.

(ii) Failures that have been determined, per applicable ES&H laws, regulations, or DOE directives, to have resulted in, or could reasonably be expected to result in, an actual injury, exposure, or exceedance that occurred or nearly occurred but had minor practical long-term health consequences.

(iii) A breakdown of the Integrated Safety Management System.

(iv) Non-compliance with applicable ES&H laws, regulations, or DOE directives actually resulting in an accident that meets the criteria of Appendix A of DOE Order 225.1B (or successor Order) but not resulting in a determination to conduct a Federal Accident Investigation Board.

(v) Non-compliance with applicable ES&H laws, regulations, or DOE directives that results in a near miss of an accident or event that could have resulted in an adverse effect and a determination to conduct a Federal Accident Investigation Board. (A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, that does not result in an adverse effect.)

(3) Third Degree: Performance failures that have been determined per applicable ES&H laws, regulations, or DOE directives to reflect a lack of focus on improving ES&H. They include:

(i) Non-compliance with applicable ES&H laws, regulations, or DOE directives actually resulting in potential breakdown of the Integrated Safety Management System. The following performance failures or performance

failures of similar import will be considered third degree:

(A) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through external (e.g., Federal) oversight and/or reported per DOE Order 231.B (or successor Order) requirements; internal oversight of 10 CFR parts 830, 835, 850, and 851; or DOE Orders 227.1A and 436.1 (or successor Order) requirements.

(B) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(C) Non-compliances that: have, or that may have, significant negative impacts to the worker, the public, or the environment; or indicate a significant programmatic breakdown.

(D) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(f) *Security or Safeguarding Restricted Data and Other Classified Information.*

Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or other incentives occur will be determined as follows:

(1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in an SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in an SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information regardless of classification (except for information covered by paragraph (f)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. This category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions that if

identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures that unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(End of clause)

■ 194. Section 952.245–2 is revised to read as follows:

952.245–2 Government property (fixed-price contracts).

Modify FAR 52.245–2 by adding “and the DOE Acquisition Regulation subpart 945.5,” at the end of paragraph (d) of the clause.

■ 195. Section 952.245–5 is revised to read as follows:

952.245–5 Government property (cost-reimbursement, time-and-materials, or labor-hour contracts).

Modify FAR 52.245–1 by adding “and DOE Acquisition Regulation subpart 945.5” at the end of the first sentence in paragraphs (e)(1) and (2) of the clause.

■ 196. Section 952.250–70 is revised to read as follows:

952.250–70 Nuclear hazards indemnity agreement.

Insert the following clause in accordance with 950.7006:

Nuclear Hazards Indemnity Agreement [December 2024]

(a) *Definitions.* Except as otherwise specified within this clause, all definitions set forth in the Atomic Energy Act of 1954, as amended

(hereinafter called the Act), shall apply to this clause.

“Extraordinary nuclear occurrence” means an event that DOE has determined to be such an occurrence, as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

“Public liability,” referred to below, is public liability as defined in the Act, which (1) arises out of or in connection with the activities under this contract, including transportation; and (2) arises out of or results from a nuclear incident or precautionary evacuation.

(b) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Act.

(c) *Financial protection.* Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (a) of this clause. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.

(d) *Indemnification.* To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in paragraph (a) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE’s liability, including such legal costs, shall not exceed the amount set forth in section 170e(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$2,000,000,000 in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(e)(1) *Waiver of defenses.* In the event of a nuclear incident (as defined in the Act) arising out of nuclear waste activities (as defined in the Act), the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence that—

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive—

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to negligence, contributory negligence, assumption of risk, or unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and any issue or defense based on any statute of limitations, if suit is instituted within three years of the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) For the purposes of making a determination of whether or not there has been an extraordinary nuclear occurrence, “offsite,” as used in 10 CFR part 840, means “away from the contract location,” a phrase that means any DOE facility, installation, or site at which contractual activity under this contract is being carried out, and any contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth in paragraph (e) of this clause—

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or

relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to any injury or damage to a claimant (or claimant’s property) that is intentionally sustained by the claimant, or that results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen’s compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) *Notification and litigation of claims.* The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (a) of this clause. Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to:

(1) Require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and

(2) Appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement

or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.

(h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the Disputes clause, provided, however, that this clause is subject to the clauses at 48 CFR 52.203–5, Covenant Against Contingent Fees, and 970.5232–3, Accounts, Records, and Inspection, and any provisions later added to this contract, as required by applicable Federal law, including statutes, Executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) *Civil penalties.* The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders, and pursuant to section 234C of the Act, for violations of applicable DOE worker safety and health related rules, regulations, and orders. If the Contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any one-year period (as determined by the Secretary) under this contract.

(j) *Criminal penalties.* Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowingly and willfully violating the Act, and applicable DOE nuclear safety-related rules, regulations or orders for which violation results in, or if undetected, would have resulted in a nuclear incident.

(k) *Inclusion in Subcontracts.* The Contractor shall insert this clause in any subcontract that may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (a) of this clause. However, this clause shall not be included in subcontracts in which the subcontractor

is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

Effective date:

() See note II below for instructions related to this section on Effective Date.

Relationship to general indemnity

() See note III below for instructions related to this section on Relationship to General Indemnity.

(End of clause)

Note I

(1) For contracts with an award date after August 16, 2012, do not include an effective date provision.

(2) For contracts with an award date before August 16, 2012—

(i) If the contract contains the Nuclear Hazards Indemnity Agreement clause (June 1996 or prior version), replace the clause at 952.250–70 with this clause and use the EFFECTIVE DATE title and language, as follows:

“Effective Date. This contract was awarded on or after August 8, 2005, and at contract award contained the clause at 952.250–70 (JUN 1996) or prior version. That clause has been deleted and replaced with this clause. The Price-Anderson Amendments Act of 2005, described by this clause, controls the indemnity for any nuclear incident that occurred on or after August 8, 2005. The Contractor’s liability for civil penalties for violations of the Atomic Energy Act of 1954 under this contract is described by paragraph (i) of this clause.

(ii) If the contract was awarded prior to August 8, 2005, and contains the Nuclear Hazards Indemnity Agreement clause, dated June 1996 or prior version, add this clause in addition to the clause at 952.250–70 or prior version and use the EFFECTIVE DATE title and language, as follows:

“Effective Date. This contract was in effect prior to August 8, 2005, and contains the clause at 952.250–70 (JUN 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005.

The indemnity of paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The Contractor’s liability for violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.

Note II

The following alternate will be added to the above Nuclear Hazards Indemnity Agreement clause for all contracts that contain a general authority indemnity pursuant to 950.7101. Caution: Be aware that for contracts that will have this provision added, but that do not contain an effective date provision, this paragraph shall be marked (1). In the event an Effective Date provision has been included, it shall be marked (m).

“() To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply.”

(End of note)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 197. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

■ 198. Amend section 970.0100 by adding a sentence at the end of the section to read as follows:

970.0100 Scope of part.

* * * This part does not apply to contracts not designated as M&O contracts by the Secretary of Energy, except as approved by the cognizant Senior Procurement Executive (SPE) or as otherwise prescribed in the DEAR.

■ 199. Amend section 970.0371–8 by revising paragraph (a)(1) to read as follows:

970.0371–8 Employee disclosure concerning other employment services.

(a) * * *

(1) Acknowledge that the employee has read and is familiar with:

(i) The requirements and restrictions prescribed in this section;

(ii) Current version of DOE Order 486.1, Department of Energy Foreign Government Sponsored or Affiliated Activities;

(iii) Current version of DOE Order 241.1, Scientific and Technical Information Management; and

(iv) The requirements of the contractor’s contract with DOE relating to patents.

* * * * *

■ 200. Section 970.0371–9 is amended by revising the last sentence of the section to read as follows:

970.0371–9 Contract clause.

* * * In paragraph (a), the words “and managerial personnel (see 970.5245–1(k))” may be inserted after “(see 952.215–70)”.

970.0404–1 [Removed]

- 201. Section 970.0404–1 is removed.
- 202. Section 970.0404–2 is revised to read as follows:

970.0404–2 General.

(a) DOE policies, definitions, provisions, and clauses associated with safeguarding and security of classified information are in part 904.

(b) For DOE management and operating contracts and other contracts designated by the Senior Procurement Executive or designee, the clause at 970.5215–3, “Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts,” implements the requirements of section 234B of the Atomic Energy Act (42 U.S.C. 2282b) that provide for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any rule, regulation, or order relating to the safeguarding or security of classified information, including Restricted Data.

970.0404–4 [Removed]

- 203. Section 970.0404–4 is removed.

970.0407–1 [Redesignated as 970.0407–100]

- 204. Section 970.0407–1 is redesignated as section 970.0407–100.

970.0407–1–1 [Redesignated as 970.0407–110]

- 205. Section 970.0407–1–1 is redesignated as section 970.0407–110.

970.0407–1–2 [Redesignated as 970.0407–120]

- 206. Section 970.0407–1–2 is redesignated as section 970.0407–120.

970.0407–1–3 [Redesignated as 970.0407–130]

- 207. Section 970.0407–1–3 is redesignated as section 970.0407–130.
- 208. Newly redesignated section 970.0407–130 is revised to read as follows:

970.0407–130 Contract clause.

The contracting officer shall insert the clause at 970.5204–3, Access to and Ownership of Records, in management and operating contracts and other contracts that contain:

(a) The Integration of Environment, Safety, and Health into Work Planning

and Execution clause located at either 952.223–71 or 970.5223–1; or

(b) The clause at 952.223–72, Radiation Protection and Nuclear Criticality.

- 209. Section 970.0801–2 is revised to read as follows:

970.0801–2 Policy.

The provisions of FAR subpart 8.1, 41 CFR chapter 102, and 41 CFR part 109–43 apply to DOE’s management and operating contracts.

- 210. Amend section 970.0905 by adding a sentence at the end of the section to read as follows:

970.0905 Organizational and consultant conflicts of interest.

* * * Contracting Officers should refer to Subpart 909.5.

- 211. Section 970.1100–1 is revised to read as follows:

970.1100–1 Performance-based contracting.

(a) Each management and operating (M&O) contract must contain a performance work statement that describes, in general terms, work planned and/or required to be performed and expectations in terms of outcome, results, or final work products, as opposed to methods, processes, or design.

(b) Contract performance requirements and expectations should be consistent with the Department’s strategic planning goals and objectives, as made applicable to the site or facility through Departmental programmatic and financial planning processes. Measurable performance criteria, objective measures, and where appropriate, performance incentives, shall be structured to correspond to the performance requirements established in the statement of work and other documents used to establish work requirements.

970.1100–2 [Removed]

- 212. Section 970.1100–2 is removed.
- 213. Subpart 970.15 is revised to read as follows:

Subpart 970.15—Contracting by Negotiation

- Sec.
- 970.1504 Contract pricing.
- 970.1504–100 Price analysis.
- 970.1504–101 Fees for management and operating contracts.
- 970.1504–102 Fee policy.
- 970.1504–103 Fee determination.
- 970.1504–104 Calculating the maximum total available fee amount for a one-year period.
- 970.1504–105 Fee base.
- 970.1504–106 Fee schedules.
- 970.1504–107 Classification factors.

970.1504–108 Determining the appropriate percentage by considering the significant factors.

970.1504–109 Adding the fee subtotals for a one-year period.

970.1504–110 Allocating the maximum total available fee amount for a one-year period to one or more of the contract’s evaluation periods.

970.1504–111 The maximum total available fee amount for a contract.

970.1504–200 Documentation.

970.1504–201 Cost or pricing data.

970.1504–300 Solicitation provision and contract clauses.

970.1504–400 Special cost or pricing areas.

Subpart 970.15—Contracting by Negotiation**970.1504 Contract pricing.****970.1504–100 Price analysis.****970.1504–101 Fees for management and operating contracts.**

This subsection sets forth the Department’s policies on fees for management and operating (M&O) contracts.

970.1504–102 Fee policy.

(a) *Basic principles.* (1) M&O contracts are typically cost-reimbursement type contracts with incentive fees. An M&O contract, however, may be of any contract type or combination of types (for example, firm-fixed-price, cost-plus-award-fee, cost-plus-incentive-fee, multiple-incentive, etc.). Regardless of contract type, an M&O contract may contain work elements using different incentives.

(2) A cost-plus-fixed-fee contract shall only be used if approved in advance by the Senior Procurement Executive (SPE) or designee. The fee for a cost-plus-fixed-fee contract may not exceed the limits at FAR 15.404–4(c)(4)(i).

(3) A base fee amount may only be used if approved in advance by the SPE or designee.

(4) Incentive fees allocated to evaluation periods under cost-reimbursement type contracts should, to the greatest extent appropriate, be tied to a specific portion of the maximum total available fee.

(5) The maximum total available fee amount may not exceed the fee derived from this subsection unless approved in advance by the SPE or designee. A request to allow a higher fee must be in writing and must clearly explain why the situation merits consideration.

(i) Typically, only a situation where either unusually difficult objective performance incentives would be used or where successful performance would provide extraordinary value would merit consideration.

(ii) When a contract requires a contractor to use its own facilities, equipment, or other resources for contract performance (e.g., when there is no letter-of-credit financing), consideration may be given, subject to approval by the SPE or designee, to allowing a maximum total available fee amount above the amount calculated by this subsection.

(6) Each M&O contract must set forth in the contract (or in a Performance Evaluation and Measurement Plan (PEMP) or similar document) the methods that will be used to rate the contractor's performance and to determine the fee the contractor's performance will earn. The DOE Contracting Officer must ensure all important areas of contract performance are specified in the contract or in a PEMP (or similar document), even if such areas are not assigned a specific portion of the maximum total available fee the contractor might earn.

(i) An M&O contract is an "incentive contract" as that term is used in FAR subpart 16.4. FAR subpart 16.4 prohibits the use in a contract of other than cost incentives without also providing a cost incentive (or constraint).

(ii) Award fee not earned during the award fee cycle shall not be carried over to any future award fee cycle. Consequently—

(A) When the award fee cycle consists of one evaluation period, unearned award fee amounts may not be carried over from one evaluation period to the next.

(B) When the award fee cycle consists of two or more evaluation periods, at the sole discretion of the Contracting Officer, unearned award fee amounts may be carried over from one evaluation period to the next, so long as the periods are within the same award fee cycle.

(b) *Coordination requirements.* (1) Before issuing a competitive solicitation, the Head of the Contracting Activity (HCA) must coordinate the greatest maximum total available fee amount the HCA will accept with the SPE or designee. A competitive solicitation must identify the greatest maximum total available fee amount the Government will accept and may invite offerors to propose a lower fee amount.

(2) Before beginning to negotiate an extension to an existing contract, the HCA must coordinate the greatest maximum total available fee amount the HCA will accept, and the maximum total available fee amount targeted for negotiation with the SPE or designee.

970.1504–103 Fee determination.

(a) *General.* Determining the fee of an M&O contract requires considering the:

- (1) Magnitude of the effort;
- (2) Type of the effort;
- (3) Nature, difficulty, complexity, and importance of the work; and
- (4) Specific circumstances of the procurement.

(b) *Maximum total available fee amount for the contract, annual fee bases, and allocation of the maximum total available fee amount.* (1) Determining the maximum total available fee amount of an M&O contract, which is based upon the fee base (among other things) in each of the one-year periods of the M&O contract, is a separate action from allocating that amount to the evaluation periods of the contract, which is based upon what best motivates the M&O contractor's superior performance. The Government's objective is to allocate incentives in a manner that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

(2) The maximum total available fee amount in an M&O contract is the sum of the maximum total available fee amounts in the contract's one-year periods. (See 970.1504–104 for a complete explanation of the calculation of the maximum total available fee amount for a one-year period and an example.)

(3) The maximum total available fee amount for a one-year period is based on the fee base for that one-year period. The fee base is an estimate of the allowable costs (with some exclusions) for that one-year period.

(4) The fee base is a basic component of the fee schedules, which link the fee base to fee. A fundamental aspect of fee calculations is the amount of the fee base and the amount of fee in the fee schedules are annual amounts. Calculating the maximum total available fee amount for a one-year period starts with determining the fee base for the one-year period. Consequently, a contract's maximum total available fee amount is based on the contract's one-year periods and their fee bases.

(5) Usually (but not necessarily) once the maximum total available fee amount for a one-year period is calculated, it is allocated (that is, made available to be earned by the M&O contractor) to the same one-year period. Additionally, when a maximum total available fee amount is established for longer than a year, it is subject to adjustment in the event of a significant change (greater than plus or minus ten percent or a lesser percent if appropriate) to the budget or work scope.

(6) In summary, while the maximum total available fee amount for a one-year period is based on the fee base for the

one-year period, the evaluation period in which the contractor may earn all, or part of that fee need not be the same one-year period or even a single evaluation period. Usually, the length of an evaluation period is one year, mirroring the one-year period used in the calculation of the maximum total available fee amount for a one-year period. In fact, the SPE's or designee's approval is required to do otherwise. Nonetheless, the Government's objective is to allocate incentives in a manner that will provide the contractor with the greatest incentive for efficient and economical performance. Consequently, there may be occasions where after calculating the maximum total available fee amount for a year, part or all of it should be allocated to a subsequent one-year evaluation period, an evaluation period of greater than a year, or to several evaluation periods.

(7) Before each year (or other appropriate period), at any time before the year (or period), including as early as the time of contract award, the Contracting Officer and M&O contractor will enter negotiations to establish the requirements for the year (or other appropriate period), including evaluation areas, individual requirements, and the maximum total available fee that the contractor can earn for its performance. If the parties cannot agree, the Contracting Officer will unilaterally establish the requirements and the maximum total available fee. The maximum total available fee allocated to an evaluation period must be apportioned among a base fee amount (which is usually zero) and a performance fee amount. The performance fee amount may consist of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both. Both performance fee components are "incentives" per FAR subpart 16.4 and both are performance based. The performance fee must be tied to objective measures to the maximum extent appropriate. Performance incentive fee is preferable to performance award fee because it uses objective performance requirements rather than subjective performance requirements. Performance fee that is award fee may be used when: objective measures are not feasible (that is, when it is not feasible to devise effective predetermined objective measures applicable to cost, technical performance, or schedule); and the likelihood of meeting acquisition objectives will be enhanced by using incentives that effectively motivate the contractor toward exceptional

performance and provide the Government with the flexibility to evaluate both actual performance and the conditions under which it was achieved.

(8) Within the maximum total available fee, Contracting Officer may include a type of incentive fee component, often labeled “performance based incentive (PBI),” that includes a target fee for a target level of performance. Each PBI must be tied to a specific portion of the total available fee pool. PBIs may only be used when—

(i) A target level of performance can be established that the contractor can reasonably be expected to reach;

(ii) Factors likely to impede the target performance are clearly within the control of the contractor; and

(iii) The contract indicates clearly a level below which performance is not acceptable.

(c) *Determining the maximum total available fee for each one-year period of the contract.* (1) Determining the maximum total available fee for each one-year period of the contract is a function of the:

(i) Magnitude of the effort (reflected by the total fee base for the year; see 970.1504–105);

(ii) Type of the effort (reflected by the allocation of the total fee base to the three fee schedules—production, research and development, and environmental restoration; see 970.1504–106);

(iii) Nature, difficulty, complexity, and importance of the work (reflected by the choice of classification factors; see 970.1504–107); and

(iv) Specific circumstances of the procurement (reflected by the appropriate percentages derived from considering significant factors; see 970.1504–108).

(2) Calculating the maximum total available fee for a one-year period entails determining the total fee base for the year, allocating it to the fee schedules based on the type of effort, using the fee schedules to determine a fee subtotal for each type of effort, multiplying those fee subtotals by classification factors, multiplying the resulting products by appropriate percentages, and summing those products. (See 970.1504–104 for a complete explanation and an example.)

(d) *Conditional payment of fee, profit, and other incentives.* (1) In addition to other performance requirements specified in their contracts, M&O contractors are subject to performance requirements relating to: environment, safety, and health (ES&H), including worker safety and health (WS&H) and safeguarding of Restricted Data and

other classified information.

Performance requirements relating to ES&H will be set forth in the contract’s ES&H terms and conditions, including a DOE-approved Integrated Safety Management System (ISMS), or similar document. Performance requirements relating to the safeguarding of Restricted Data and other classified information will be set forth in the clauses of the contract at 952.204–2, “Security Requirements,” and 970.5204–2, “Laws, Regulations, and DOE Directives,” as well as in other terms and conditions that prescribe requirements for the safeguarding of Restricted Data and other classified information. (If the contract does not include the clause at 952.204–2, “Security Requirements,” the safeguarding of Restricted Data and other classified information requirements of the clause at 970.5215–3, “Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts,” do not apply.)

(2) If the contractor does not meet the performance requirements of the contract relating to ES&H or to the safeguarding of Restricted Data and other classified information, otherwise earned fee, fixed fee, profit, or other incentives may be unilaterally reduced by the Contracting Officer in accordance with the clause at 970.5215–3, “Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts.”

(3) The clause at 970.5215–3, entitled “Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts,” provides for reductions of earned fee, fixed fee, profit, or other incentives under the contract depending upon the severity of the contractor’s performance failure relating to ES&H requirements, and relating to the safeguarding of Restricted Data and other classified information. When reviewing performance failures that would otherwise warrant a reduction of earned fee, fixed fee, profit, or other incentives, the Contracting Officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. Some of the mitigating factors that must be considered are included in the clause.

(4) The Contracting Officer must obtain the concurrence of the cognizant Program Secretarial Officer—

(i) Prior to effecting any reduction; and

(ii) Prior to determining that a reduction is not warranted for a particular performance failure or a group of performance failures.

(5) The Contracting Officer must coordinate with the Office of

Enforcement within the Office of Enterprise Assessments (or with any designated successor office) before pursuing a contract fee reduction in the event of a violation by the contractor or any contractor employee of any DOE regulation relating to worker safety and health concerns. See 970.2303–2.

(e) *Types of contracts and fee arrangements.* (1) Contracts that are a combination of types or include work elements with fee arrangements that are a combination of contract types must—

(i) Conform to the requirements of parts 915 and 916 and FAR parts 15 and 16; and

(ii) Where appropriate to the type, be supported by:

(A) Negotiated costs subject to the requirements of the 41 U.S.C. chapter 35;

(B) A pre-negotiation memorandum; and

(C) A plan describing how each contract type or fee arrangement will be administered.

(2) [Reserved]

(f) *Establishing contract type.* Operations and field offices shall take the lead in establishing the most appropriate contract type for their requirements. Before establishing contract types and fee arrangements, operations and field offices must ensure the necessary resources exist within the contractor’s and the Government’s organizations to administer them.

970.1504–104 Calculating the maximum total available fee amount for a one-year period.

(a) The maximum total available fee amount for a contract is the sum of the maximum total available fee amounts of the contract’s one-year periods. The maximum total available fee amount in a one-year period is based on the fee base of the one-year period. Calculating the maximum total available fee amount for a one-year period requires considering the: magnitude of the effort (reflected by the total fee base for the year); type of effort (reflected by the allocation of the total fee base to the three fee schedules); nature, difficulty, complexity, and importance of the work (reflected by the choice of classification factors); and specific circumstances of the procurement (reflected by the appropriate percentages derived from considering significant factors).

(b) To calculate the maximum total available fee amount for a year, the Contracting Officer takes the following steps:

(1) *Step 1.* Determines the total fee base for the year (see 970.1504–105);

(2) *Step 2.* Allocates the total fee base for the year as appropriate to the three

types of efforts reflected by the three fee schedules (if there is only one type of effort, all of the total fee base is allocated to the fee schedule appropriate for the effort);

(3) *Step 3.* Using the portion of the total fee base allocated to the schedule in paragraph (b)(2) of this section (step 2), determines a fee subtotal for each type of effort (see 970.1504–106);

(4) *Step 4.* Multiplies each of the fee subtotals in paragraph (b)(3) of this section (step 3) by the appropriate classification factor (see 970.1504–107);

(5) *Step 5.* Multiplies each of the products produced in paragraph (b)(4) of this section (step 4) by the appropriate percentage, which is determined by considering the significant factors (see 970.1504–108); and

(6) *Step 6.* Adds the products of paragraph (b)(5) of this section (step 5).

(c) An example of calculating the maximum total available fee for a one-year period follows in paragraphs (c)(1) through (6) of this section. The assumptions are: total fee base is 50,000,000 (comprising 10,000,000 of Production efforts, 15,000,000 of Research and Development (R&D) efforts, and 25,000,000 of Environmental Management (EM) efforts), classification factors are 3.0, 1.5, and 2.0, and appropriate percentages are 90%, 85%, and 75%.

(1) *Step 1.* Determination of the total fee base: 50,000,000.

(2) *Step 2.* Allocation of the total fee base in paragraph (c)(1) of this section (step 1) to the three fee schedules (based on the types of effort in the total fee base):

- (i) 10,000,000 to Production;
- (ii) 15,000,000 to R&D; and
- (iii) 25,000,000 to EM.

(3) *Step 3.* Determination of the fee subtotal for each type of effort using the applicable fee schedules:

- (i) 578,726 for Production;
- (ii) 957,250 for R&D; and
- (iii) 1,236,340 for EM.

(4) *Step 4.* Multiplication of the fee subtotal in paragraph (c)(3) of this section (step 3) for each type of effort by the appropriate classification factor:

- (i) $578,726 \times 3.0 = 1,736,178$ for Production;
- (ii) $957,250 \times 1.5 = 1,435,875$ for R&D; and

- (iii) $1,236,340 \times 2.0 = 2,472,680$ for EM.

(5) *Step 5.* Multiplication of each of the products of paragraph (c)(4) of this section (step 4) by the appropriate percentage for the type of work (determined by considering the significant factors (see 970.1504–108)):

- (i) $1,736,178 \times .9 = 1,562,560$ for Production;
- (ii) $1,435,875 \times .85 = 1,220,494$ for R&D; and
- (iii) $2,472,680 \times .75 = 1,854,510$ for EM.

(6) *Step 6.* Addition of the products of paragraph (c)(5) of this section (step 5):

- (i) 1,562,560.
- (ii) 1,220,494.
- (iii) 1,854,510.
- (iv) 4,637,564.

(d) In summary, the maximum total available fee amount for a contract is the sum of the maximum total available fee amounts of the contract's one-year periods. Calculating the maximum total available fee amount for a one-year period entails determining the total fee base, allocating it to the fee schedules, using the fee schedules to determine fee subtotals, multiplying the fee subtotals by classification factors, multiplying the resulting products by appropriate percentages, and summing those products. (Allocating the amount of maximum total available fee for a one-year period to an evaluation period or periods is a separate action.)

970.1504–105 Fee base.

(a) The total fee base for a one-year period (see step 1 located at 970.1504–104(b)(1)) is an estimate of the allowable costs for the one-year period, with some exclusions. (Estimates for Strategic Partnership Projects may be included in the total fee base, where appropriate.)

The total fee base excludes estimates of allowable costs for: source and special nuclear materials; land, buildings, and facilities (whether they are to be leased, purchased or constructed); depreciation of Government facilities; and efforts for which a separate fee is to be negotiated.

(b) In addition to the exclusions in paragraph (a) of the section, the total fee base excludes:

(1) Any part of the estimated allowable cost of capital equipment that the contractor procures by subcontract and other similar costs that are of such

magnitude or nature as to distort the technical and management effort required of the contractor;

(2) At least 20% of the estimated allowable cost of subcontracts and other major contractor procurements, with the excluded amount increasing as the contractor's estimated required management effort decreases;

(3) Estimates of allowable home office or corporate general and administrative expenses that will be reimbursed;

(4) Any cost of work funded with uncosted balances previously included in a fee base of this or any other contract performed by the contractor;

(5) Cost of rework attributable to the contractor; and

(6) State taxes.

(c) The total fee base does not reflect any fee or compensation for unusual architect-engineer or construction services provided by the M&O contractor. Architect-engineer and construction services are normally covered by special agreements based on the policies applying to architect-engineer or construction contracts. The fees for such services shall be calculated per 915.404–4800 and added to the fees calculated using the production, R&D, and EM schedules. The total fee base also does not reflect any fee or compensation for special equipment purchases. The fees for special equipment purchases shall be calculated per 915.404–4800 and added to the fees calculated using the production, R&D, and EM schedules.

(d) No fee schedule may be used more than once in calculating the maximum total available fee amount for a one-year period.

970.1504–106 Fee schedules.

(a) In calculating the amount of maximum total available fee amount for a one-year period (see 970.1504–104), once the total fee base for the year is determined it is allocated to one or more of the three fee schedules based upon the type of effort. The three types of efforts are: Production; R&D; and EM. Each fee schedule provides a fee subtotal (see steps 2 and 3 in 970.1504–104(b)(2) and (3)).

(b) The three schedules are:

TABLE 1 TO PARAGRAPH (b)

Fee base (dollars)	Fee dollars	Fee (percent)	Incr. (percent)
PRODUCTION EFFORTS SCHEDULE			
Up to \$1 Million .....	.....	.....	7.66
1,000,000	\$76,580	7.66	6.78

TABLE 1 TO PARAGRAPH (b)—Continued

Fee base (dollars)	Fee dollars	Fee (percent)	Incr. (percent)
3,000,000	212,236	7.07	6.07
5,000,000	333,670	6.67	4.90
10,000,000	578,726	5.79	4.24
15,000,000	790,962	5.27	3.71
25,000,000	1,161,828	4.65	3.35
40,000,000	1,663,974	4.16	2.92
60,000,000	2,247,076	3.75	2.57
80,000,000	2,761,256	3.45	2.34
100,000,000	3,229,488	3.23	1.45
150,000,000	3,952,622	2.64	1.12
200,000,000	4,510,562	2.26	0.61
300,000,000	5,117,732	1.71	0.53
400,000,000	5,647,228	1.41	0.45
500,000,000	6,097,956	1.22	.....
Over \$500,000,000	6,097,956	.....	0.45

TABLE 2 TO PARAGRAPH (b)

Fee base (dollars)	Fee dollars	Fee (percent)	Incr. (percent)
RESEARCH AND DEVELOPMENT EFFORTS SCHEDULE			
Up to \$1 Million .....	.....	.....	8.42
1,000,000	\$84,238	8.42	7.00
3,000,000	224,270	7.48	6.84
5,000,000	361,020	7.22	6.21
10,000,000	671,716	6.72	5.71
15,000,000	957,250	6.38	4.85
25,000,000	1,441,892	5.77	4.22
40,000,000	2,075,318	5.19	3.69
60,000,000	2,813,768	4.69	3.27
80,000,000	3,467,980	4.33	2.69
100,000,000	4,006,228	4.01	1.69
150,000,000	4,850,796	3.23	1.14
200,000,000	5,420,770	2.71	0.66
300,000,000	6,083,734	2.03	0.58
400,000,000	6,667,930	1.67	0.50
500,000,000	7,172,264	1.43	.....
Over \$500,000,000	7,172,264	.....	0.50

TABLE 3 TO PARAGRAPH (b)

Fee base (dollars)	Fee dollars	Fee (percent)	Incr. (percent)
ENVIRONMENTAL MANAGEMENT EFFORTS SCHEDULE			
Up to \$1 Million .....	.....	.....	7.33
1,000,000	\$73,298	7.33	6.49
3,000,000	203,120	6.77	5.95
5,000,000	322,118	6.44	5.40
10,000,000	592,348	5.92	4.83
15,000,000	833,654	5.56	4.03
25,000,000	1,236,340	4.95	3.44
40,000,000	1,752,960	4.38	3.29
60,000,000	2,411,890	4.02	3.10
80,000,000	3,032,844	3.79	2.49
100,000,000	3,530,679	3.53	1.90
150,000,000	4,479,366	2.99	1.48
200,000,000	5,219,924	2.61	1.12
300,000,000	6,337,250	2.11	0.88
400,000,000	7,219,046	1.80	0.75
500,000,000	7,972,396	1.59	0.58
750,000,000	9,423,463	1.26	0.55
1,000,000,000	10,786,788	1.08	.....
Over \$1 Billion	10,786,788	.....	0.55

970.1504–107 Classification factors.

(a) There are five classification factors. They are tied to facility/task categories. Step 4 in calculating the maximum total available fee amount for the one-year period (see 970.1504–104(b)(4)) is to multiply the fee subtotal in step 3 for each type of effort by the appropriate classification factor. The classification factors and their corresponding facility/task categories are:

TABLE 1 TO PARAGRAPH (a)

Facility/task category	Classification factor
A	3.0
B	2.5
C	2.0
D	1.5
E	1.0

(b) The Contracting Officer shall select the Facility/Task Category after considering the following:

(1) *Facility/Task Category A.* The main focus of effort performed is related to—

(i) The manufacture, assembly, retrieval, disassembly, or disposal of nuclear weapons with explosive potential;

(ii) The physical cleanup, processing, handling, or storage of nuclear radioactive or toxic chemicals with consideration given to the degree the nature of the work advances state-of-the-art technologies in cleanup, processing or storage operations and/or the inherent difficulty or risk of the work is significantly demanding when compared to similar industrial/DOE settings (*i.e.*, nuclear energy processing, industrial environmental cleanup);

(iii) Construction of facilities such as nuclear reactors, atomic particle accelerators, or complex laboratories or industrial units especially designed for handling radioactive materials;

(iv) R&D directly supporting paragraph (b)(1)(i), (ii), or (iii) of this subsection and not conducted in a DOE laboratory; or

(v) As designated by the SPE, or designee. (Classification factor 3.0)

(2) *Facility/Task Category B.* The main focus of effort performed is related to—

(i) The safeguarding and maintenance of nuclear weapons or nuclear material;

(ii) The manufacture or assembly of nuclear components;

(iii) The physical cleanup, processing, handling, or storage of nuclear radioactive or toxic chemicals or other substances that pose a significant threat to the environment or the health and safety of workers or the public, if the

nature of the work uses state-of-the-art technologies or applications in such operations and/or the inherent difficulty or risk of the work is more demanding than that found in similar industrial/DOE settings (*i.e.*, nuclear energy, chemical or petroleum processing, industrial environmental cleanup);

(iv) The detailed planning necessary for the assembly/disassembly of nuclear weapons/components;

(v) Construction of facilities involving operations requiring a high degree of design layout or process control;

(vi) R&D directly supporting paragraph (b)(2)(i), (ii), (iii), (iv), or (v) of this subsection and not conducted in a DOE laboratory; or

(vii) As designated by the SPE or designee. (Classification factor 2.5)

(3) *Facility/Task Category C.* The main focus of effort performed is related to—

(i) The physical cleanup, processing, or storage of nuclear radioactive or toxic chemicals if the nature of the work uses routine technologies in cleanup, processing or storage operations and/or the inherent difficulty or risk of the work is similar to that found in similar industrial/DOE settings (*i.e.*, nuclear energy, chemical processing, industrial environmental cleanup);

(ii) Plant and facility maintenance;

(iii) Plant and facility security (other than the safeguarding of nuclear weapons and material);

(iv) Construction of facilities involving operations requiring normal processes and operations; general or administrative service buildings; or routine infrastructure requirements;

(v) R&D directly supporting paragraph (b)(3)(i), (ii), (iii), or (iv) of this subsection and not conducted in a DOE laboratory; or

(vi) As designated by the SPE or designee. (Classification factor 2.0)

(4) *Facility/Task Category D.* The main focus of the effort performed is R&D conducted at a DOE laboratory. (Classification factor 1.5)

(5) *Facility/Task Category E.* Efforts performed using a fixed fee. (Classification factor 1.0)

(c) Where the SPE or designee has approved a base fee, the Classification Factors shall be reduced, as approved by the SPE or designee.

(d) Any risks that are indemnified by the Government (for example, risks under the Price-Anderson Act) will not be considered as risks to the contractor.

970.1504–108 Determining the appropriate percentage by considering the significant factors.

(a) In calculating the maximum total available fee for a one-year period (see

970.1504–104), step 5 (970.1504–104(b)(5)) is to consider the specific circumstances of the procurement using the following significant factors for each type of effort, determine the appropriate percentage for the type of work, and apply it to the subtotals of fee from step 4 (970.1504–104(b)(4)). An appropriate percentage of 100% would be applied to work of maximum difficulty and/or complexity; lesser percentages would be applied to work less difficult or complex. The significant factors are:

(1) The relative difficulty of work, including specific performance objectives, environment, safety and health concerns, and the technical and administrative knowledge, and skill necessary for work accomplishment and experience;

(2) Management risk relating to performance, including—

(i) Composite risk and complexity of principal work tasks required to do the job; and

(ii) Advance planning, forecasting and other such requirements;

(3) Size and operation (number of locations, plants, differing operations, etc.);

(4) The nature and relative complexity of subcontracted efforts, subcontractor management, and complexity of integration with other contractors;

(5) Other special considerations, including support of Government programs such as those relating to small and minority business subcontracting, energy conservation, etc.; and

(6) The presence or absence of financial risk, including the type and terms of the contract.

(b) [Reserved]

970.1504–109 Adding the fee subtotals for a one-year period.

In calculating the maximum total available fee amount for a one-year period (see 970.1504–104), step 6 (970.1504–104(b)(6)) is to add the products of step 5 (970.1504–104(b)(5)).

970.1504–110 Allocating the maximum total available fee amount for a one-year period to one or more of the contract's evaluation periods.

Usually, the length of an evaluation period is one year, mirroring the one-year period used in calculating the maximum total available fee amount for a one-year period. The SPE's or designee's approval is required to do otherwise. Nonetheless, the Government's objective is to allocate incentives in a manner that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance. Consequently, there may

be occasions where after calculating the maximum total available fee amount for a one-year period, part or all of it should be allocated to a subsequent one-year evaluation period, an evaluation period of greater than a year, or to several evaluation periods.

970.1504–111 The maximum total available fee amount for a contract.

The maximum total available fee amount for a contract is the sum of the maximum total available fee amounts of the contract's one-year periods.

970.1504–200 Documentation.

970.1504–201 Cost or pricing data.

(a) The certification requirements of FAR 15.406–2 are not applied to DOE cost-reimbursement M&O contracts.

(b) The Contracting Officer shall ensure that M&O contractors and their subcontractors obtain certified cost or pricing data prior to the award of a negotiated subcontract or modification of a subcontract in accordance with FAR 15.406–2, if required by FAR 15.403–4, and incorporate appropriate contract provisions similar to those set forth at FAR 52.215–10 and 52.215–11 that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of the submission of defective cost or pricing data by a subcontractor at any tier.

(c) The clauses at FAR 52.215–12 and 52.215–13 shall be included in M&O contracts.

970.1504–300 Solicitation provision and contract clauses.

(a) The Contracting Officer shall insert the clause at 970.5215–1, Total Available Fee: Base Fee Amount and Performance Fee Amount, in M&O contracts.

(b) The Contracting Officer shall insert the clause at 970.5215–3, Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts, in M&O contracts. (Note: The clause states if the contract does not include the Security Requirements clause (952.204–2), the requirements of the clause related to security or safeguarding of Restricted Data and other classified information do not apply.)

(c) The Contracting Officer shall insert the provision at 970.5215–5, Limitation on Fee, in solicitations for M&O contracts.

970.1504–400 Special cost or pricing areas.

■ 214. Amend section 970.1706–1 by revising paragraphs (a) and (b) to read as follows:

970.1706–1 Award, renewal, and extension.

(a) *Contract term.* Effective performance under an M&O contract is facilitated by the use of a relatively long contract term. Only the Secretary can authorize the use of an M&O contract and only the Secretary can renew the original authorization of an M&O contract.

(1) An M&O contract shall—after the Secretary has authorized its original use (either by a competitive award or by a sole source award), its maximum term, and any other limits on its terms (options or other terms)—provide for a base term not to exceed the lesser of five years or the maximum term the Secretary authorized.

(2) The contract may include option terms provided no option term exceeds the lesser of five years or the maximum term the Secretary authorized (for options or the contract) and the sum of base term and the option terms does not exceed the lesser of 10 years or the maximum term the Secretary authorized for the contract. In addition to the base term and the option terms just described, an M&O contract for a national laboratory that is competitively awarded may provide for award term incentives provided none exceed the maximum term the Secretary authorized for each. The sum of base term, option terms, and award terms shall not exceed the lesser of 20 years or the maximum term the Secretary authorized for the contract.

(3) After the Secretary's original authorization of the use of the M&O contract has expired, any continuation of work under an M&O contract must be preceded by the Secretary's renewal of his/her authorization for use of an M&O contract. Whether work is to be continued by a competitive award to a new contractor or to the incumbent, by a sole source award to a new contractor, or by a sole source extension of the contract to the incumbent, the Secretary's renewal of his/her authorization for use of an M&O contract to perform the work is required before work may continue.

(4) In addition to requiring the Secretary's renewal of his/her authorization for use of an M&O contract, a sole source extension of an M&O contract to the incumbent must be justified under one of the statutory authorities listed in FAR 6.302 and authorized by the Secretary.

(5) The specific duration of the base term, option terms, and award terms of an M&O contract must be established concurrent with the Secretary's authorization (or renewal of his/her authorization) to use an M&O contract

(for original use, sole source award to a new contractor, competitive award to a new contractor or to the incumbent, or sole source extension of the contract to the incumbent).

(b) *Exercise of option.* The contracting officer's decision to exercise an option (if the Secretary's authorization to use an M&O contract covers the option period) must be approved by the Senior Procurement Executive and the cognizant Assistant Secretary(s). In deciding to exercise the option, the contracting officer shall:

(1) Consider the extent to which performance-based management contract provisions are present or can be negotiated into the contract.

(2) Make the determinations required by FAR 17.605 in the manner described therein. As part of the review required by FAR 17.605(b), the Contracting Officer shall assess whether competing the contract will produce a more advantageous offer than exercising the option. The incumbent contractor's past performance under the contract, the extent to which performance-based management contract provisions are present, or can be negotiated into the contract, and the impact of a change in a contractor on the Department's discharge of its programs are considerations that shall be addressed in the Contracting Officer's decision that the exercise of the option is in the Government's best interest. The Contracting Officer's decision shall be approved by the Senior Procurement Executive and the cognizant Assistant Secretary(s). The determinations described in FAR 17.207(d) and (e)(2) are not required, and because of the way in which the evaluation of cost to the Government is performed in the award of an M&O contract that includes options, the Contracting Officer need only determine the option was evaluated as part of the initial competition and contains a maximum fee. The Contracting Officer need not, for example: issue a new solicitation; informally analyze prices; or determine the option is the more advantageous offer.

* * * * *

■ 215. Section 970.1707–1 is revised to read as follows:

970.1707–1 Scope.

Pursuant to 42 U.S.C. 2053 and 7259a, DOE is authorized to make its facilities available to other Federal and non-Federal entities (sponsors) for the conduct of certain research and development and training activities. Pursuant to 31 U.S.C. 1535 and 42 U.S.C. 7259a, or other applicable authority, other Federal entities may

request DOE to conduct work. DOE has implemented these and other statutory authorities and requirements in its Strategic Partnership Projects Program.

- 216. Amend section 970.1707–3 by:
 - a. Revising paragraph (a);
 - b. Adding the word “and” at the end of paragraph (b)(2);
 - c. Removing paragraph (b)(3) and redesignating paragraph (b)(4) as paragraph (b)(3); and
 - d. Revising paragraph (c)(1).

The revisions read as follows:

970.1707–3 Terms governing strategic partnership projects.

(a) DOE’s internal review and approval procedural requirements for strategic partnership projects agreements are set forth in the current version of DOE Order 481.1, and such other guidance as may be issued by DOE.

* * * * *

(c) * * *

(1) The interagency agreement with DOE complies with the Economy Act of 1932 (31 U.S.C. 1535) or other applicable statutory authorities and FAR 6.002, which prohibits the use of an Interagency Agreement for the purpose of avoiding the competition requirements of the Federal Acquisition Regulation (48 CFR chapter 1); and

* * * * *

- 217. Section 970.1707–4 is revised to read as follows:

970.1707–4 Contract clause.

Insert the clause at 970.5217–1, Strategic Partnership Projects Program (Non-DOE Funded Work), in any contract that may involve work under the Strategic Partnership Projects Program.

- 218. Sections 970.1708, 970.1708–1, 970.1708–2, and 970.1708–3 are added to read as follows:

Sec.

970.1708 Agreements for commercializing technology (ACT).

970.1708–1 Scope.

970.1708–2 General.

970.1708–3 Contract clause.

970.1708 Agreements for commercializing technology (ACT).

970.1708–1 Scope.

The scope of this subpart is to provide authorization for the M&O contractor to conduct third party-sponsored research at the M&O contractor’s risk.

970.1708–2 General.

M&O contractors may elect to enter into agreements directly with non-Federal sponsors to conduct research at the facility the M&O contractor is

responsible for managing and operating so long as the work does not present, or minimizes, any apparent COI, as well as avoiding or neutralizing any actual COI as a result of the agreement. This research is conducted at the M&O contractor’s risk and the M&O contractor may obtain compensation beyond full-cost recovery for accepting the risk of performance.

970.1708–3 Contract clause.

The Contracting Officer shall insert the clause at 970.5217–2, Agreements for Commercializing Technology (ACT), in any contract that may involve ACT pursuant to 970.1708.

- 219. Section 970.1907–8 is added to read as follows:

970.1907–8 Contract clauses.

(a) In accordance with FAR 19.708(b)(1), the Contracting Officer shall insert the clause FAR 52.219–9, Small Business Subcontracting Plan, in all M&O solicitations and contracts.

(b) The Contracting Officer shall supplement the clause at FAR 52.219–9 with the clause at 970.5219, Small Business Subcontracting Plan, in M&O solicitations and contracts, except for those for the Ames Laboratory and Princeton Plasma Physics Laboratory. The Contracting Officer may tailor the clause as needed.

970.2201–1 [Redesignated as 970.2201–100]

- 220. Section 970.2201–1 is redesignated as section 970.2201–100.

970.2201–1–1 [Redesignated as 970.2201–110]

- 221. Section 970.2201–1–1 is redesignated as section 970.2201–110.

- 222. Newly redesignated section 970.2201–110 is revised to read as follows:

970.2201–110 General.

Contracting officers shall, in appropriate circumstances, follow the requirements in FAR subpart 22.1, as supplemented in this section, in the award and administration of:

- (a) Management and operating (M&O) contracts;
- (b) Contracts the Senior Procurement Executive designates; and
- (c) Non-M&O contracts where the current contract’s work was previously performed under an M&O contract and the current Contractor was required to, and did, employ the former Contractor’s legacy workforce. These non-M&O contracts may include, but are not limited to, contracts whose work is for:

- (1) Environmental remediation;
- (2) Decontamination and decommissioning;

- (3) Environmental restoration;
- (4) Infrastructure services for the site;
- (5) Site closure at a current or former M&O contract site or facility; or
- (6) Protective forces that provide physical security of sites at a current of former M&O contract site or facility.

970.2201–1–2 [Redesignated as 970.2201–120]

- 223. Section 970.2201–1–2 is redesignated as section 970.2201–120.

- 224. Newly redesignated section 970.2201–120 is revised to read as follows:

970.2201–120 Policies.

(a) The extent of Government ownership of the nation’s energy plant and materials, and the overriding concerns of national defense and security, impose special conditions on personnel and labor relations in the energy program. Such special conditions include the need for continuity of vital operations at DOE installations; retention by DOE of absolute authority on all questions of security in accordance with 10 CFR 706.40; and DOE review of labor expenses under management and operating (M&O) contracts (and certain other contracts) to assure judicious expenditure of public funds. It is the intent of DOE that personnel and labor policies throughout the energy program reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations that are essential to the proper development of the energy program. The following enunciates the principles upon which the DOE policy is based:

(1) *Employment standards.* (i) M&O contractors (and certain other non-M&O contractors and subcontractors as described in 970.2201–110) are expected to bring experienced, proven personnel from their private operations to staff key positions on the contract and to recruit other well-qualified personnel as needed. Such personnel should be employed and treated during employment without discrimination by reason of race, color, religion, sex, age, disability, or national origin. Contractors are required to take affirmative action to achieve these objectives as required by, among other things, the clause at FAR 52.222–26.

(ii) When the clause at 952.204–2, Security Requirements, is applicable (see 904.404), the Contracting Officer will obtain adequate assurance that the Contractor performed the required review of an uncleared applicant’s or of an uncleared employee’s background in its determination to select an individual

for a position requiring a DOE access authorization.

(2) *Security*. In accordance with 10 CFR 706.40, on all matters of security at its facilities, DOE retains absolute authority. Neither the regulations or policies pertaining to security, nor their administration, are matters for collective bargaining between the contractor's management and labor. Insofar as DOE security regulations affect the collective bargaining process, the security policies and regulations will be made known to both parties. To the fullest extent feasible, DOE will consult with representatives of the contractor's management and labor when formulating security regulations and policies that may affect the collective bargaining process.

(3) *Wages, salaries, and employee benefits*. The aspects of wages, hours, and working conditions which are the substance of collective bargaining in normal organized industries will be left to the orderly processes of negotiation and agreement between contractor management and employee representatives with maximum possible freedom from Government interference and consistent with paragraph (a)(5) of this section and 970.2201–140.

(4) *Employee relations*. The handling of employee relations on contract work, including such matters as the conduct and discipline of the work force and the handling of employee grievances, is part of the normal management responsibility of the contractor.

(5) *Collective bargaining*. (i) DOE review of collective bargaining practices will be premised on the view that management's trusteeship for the operation of the Government facilities includes the duty to adopt practices (which experience has shown) that are fundamental to the equitable resolution of disputes and promote orderly collective bargaining relationships. Practices inconsistent with this view may be objected to if not found to be otherwise clearly warranted.

(ii) Consistent with the policy of assuring continuity of operation of vital facilities, all collective bargaining agreements at DOE-owned facilities should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For purposes of this paragraph (a)(5)(ii), each collective bargaining agreement entered into during the period of performance of this contract should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method

of assuring continuity of operation for the term of the collective bargaining agreement.

(iii) DOE expects its management and operating contractors and the unions representing the contractor's employees to cooperate fully with the Federal Mediation and Conciliation Service.

(6) *Personnel training*. DOE encourages and supports personnel training programs aimed at improving work efficiency or developing needed skills which are not otherwise obtainable.

(7) *Working conditions*. Accident, fire, health, and occupational hazards associated with DOE activities should be held to a practical minimum level and controlled in the interest of maintenance of health and prevention of accidents. Subject to DOE control, to the extent set forth in the terms and conditions of the contract, contractors are required to:

(i) Maintain comprehensive continuous preventive and protective programs appropriate to the particular activities throughout all operations.

(ii) Provide appropriate financial protection in case of occupational disability to employees.

(b) Title to payroll and associated records under certain contracts (see 970.0407–120) for the management and operation of DOE facilities, and for necessary miscellaneous construction incidental to the function of these facilities, shall vest in the Government. Such records are to be disposed of in accordance with the clause at 970.5232–3, Accounts, Records, and Inspection, and other DOE directions. For such contracts, the Solicitor of Labor has granted a tolerance from the Department of Labor regulations to omit from the prescribed labor clauses the requirement for the retention of payrolls and associated records for a period of three years after completion of the contract. Under this tolerance, the records retention requirements for all labor clauses in the contract and the Fair Labor Standards Act are satisfied by disposal of such records in accordance with applicable DOE directives.

970.2201–1–3 [Redesignated as 970.2201–130]

■ 225. Section 970.2201–1–3 is redesignated as section 970.2201–130.

■ 226. Newly redesignated section 970.2201–130 is revised to read as follows:

970.2201–130 Contract clause.

In addition to the clause at FAR 52.222–1, Notice to the Government of Labor Disputes, the contracting officer shall insert the clause at 970.5222–1,

Collective Bargaining Agreements—Management and Operating Contracts, in all M&O contracts and certain other non-M&O contracts as described in 970.2201–110. The substance of the clause at 970.5222–1, Collective Bargaining Agreements, shall be included in any subcontract for protective services or other services performed on the DOE-owned site which will affect the continuity of operations of the facility.

■ 227. Section 970.2201–140 is added to read as follows:

970.2201–140 Wages, salaries, and employee benefits.

(a) It is DOE policy that contractors facilitate the retention of certain critically skilled employees for: the management and operation of laboratories and other national defense and security site facilities; contracts designated by the Senior Procurement Executive; and certain other non-M&O contracts as described in 970.2201–100. Critically skilled employees are those employees whose specific recognized technical skills, knowledge, and experience in a specific field are critical to the operations or strategy of a contractor, and whose loss from the DOE contractor's workforce system would cause a significant negative impact on achieving and supporting national research, environmental, defense, and security objectives.

(b) Wages, salaries, and employee benefits shall be administered in a manner designated to adapt the normal practices and conditions of industry or institutions of higher education to the contract work, and to provide for appropriate review by DOE.

(c) The contractor's compensation systems and supporting policies should support the effective recruitment and retention of a highly skilled, motivated, and experienced workforce at a reasonable cost. For a cost to be allowable it must comply with each of the five requirements for allowability stated in FAR 31.201–2. Some of the specific details of the allowable costs for compensation for personal services are discussed at FAR 31.205–6, as supplemented by, 970.3102–506, and other pertinent parts of the DEAR and DOE directives and policies.

970.2201–2 [Redesignated as 970.2201–200]

■ 228. Section 970.2201–2 is redesignated as section 970.2201–200.

970.2201–2–1 [Redesignated as 970.2201–210]

■ 229. Section 970.2201–2–1 is redesignated as section 970.2201–210.

970.2201–2–2 [Redesignated as 970.2201–220]

- 230. Section 970.2201–2–2 is redesignated as section 970.2201–220.
- 231. Section 970.2204 is revised to read as follows:

970.2204 Labor standards for contracts involving construction.

The policy in 922.406–1 applies to M&O contracts.

970.2204–1 and 970.2204–1–1 [Removed]

- 232. Sections 970.2204–1 and 970.2204–1–1 are removed.
- 233. Section 970.2210 is revised to read as follows:

970.2210 Service contract labor standards.

The Service Contract Labor Standards, historically referred to as the Service Contract Act of 1965, is not applicable to contracts for the management and operation of DOE facilities, but it is applicable to subcontracts under such contracts (see 970.5244–1(x)).

- 234. Section 970.2270 is revised to read as follows:

970.2270 Unemployment compensation.

(a) Each state has its own unemployment compensation system to provide payments to workers who become unemployed involuntarily and through no fault of their own. These claims are payable by employers through the state unemployment insurance tax. Some entities such as nonprofits may be permitted to either pay in or opt out. These claims are payable either through the state unemployment insurance tax (pay in) or by reimbursing the state for actual claims paid out to former employees (opt out).

(b) The predictability of paying claims through the state unemployment insurance tax is preferred and highly encouraged. However, an M&O contractor may choose to opt out. A contractor before deciding to opt out, generally performs an analysis of its workforce including size and stability of the workforce, historical turnover rate and historical payout data. This information may also be provided to state regulators who are interested in ensuring that employers who opt out establish an adequate reserve fund to reimburse the state for the claims that are processed for the company's former employees.

(c) When an M&O contractor opts out of paying for claims through the state's unemployment insurance tax, as permitted and in accordance with state laws, regulations and guidelines, the reimbursement by DOE, in any given

year, should generally be limited to the actual incurred cost, but no more than what would have been incurred had the contractor chosen to pay in.

- 235. Section 970.2270–2 is added to read as follows:

970.2270–2 Contract clause.

The Contracting Officer shall insert the clause at 970.5222–4, Unemployment Compensation, in all solicitations for an M&O contract and in all M&O contracts awarded to a nonprofit entity. When this is included in a contract or solicitation, the Contracting Officer shall fill in the appropriate number of calendar days.

- 236. Revise the heading for subpart 970.23 to read as follows:

970.23 Environment, Sustainable Acquisition, and Material Safety**970.2301–1 [Removed and Reserved]**

- 237. Section 970.2301–1 is removed and reserved.
- 238. Section 970.2301–2 is revised to read as follows:

970.2301–2 Contract clauses.

The Contracting Officer shall insert the clause at 952.223–78, Sustainable Acquisition Requirements, in all management and operating (M&O) contracts in accordance with 923.172.

970.2303–2–70 [Redesignated as 970.2303–2]

- 239. Section 970.2303–2–70 is redesignated as section 970.2303–2.

970.2303–2 [Amended]

- 240. Amend newly redesignated section 970.2303–2 in paragraph (c)(2)(ii) by removing the text “the Office of Price Anderson Enforcement within the Office of the Assistant Secretary for Health, Safety and Security” and adding in its place “the Office of Enforcement within the Office of Enterprise Assessments”.

970.2305, 970.2305–1, 970.2305–2, 970.2305–3, 970.2305–4, and 970.2306 [Redesignated as 970.2605, 970.2605–1, 970.2605–2, 970.2605–3, 970.2605–4, and 970.2606]

- 241. Redesignate sections 970.2305, 970.2305–1, 970.2305–2, 970.2305–3, 970.2305–4, and 970.2306 as sections 970.2605, 970.2605–1, 970.2605–2, 970.2605–3, 970.2605–4, and 970.2606 respectively.

970.2605–2 [Amended]

- 242. Amend newly redesignated section 970.2605–2 in paragraph (b) by removing “48 CFR subpart 23.5” and adding “48 CFR subpart 26.5” in its place.

970.2605–4 [Amended]

- 243. Amend newly redesignated section 970.2605–4 as follows:

- a. In paragraph (a) remove “970.5223–3” and add “970.5226–4” in its place; and
- b. In paragraph (b) remove “970.5223–4” and add “970.5226–5” in its place.

970.2606 [Amended]

- 244. Amend newly redesignated section 970.2606 as follows:

- a. In paragraph (a) remove “48 CFR 23.506” and add “48 CFR 26.505” in its place;
- b. In paragraph (a) remove “970.5223–4” and add “970.5226–5” in its place; and
- c. In paragraph (b) removing “970.5223–3” and add “970.5226–4” in its place wherever it appears.

- 245. Section 970.2672–3 is revised to read as follows:

970.2672–3 Contract clause.

(a) The contracting officer shall insert the clause at 970.5226–2, Workforce Restructuring under section 3161 of the National Defense Authorization Act for Fiscal Year 1993, in contracts for the management and operation of Department of Energy Defense Nuclear Facilities and, as appropriate, in other contracts that include site management responsibilities at a Department of Energy Defense Nuclear Facility.

(b) The contracting officer shall insert the clause at 952.226–74, Workforce Restructuring and Displaced Employee Hiring Preference, in contracts and subcontracts at any tier (except for contracts for commercial items, pursuant to 41 U.S.C. 403) which exceed \$500,000 in value.

- 246. Section 970.2673–2 is revised to read as follows:

970.2673–2 Contract clause.

The contracting officer may insert the clause at 970.5226–3, Community Commitment, in management and operating contracts where community involvement will be required of the contractor.

- 247. Section 970.2701–1 is revised to read as follows:

970.2701–1 Applicability.

This subpart applies to negotiation of patent rights, rights in technical data provisions and other related provisions for the Department of Energy contracts for the management and operation of DOE's major sites or facilities, including the conduct of research and development and nuclear weapons production, and contracts which involve major, long-term or continuing

activities conducted at a DOE site, including decontamination and decommissioning activities.

■ 248. Section 970.2702 is revised to read as follows:

970.2702 Patent and copyrights.

970.2702–1 through 970.2702–6 [Removed]

■ 249. Sections 970.2702–1 through 970.2702–6 are removed.

■ 250. Section 970.2702–70 is added to read as follows:

970.2702–70 Solicitation provision and contract clauses.

(a) *Authorization and consent.* Contracting officers must include the clause at 970.5227–4, Authorization and Consent, instead of the clause at FAR 52.227–1.

(b) *Notice and assistance regarding patent and copyright infringement.* Contracting Officers must include the clause at 970.5227–5, Notice and Assistance Regarding Patent and Copyright Infringement, instead of the clause at FAR 52.227–2.

(c) *Patent indemnity.* (1) Contracting Officers must include the clause at 970.5227–6, Patent Indemnity-Subcontracts, to assure that subcontracts appropriately address patent indemnity.

(2) Normally, the clause at FAR 52.227–3 would not be appropriate for an M&O contract; however, if there is a question, such as when the mission of the contractor involves production, the Contracting Officer must consult with DOE patent counsel and use the clause where appropriate.

(d) *Rights to proposal data.* Contracting Officers must include the clause at FAR 52.227–23, Rights to Proposal Data (Technical), in all solicitations and contracts for the management and operation of DOE sites and facilities.

(e) *Notice of right to request patent waiver.* Contracting Officers must include the provision at 970.5227–9 in all solicitations for contracts for the management and operation of DOE sites or facilities.

(f) *Royalties.* Contracting Officers must include the solicitation provision at 970.5227–7, Royalty Information, and the clause at 970.5227–8, Refund of Royalties, instead of the provision at FAR 52.227–6 and the clause at FAR 52.227–9, respectively.

970.2703–1 [Amended]

■ 251. Amend section 970.2703–1 by:
■ a. Removing paragraph (b); and
■ b. Redesignating paragraph (c) as paragraph (b).

■ 252. Amend section 970.2703–2 by revising paragraphs (a), (b), and (c) and adding paragraph (h) to read as follows:

970.2703–2 Patent rights clause provisions for management and operating contractors.

(a) *Allocation of principal rights: Bayh-Dole provisions.* (1) If the M&O contractor is a nonprofit organization or small business firm as defined by 35 U.S.C. 201, the clause at 970.5227–10 must be inserted into the M&O contract, except when the M&O contract is for the operation of a DOE facility primarily dedicated to naval nuclear propulsion or weapons related programs. The patent rights clause at 970.5227–10 allows the contractor to elect to retain title to inventions conceived or first actually reduced to practice in performance of work under the contract in accordance with 35 U.S.C. 200 *et seq.* (the Bayh-Dole Act).

(2) If the M&O contractor is conducting privately funded technology transfer activities, involving the use of private funds to conduct licensing and marketing activities related to inventions made under the contract in accordance with the Bayh-Dole Act, DOE may modify the clause at 970.5227–10 to address issues such as the disposition of royalties earned under the privately funded technology transfer program, the transfer of patent rights to a successor contractor, allowable cost restrictions concerning privately funded technology transfer activities, and the Government's freedom from any liability related to licensing under the contractor's privately funded technology transfer program.

(b) *Allocation of principal rights: Government title.* (1) The clause at 970.5227–11 must be incorporated into the M&O contract:

(i) For any the M&O contractor that does not qualify as a nonprofit organization or small business firm as defined by 35 U.S.C. 201 and for which DOE has not granted a patent waiver pursuant to 10 CFR part 784; or

(ii) If, without regard to the type of contractor, the M&O contract is for the operation of a DOE facility primarily dedicated to naval nuclear propulsion or weapons related programs.

(2) The clause at 970.5227–11 requires the contractor to assign the Government title to inventions conceived or first actually reduced to practice in the course of or under an M&O contract in accordance with 42 U.S.C. 2182 and 5908 (the Atomic Energy of 1954 and the Federal Nonnuclear Energy Act of 1974).

(c) *Allocation of principal rights: Contractor right to elect title under a*

patent waiver. DOE may grant a patent waiver for an M&O contractor that does not qualify as a nonprofit organization or a small business firm pursuant to 10 CFR part 784. The patent waiver would allow the contractor to elect to retain title to inventions made in the course of or under the M&O contract. When a patent waiver is granted that covers the M&O contractor, the clause at 970.5227–12 must be inserted into the M&O contract, instead of using the clause at 970.5227–11. The clause at 970.5227–12 may be modified by applicable patent. If the M&O contractor is conducting privately funded technology transfer activities, involving the use of private funds to conduct licensing and marketing activities related to inventions made under the contract, DOE may modify the patent rights clause to address issues such as the disposition of royalties earned under the privately funded technology transfer program, the transfer of patent rights to a successor contractor, allowable cost restrictions concerning privately funded technology transfer activities, and the Government's freedom from any liability related to licensing under the contractor's privately funded technology transfer program.

* * * * *

(h) *Allocation of principal rights: Subcontractor rights to elect title under Bayh-Dole provisions.* When the M&O contractor is issuing a subcontract to a nonprofit organization or small business firm as defined by 35 U.S.C. 201, the subcontractor retains all rights provided in the patent rights clause at 37 CFR 401.3(a) and 401.14 and adding Alternate I of 48 CFR 952.227–11, Patent Rights-Retention by the Contractor, that includes the agency implementing regulations specific for DOE. If the S&E DEC, or any other related DEC to substantial U.S. manufacturing policy, is applicable, the Contractor shall include Alternate II of 48 CFR 952.227–11, Patent Rights-Retention by the Contractor. Alternate II modifies 37 CFR 401.14 to:

(1) Reflect DOE required subcontracting instructions pursuant to 37 CFR 401.5(a) as well as the deletion of the definition of contractor that does not apply based on the subcontracting instructions; and

(2) Include the U.S. competitiveness provision pursuant to the Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies executed by DOE on June 7, 2021.

■ 253. Amend section 970.2704–2 by revising paragraphs (a), (c)(2), and (e) to read as follows:

970.2704–2 Procedures.

(a) The clauses at 970.5227–1, Rights in Data—Facilities, and 970.5227–2, Rights in Data—Technology Transfer, both provide generally for Government ownership and for unlimited rights in the Government for all data first produced in the performance of the contract and unlimited rights in data specifically used in the performance of the contract. Both clauses provide that, subject to patent, security, and other provisions of the contract, the contractor may use contract data for its private purposes. The contractor, under either clause, must treat any data furnished by DOE or acquired from other Government agencies or private entities in the performance of their contracts in accordance with any restrictive legends contained therein. For Research and Development Contracting, requirements for R&D results conveyed in scientific and technical information are addressed in 935.010 and should be set forth as part of the contract. These contractual requirements are further addressed in DOE Order 241.1B, or its successor version, which sets forth requirements for scientific and technical information.

* * * * *

(c) * * *

(2) Where, however, a subcontract is to be awarded by the management and operating contractor in connection with a program, as discussed at 927.404–71, which provides statutory authority to protect from public disclosure, data first produced under contracts awarded pursuant to the program, contracting officers shall ensure that the management and operating contractor includes in that subcontract the rights in data clause provided by DOE Patent Counsel, consistent with any accompanying guidance.

* * * * *

(e) The Rights in Data—Technology Transfer clause at 970.5227–2 differs from the clause at 970.5227–1, Rights in Data—Facilities, in the context of its more detailed treatment of copyright. In management and operating contracts that have technology transfer as a mission, the right to assert copyright in data first produced under the contract will be a valuable right, and commercialization of such data, including computer software, will assist the management and operating contractor in advancing the technology transfer mission of the contract. The clause at 970.5227–2, Rights in Data—Technology Transfer, provides for DOE

approval of DOE’s taking a limited copyright license during the period in which the copyrighted data is being commercialized. The contractor must notify DOE (Patent Counsel and Office of Scientific and Technical Information (OSTI)) when commercial activity ceases.

* * * * *

■ 254. Section 970.2704–3 is revised to read as follows:

970.2704–3 Contract clauses.

(a) The contracting officer shall insert the clause at 970.5227–1, Rights in Data—Facilities, in management and operating contracts which do not contain the clause at 970.5227–2, Rights in Data—Technology Transfer. The Contracting Officer may insert, with concurrence of Patent Counsel, the clause at 970.5227–1, Rights in Data—Facilities, in other contracts where Government facilities are being constructed, modified, or in decontamination and decommissioning. The contracting officer shall include the clause with its Alternate I in contracts where access to Category C–24 restricted data, as set forth in 10 CFR part 725, is to be provided to contractors. The Contracting Officer shall include the clause with its Alternate II in contracts where Government facilities are being constructed, modified, or in decontamination and decommissioning, and it is anticipated that further solicitation may be required to complete the project.

(b) The contracting officer shall insert the clause at 970.5227–2, Rights in Data—Technology Transfer, in management and operating contracts which contain the clause at 970.5227–3, Technology Transfer Mission. The contracting officer shall include the clause with its Alternate I in contracts where access to Category C–24 restricted data, as set forth in 10 CFR part 725, is to be provided to contractors. The Contracting Officer shall include the clause with its Alternate II in contracts where Government facilities are being constructed, modified, or in decontamination and decommissioning, and it is anticipated that further solicitation may be required to complete the project.

■ 255. Amend section 970.2770–2 by adding a sentence after the first sentence to read as follows:

970.2770–2 Policy.

* * * All new awards for or extensions of existing DOE laboratory or weapon production facility M&O contracts shall include authorization for the M&O contractor to engage directly

with third parties in Agreements for Commercializing Technology, under section 107 of the Department of Energy Research and Innovation Act, Public Law 115–246, by using 970.5217–2, Agreements for Commercializing Technology. * * *

■ 256. Amend section 970.2803–1 by revising the subject heading and paragraph (b) to read as follows:

970.2803–1 Workers’ compensation insurance.

* * * * *

(b) *Assignment of responsibilities.* (1) Office of Acquisition Management, other officials, and the Heads of Contracting Activities, consistent with their delegations of responsibility, shall assure management and operating contracts are consistent with the policies and requirements of paragraph (a) of this section.

(2) In discharging assigned responsibility, the Heads of Contracting Activities shall—

(i) Periodically review workers’ compensation insurance programs of management and operating contractors in the light of applicable workers’ compensation statutes to assure conformance with the requirements of paragraph (a) of this section;

(ii) Evaluate the adequacy of coverage of “self-insured” workers’

compensation programs; and

(iii) Provide arrangements for the administration of any existing “employees” benefit plans until such plans” are terminated.

(3) Heads of Contracting Activities are responsible for approving management and operating contractor “employees” benefit plans.”

■ 257. Amend section 970.2803–2 by revising the second sentence to read as follows:

970.2803–2 Contract clause.

* * * Paragraphs (f)(1)(iii)(C) and (g)(2) of that clause apply to a nonprofit contractor only to the extent specifically provided in the individual contract.

970.3101–00–70 [Redesignated as 970.3101–1]

■ 258. Section 970.3101–00–70 is redesignated as section 970.3101–1.

■ 259. Section 970.3101–2 is added to read as follows:

970.3101–2 Applicability.

The cost principles of FAR subpart 31.2 and this subpart apply regardless of entity type for the M&O contract.

970.3101–10 [Amended]

■ 260. Amend section 970.3101–10 by removing “970.4207–03–02” and adding

in its place “970.4207–302” wherever it appears

970.3102–3–70 [Redesignated as 970.3102–370]

■ 261. Section 970.3102–3–70 is redesignated as section 970.3102–370.

■ 262. In newly redesignated section 970.3102–370 revise paragraph (a) introductory text and paragraph (a)(3)(i) to read as follows:

970.3102–370 Home office expenses.

(a) For on-site work, DOE’s fee for management and operating contracts, determined under the policy of and calculated per the procedures in 970.1504–103, generally provides adequate compensation for home or corporate office general and administrative expenses incurred in the general management of the contractor’s business as a whole.

* * * * *

(3) * * *

(i) Fee in addition to its normal fee;

or

* * * * *

970.3102–05 [Redesignated as 970.3102–500]

■ 263. Section 970.3102–05 is redesignated as section 970.3102–0500.

970.3102–05–4 [Redesignated as 970.3102–504]

■ 264. Section 970.3102–05–4 is redesignated as section 970.3102–504.

970.3102–05–6 [Redesignated as 970.3102–506]

■ 265. Section 970.3102–05–6 is redesignated as section 970.3102–506.

■ 266. Newly redesignated section 970.3102–506 is revised to read as follows:

970.3102–506 Compensation for personal services.

(a)(6) In determining the reasonableness of compensation, the compensation of each individual contractor employee normally need not be subjected to review and approval. Generally, the compensation paid individual employees should be left to the judgment of contractors subject to the limitations of DOE-approved compensation policies, programs, classification systems, and schedules, and amounts of money authorized for wage and salary increases for groups of employees. However, the contracting officer shall designate a compensation threshold appropriate for the particular situation. The contract shall specifically provide that contracting officer approval is required for compensating an individual contractor employee above

the threshold if a total of 50 percent or more of such compensation is reimbursed under DOE cost-type contracts.

(7)(i) Reimbursable costs for compensation for personal services are to be set forth in the contract. This compensation shall be set forth using the principles and policies of FAR 31.205–6, Compensation for personal services, as supplemented by this section, and other pertinent parts of the DEAR. Costs that are unallowable under other contract terms shall not be allowable as compensation for personnel services.

(ii) The contract sets forth, in detail, personnel costs and related expenses allowable under the contract and documents personnel policies, practices and plans which have been found acceptable by the contracting officer. The contractor will advise DOE of any proposed changes in any matters covered by these policies, practices, or plans which relate to personnel costs. Types of personnel costs and related expenses addressed in the contract are as follows: Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; welfare benefits and retirement programs; paid time off, and salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees provided, however, that the contracting officer’s approval is required in each instance of total compensation to an individual employee above an annual rate as specified in the contract. Allowable costs of employee compensation shall be determined pursuant to FAR 31.205–6(p).

970.3102–05–18 [Redesignated as 970.3102–518]

■ 267. Section 970.3102–05–18 is redesignated as section 970.3102–518

970.3102–05–19 [Redesignated as 970.3102–519]

■ 268. Section 970.3102–05–19 is redesignated as section 970.3102–519.

970.3102–05–22 [Redesignated as 970.3102–522]

■ 269. Section 970.3102–05–22 is redesignated as section 970.3102–522.

970.3102–05–28 [Redesignated as 970.3102–528]

■ 270. Section 970.3102–05–28 is redesignated as section 970.3102–528.

970.3102–05–30 [Redesignated as 970.3102–530]

■ 271. Section 970.3102–05–30 is redesignated as section 970.3102–530.

970.3102–05–30–70 [Redesignated as 970.3102–531]

■ 272. Section 970.3102–05–30–70 is redesignated as section 970.3102–531.

970.3102–05–33 [Redesignated as 970.3102–533]

■ 273. Section 970.3102–05–33 is redesignated as section 970.3102–533.

970.3102–05–46 [Redesignated as 970.3102–546]

■ 274. Section 970.3102–05–46 is redesignated as section 970.3102–546.

970.3102–05–47 [Redesignated as 970.3102–547]

■ 275. Section 970.3102–05–47 is redesignated as section 970.3102–547.

970.3102–05–70 [Redesignated as 970.3102–570]

■ 276. Section 970.3102–05–70 is redesignated as section 970.3102–570.

970.3200–1 [Amended]

■ 277. Amend section 970.3200–1 in paragraph (c) by removing “remedy coordination official” and adding in its place “Head of the Contracting Activity”.

970.3200–1–1 [Redesignated as 970.3200–11]

■ 278. Section 970.3200–1–1 is redesignated as section 970.3200–11.

970.3270 [Amended]

■ 279. Amend section 970.3270 by removing paragraph (a)(4) and redesignating paragraphs (a)(5) through (8) as paragraphs (a)(4) through (7), respectively.

■ 280. Amend section 970.3501–1 by:
■ a. Removing the period at the end of paragraph (c)(1) and adding a semicolon in its place; and

■ b. Revising paragraph (c)(2).

The revision reads as follows:

970.3501–1 Sponsoring agreements.

* * * * *

(c) * * *

(2) The plan for the identification, use, and disposition of retained earnings, if applicable;

* * * * *

■ 281. Section 970.3501–2 is revised to read as follows:

970.3501–2 Using an FFRDC.

The contractor may only accept work from a non-sponsor (as defined in FAR 35.017) in accordance with the

requirements of the current DOE approved mechanisms for engaging with a non-sponsor (e.g., Strategic Partnership Projects, Cooperative Research and Development Agreements, and Agreements for Commercializing Technology). Only a Federal Contracting Officer can obligate the Government to place work on the contract and obligate the Government to reimburse the contractor under the contract.

■ 282. Amend section 970.4102–1 by revising paragraphs (b) and (c) to read as follows:

970.4102–1 Policy.

* * * * *

(b) Where it is determined to be in the best interest of the Government, a DOE contracting activity may authorize a management and operating contractor for a facility to acquire such utility service for the facility, after requesting and receiving concurrence to make such an authorization from the DOE Federal Energy Management Program (FEMP). Any request for such concurrence should be included in the Utility Acquisition Plan. Alternatively, it may be made in a separate document submitted to the FEMP Utility Program Manager early in the acquisition cycle. Any request shall set forth why it is in the best interest of the DOE to acquire utility service(s) by subcontract, *i.e.*, low performance risk and cost risk. For NNSA programs, FEMP review and technical input may be obtained, but FEMP concurrence is not necessary.

(c) The requirements of FAR part 41 and this section shall be applied to a subcontract level acquisition for furnishing utility services to a facility owned or leased by DOE.

970.4207–03–02 [Redesignated as 970.4207–302]

■ 283. Section 970.4207–03–02 is redesignated as section 970.4207–302.

970.4207–03–70 [Redesignated as 970.4207–370]

■ 284. Section 970.4207–03–70 is redesignated as section 970.4207–370.

970.4207–05–01 [Redesignated as 970.4207–501]

■ 285. Section 970.4207–05–01 is redesignated as section 970.4207–501.

■ 286. Amend newly redesignated section 970.4207–501 by revising paragraph (b)(4)(ii) to read as follows:

970.4207–501 Contracting officer determination procedure.

(b) * * *

(4) * * *

(ii) The opinion of the Department of Energy's auditor on the allowability of

such costs if such costs have been the subject of a DOE audit.

* * * * *

■ 287. Amend section 970.4401–1 by revising paragraph (b)(4) to read as follows:

970.4401–1 General.

* * * * *

(b) * * *

(4) Ensure that periodic appraisals of the contractor's management of all facets of the purchasing function, including compliance with the contractor's approved system and methods, are performed by the contracting officer.

* * * * *

■ 288. Amend section 970.4402–1 by adding paragraph (c) to read as follows:

970.4402–1 Policy.

* * * * *

(c) The M&O contractor's purchasing performance, including compliance with the contractor's approved system and methods, will be evaluated against the performance criteria and measures set forth in FAR subpart 44.3, using the procedures articulated in DOE policies including DOE guidance on oversight of M&O Contractors' Purchasing Systems.

■ 289. Section 970.4501–1 is revised to read as follows:

970.4501–1 Applicability.

This subpart is applicable to management and operating (M&O) contractors, and on-site environmental management and other major prime contractors as designated by the Senior Procurement Executive, or designee. This subpart supplements 41 CFR part 109.

■ 290. Section 970.4501–2 is added to read as follows:

970.4501–2 Contract clause.

(a) The contracting officer shall insert the clause at 970.5245–1, Property, in management and operating contracts and environmental management, and other major prime contractors located at DOE sites. Specific managerial personnel may be listed in paragraph (k) of the clause at 970.5245–1, provided their listing is consistent with the clause and the DEAR.

(b) The contracting officer shall insert the basic clause at 970.5245–1 with its Alternate I in contracts with nonprofit contractors.

■ 291. Amend section 970.5203–1 by revising the introductory text to read as follows:

970.5203–1 Management controls.

As prescribed in 970.0370–2(a), insert the following clause:

* * * * *

970.5204–1 [Removed]

■ 292. Section 970.5204–1 is removed.

■ 293. Amend section 970.5204–3 by revising the introductory text, clause date, and paragraphs (b) and (g) to read as follows:

970.5204–3 Access to and ownership of records.

As prescribed in 970.0407–130, insert the following clause:

Access to and Ownership of Records
[December 2024]

* * * * *

(b) *Contractor-owned records.* The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except those records described by the contract as being operated and maintained by the Contractor in Privacy Act system of records.

* * * * *

(g) *Subcontracts.*

(1) The contractor shall include the requirements of this clause in all subcontracts that contain the Radiation Protection and Nuclear Criticality clause at 48 CFR 952.223–72, or whenever an on-site subcontract scope of work:

(i) Could result in potential exposure to:

(A) Radioactive materials;

(B) Beryllium; or

(C) Asbestos; or

(ii) Involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in:

(A) Radiological areas and/or radioactive materials areas (as defined at 10 CFR 835.2);

(B) Areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR part 850;

(C) An asbestos regulated area (as defined at 29 CFR 1926.1101 or 1910.1001); or

(D) A workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.

(2) The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor and maintain records that would otherwise be maintained by the subcontractor.

(End of clause)

■ 294. Section 970.5215–1 is revised to read as follows:

970.5215–1 Total available fee: Base fee amount and performance fee amount.

As prescribed in 970.1504–3(a), insert the following clause.

Total Available Fee: Base Fee Amount and Performance Fee Amount
[December 2024]

(a) *Total available fee.* Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, “Payments and advances.”

(b) *Fee negotiations.* For any fee negotiations under this contract, at any time prior to the beginning of the evaluation period the negotiations cover, the Contracting Officer and Contractor shall attempt to reach agreement on: the requirements for the evaluation period including, if appropriate, the evaluation areas and individual requirements subject to incentives; the total available fee amount of the evaluation period; and the allocation of the total available fee amount. If agreement is reached prior to the beginning of the evaluation period, the Contracting Officer shall modify the contract to reflect the agreement. If agreement is not reached prior to the beginning of the evaluation period, the Contracting Officer will, prior to the

beginning of the evaluation period, unilaterally determine: the requirements of the evaluation period including, if appropriate, the evaluation areas and individual requirements subject to incentives, the total available fee amount, and the allocation of the total available fee amount. The Contracting Officer shall modify the contract to reflect the determination.

(c) *Determination of total available fee amount earned.* (1) The Department of Energy (DOE) shall, at the conclusion of each specified evaluation period, evaluate the Contractor’s performance of all requirements, and determine the total available fee amount earned. At DOE’s discretion, if the contract established specific incentivized requirements and a schedule for their completion and the Contractor completes them during the evaluation period, DOE may evaluate the Contractor’s performance upon the requirements’ completion. The Contractor agrees the determination of the total available fee amount earned is a unilateral determination made by the Fee Determining Official (FDO). DOE will identify the FDO. The FDO will be the DOE Operations/Field Office Manager, or another DOE official designated by the Assistant Secretary or equivalent (not delegable).

(2) If the award fee cycle consists of one evaluation period, award fee not earned during the evaluation period shall not be allocated to future evaluation periods. At the sole discretion of DOE, if the award fee cycle consists of more than one evaluation period, award fee not earned during the evaluation period may be allocated to future evaluation periods within the same award fee cycle.

(3) Following each evaluation period, the Contractor [insert may or shall] submit a self-assessment within [insert number] calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor’s performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct them and avoid their recurrence. The FDO will review the Contractor’s self-assessment as part of the evaluation of the Contractor’s performance during the period.

(4) The FDO will evaluate the Contractor’s performance in accordance with the Performance Evaluation and Measurement Plan (PEMP) described in paragraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the total available fee amount

earned determination and the basis of the determination.

(d) *PEMP.* To the extent not set forth elsewhere in the contract:

(1) DOE shall establish a PEMP upon which the determination of the total available fee amount earned shall be based. The PEMP will address all of the requirements of contract performance specified in the contract directly or by reference. The Contracting Officer shall provide the Contractor with a copy of the PEMP before the start of an evaluation period.

(2) The PEMP will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. The PEMP will include, per 48 CFR 16.402–1, a cost incentive (or constraint). The criteria in the PEMP should be objective but may also include subjective criteria. The PEMP will set forth the method by which the total available fee amount will be allocated, and the total available fee amount earned will be determined.

(3) The PEMP may be revised, either unilaterally (by DOE) or bilaterally, during the evaluation period. If it is revised, the Contracting Officer shall notify the contractor—

(i) Of unilateral revisions (unless they are urgent and high priority) at least ninety calendar days prior to the end of the evaluation period and at least thirty calendar days prior to the effective date of the revision;

(ii) Of bilateral revisions (unless they are urgent and high priority) at least sixty calendar days prior to the end of the evaluation period;

(iii) Of urgent and high priority revisions, whether made unilaterally or bilaterally, at least thirty calendar days prior to the end of the evaluation period.

(e) *Schedule for total available fee amount earned determinations.* The FDO shall issue the final total available fee amount earned determination in accordance with the schedule set forth in the PEMP or as otherwise set forth in this contract.

(1) The determination for the evaluation period must be made within the later of: sixty calendar days after the receipt by the Contracting Officer of the Contractor’s self-assessment, if one is required or permitted; seventy calendar days after the end of the evaluation period; or a longer period if the Contractor and Contracting Officer agree.

(2) If the FDO elects to evaluate the Contractor’s performance of any specific requirements upon their completion, the determination of any fee amount earned must be made: within seventy calendar

days of the requirements' completion; or a longer period if the Contractor and Contracting Officer agree.

(3) If the determination is not made within the periods stated above, the Contractor shall be entitled to interest on the total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 7109) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is made. That is, interest accrued at the end of any 30-day period will be added to the total available fee amount earned and be subject to interest if not paid in the succeeding 30-day period.

(End of clause)

■ 295. Section 970.5215–3 is revised to read as follows:

970.5215–3 Conditional payment of fee, profit, and other incentives—facility management contracts

As prescribed in 970.1504–3(b), insert the following clause:

Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts [December 2024]

(a) *Definitions*. "Amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for an evaluation period" means the quantity the Contracting Officer or Fee Determining Official determines the Contractor is due for its performance in consideration of the Performance Evaluation and Measurement Plan, Award Fee Plan, or similar document prior to a separate determination that the Contractor did not comply with a term or condition of the contract or experienced a failure relating to: environment, safety, and health or security or safeguarding of Restricted Data and other classified information. If the contract includes incentives allocable to more than one evaluation period, the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for an evaluation period includes the allocable amount of payment for each such incentive for otherwise earned fee, fixed fee, profit, or other incentives. The allocable amount is the total amount divided by the number of evaluation periods the

incentive covered. "Amount actually payable to the Contractor for an evaluation period" means: (the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the evaluation period) less (the amount of any reduction under this clause and the amount of any reductions under other clauses to the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the evaluation period).

(b) *General*. (Note: If this contract does not include the Security Requirements clause (48 CFR 952.204–2), the requirements of this clause related to security or safeguarding of Restricted Data and other classified information do not apply.)

(1) The amount of payment of otherwise earned fee, fixed fee, profit, or other incentives for any evaluation period under this contract is dependent upon the Contractor's and the Contractor's employees' compliance during the evaluation period with the performance requirements of this contract relating to:

(i) Environment, safety and health (ES&H), which includes worker safety and health (WS&H); and

(ii) Security or safeguarding of Restricted Data and other classified information.

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE-approved contractor Integrated Safety Management System (ISMS) or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) The security or safeguarding of Restricted Data and other classified information performance requirements of this contract are set forth in: the clause of this contract entitled, "Security Requirements"; the clause of this contract entitled "Laws, Regulations, and DOE Directives"; and other terms and conditions of this contract.

(4) If the Contractor does not meet the performance requirements of this contract relating to ES&H or security or safeguarding of Restricted Data and other classified information during any evaluation period established under the contract pursuant to the clause of this contract entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount," the amount of payment of otherwise earned fee, fixed fee, profit or other incentives for the evaluation period may be unilaterally reduced by the Contracting Officer.

(c) *Amount of Reduction*. (1) The Contracting Officer will unilaterally determine the amount of reduction to the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for an evaluation period based on the severity of the performance failure pursuant to the degrees of failure specified in paragraphs (e) and (f) of this clause. The percent reduction for each performance failure will be: not less than 26% nor more than 100% for a first degree failure; not less than 11% or more than 26% for a second degree failure; and no more than 11% for a third degree failure.

(2) For a reduction allocable to more than one evaluation period, the Government will effect the allocation at the end of the evaluation period in which it determines the total amount of the reduction. The allocable amount is the total reduction amount divided by the number of evaluation periods the reduction covered.

(3) The Government will reduce the payment of otherwise earned fee, fixed fee, profit, or other incentives as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practicable after becoming aware.

(4) In determining the reduction and in applying the mitigating factors, the Contracting Officer must consider the Contractor's overall performance in meeting the ES&H, and security or safeguarding of Restricted Data and other classified information performance requirements of the contract. Such consideration must include performance against any site-specific performance criteria/requirements that provide additional definition or guidance for the amount of reduction or for the applicability of mitigating factors. In all cases, the Contracting Office must consider mitigating factors that may warrant a reduction below the reduction that would be appropriate absent mitigating factors. Mitigating factors include, but are not limited to, the following (paragraphs (c)(4)(v), (vi), (vii), and (viii) of this clause apply to ES&H only):

(i) Degree of control the Contractor had over the event or incident;

(ii) Efforts the Contractor made to anticipate and mitigate the possibility of the event in advance;

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence;

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified

information and compliance in related areas;

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced;

(vi) Event caused by "Good Samaritan" act by the Contractor (e.g., offsite emergency response);

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs); and

(viii) Contractor demonstration that an operating experience and feedback program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons learned and best practices inter- and intra-DOE sites.

(d) *Reductions to the amount of payments the Contractor has received for earned fee, fixed fee, profit, or other incentives under this and other clauses.*

(1) The amount of the reduction under this clause for an evaluation period, in combination with the amount of any reduction under any other clause, shall not exceed the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the evaluation period.

(2) If at any time during the contract any reductions under this clause or other clauses result in the sum of the amount of payments the Contractor has received for earned fee, fixed fee, profit, or other incentives to exceed the sum of the amounts of actually payable to the Contractor, the Contractor shall immediately return the excess to the Government.

(3) At the end of the contract—

(i) The Government will pay the Contractor the amount by which the sum of amounts actually payable to the Contractor exceeds the sum of the payments the Contractor has received; or

(ii) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of the amounts actually payable to the Contractor.

(e) *Environment, Safety and Health (ES&H).* Performance failures occur if the Contractor does not comply with the contract's ES&H terms and conditions, including applicable ES&H laws, regulations, DOE directives, and the DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

(1) *First Degree.* Performance failures most adverse to ES&H are first degree. They include:

(i) Failure to develop and obtain required DOE approval of an ISMS. (The Government will perform necessary reviews in a timely manner and not unreasonably withhold approval.)

(ii) Performance failures determined, per applicable ES&H laws, regulations, or DOE directives, to have resulted in, or that could reasonably be expected to result in, serious injury or death to a worker.

(iii) Occurrence of any accident or event that meets the criteria of Appendix A of DOE Order 225.1B (or successor Order) and results in a determination to conduct a Federal Accident Investigation Board.

(2) *Second Degree.* Performance failures significantly adverse to ES&H are second degree. They include:

(i) Failures to comply with an approved ISMS.

(ii) Failures that have been determined, per applicable ES&H laws, regulations, or DOE directives, to have resulted in, or could reasonably be expected to result in, an actual injury, exposure, or exceedance that occurred or nearly occurred but had minor practical long-term health consequences.

(iii) A breakdown of the Safety Management System.

(iv) The following performance failures or performance failures of similar import will be considered second degree:

(A) Non-compliance with applicable ES&H laws, regulations, or DOE directives actually resulting in an accident that meets the criteria of Appendix A of DOE Order 225.1B (or successor Order) but not resulting in a determination to conduct a Federal Accident Investigation Board.

(B) Non-compliance with applicable ES&H laws, regulations, or DOE directives that results in a near miss of an accident or event that could have resulted in an adverse effect and a determination to conduct a Federal Accident Investigation Board. (A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, that does not result in an adverse effect.)

(3) *Third Degree.* Performance failures determined per applicable ES&H laws, regulations, or DOE directives to reflect a lack of focus on improving ES&H are third degree. They include:

(i) Non-compliance with applicable ES&H laws, regulations, or DOE directives actually resulting in potential breakdown of the Safety Management System. The following performance

failures or performance failures of similar import will be considered third degree:

(A) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 231.B (or successor Order) requirements; or internal oversight of 10 CFR parts 830, 835, 850, and 851, or DOE Orders 227.1A and 436.1 (or successor Order) requirements.

(B) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(C) Non-compliances that have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.

(D) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(f) *Security or Safeguarding Restricted Data and Other Classified Information.* Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or other incentives will be determined are as follows:

(1) *First Degree.* Performance failures determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security are first degree. The following are examples:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in an SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in an SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) *Second Degree.* Performance failures determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security are second degree. The following are examples:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information regardless of classification (except for information covered by paragraph (f)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) *Third Degree.* Performance failures determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security are third degree. This category also includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future more severe performance failures and/or conditions that if identified and corrected early would

prevent serious incidents. The following are examples:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures that by themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(End of clause)

970.5215–4 [Removed]

■ 296. Section 970.5215–4 is removed.

■ 297. Section 970.5215–5 is revised to read as follows:

970.5215–5 Limitation on fee.

As prescribed in 970.1504–3(c), insert the following provision:

Limitation on Fee [December 2024]

(a) For the purpose of this solicitation, fee amounts shall not exceed the total available fee allowed by the fee policy at 48 CFR 970.1504–101, or as specifically stated elsewhere in the solicitation.

(b) The Government reserves the unilateral right, in the event an offeror's proposal is selected for award, to limit the total available fee to an amount allowed by the fee policy at 48 CFR 970.1504–101 unless specifically stated in this solicitation.

(End of provision)

■ 298. Section 970.5217–1 is revised to read as follows:

970.5217–1 Strategic partnership projects program.

As prescribed in 970.1707–4, insert the following clause:

Strategic Partnership Projects Program (Non-DOE Funded Work) [December 2024]

(a) *Authority to perform Strategic Partnership Projects.* Pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) the Contractor may perform work for non-DOE entities (sponsors) on a fully reimbursable basis in accordance with this clause. For instances in which the Atomic Energy Act of 1954 does not apply, and no other specific authority applies, DOE may use the Economy Act of 1932, as amended (31 U.S.C. 1535), as authority to accept and perform the work.

(b) *Contractor's implementation.* The Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this clause, which must be submitted to the Contracting Officer for review and approval.

(c) *Conditions of participation in Strategic Partnership Projects program.* The Contractor—

(1) Must not perform Strategic Partnership Projects (SPP) activities that would place it in direct competition with the domestic private sector;

(2) Must not respond to a request for proposals or any other solicitation from another Federal agency or non-Federal organization that involves direct comparative competition, either as an offeror, team member, or subcontractor to an offeror; however, the Contractor may, following notification to the Contracting Officer, respond to Broad Agency Announcements, Financial Assistance solicitations, and similar solicitations from another Federal Agency or non-Federal organizations when the selection is based on merit or peer review, the work involves basic or applied research to further advance scientific knowledge or understanding, and a response does not result in direct, comparative competition;

(3) Must not commence work on any SPP project until it has been approved by the DOE Contracting Officer or designated representative or, if it includes support for a Special Access Program (SAP), receives formal approval outlined in DOE Order 471.5 (or its successor), or the work falls under an approved Master Scope of Work (MSW);

(4) Must not incur project costs until receipt of DOE notification that a budgetary resource is available for the project, except as provided in 48 CFR 970.5232–6;

(5) Must ensure that all costs associated with the performance of the work under a SPP project are included in the project's cost estimate, as provided for in the current version of

DOE Order 522.1, Pricing of Departmental Materials and Services, including specifically all DOE direct costs and applicable surcharges;

(6) Must maintain records for the accumulation of costs and the billing of such work to ensure that DOE's appropriated funds are not used in support of SPP projects and to provide an accounting of the expenditures to DOE and the sponsor upon request;

(7) Must perform all SPP projects in accordance with the standards, policies, and procedures that apply to performance under this contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

(8) May subcontract portion(s) of a SPP project; however, the Contractor must select the subcontractor and the work to be subcontracted. Any subcontracted work must be in direct support of the Contractor's performance as defined in the DOE approved SPP project;

(9) Must maintain a summary listing of project information for each active SPP project, consisting of—

- (i) Sponsoring agency;
- (ii) Total estimated costs;
- (iii) Project title and description;
- (iv) Project point of contact; and
- (v) Estimated start and completion dates; and

(10) May use a Master Scope of Work (MSW) as defined in 48 CFR 970.5227–3 for a SPP project.

(d) *Negotiation and execution of Strategic Partnership Projects agreement.* (1) When delegated authority by the Contracting Officer, the Contractor may negotiate the terms and conditions that will govern the performance of a specific SPP project. Such terms and conditions must be consistent with the terms, conditions, and requirements of the Contractor's contract with DOE. The Contractor may use DOE-approved contract terms and conditions as delineated in the current version of DOE Order 481.1 or terms and conditions previously approved by the responsible Contracting Officer or authorized designee for agreements with non-Federal entities. The Contractor must not hold itself out as representing DOE when negotiating the proposed SPP agreement.

(2) With the exception of a SPP project using a Contracting Officer approved MSW, the Contractor must submit all SPP projects to the DOE Contracting Officer for DOE review and approval. The Contractor shall also include in any request for DOE SPP project approval a listing of any

associated background intellectual property having a prior assignment, exclusive licensing or option for exclusive licensing. The Contractor may not start work under a SPP project until it has received notice of DOE approval except when the work falls under an approved MSW.

(3) The Contractor is authorized to reserve the intellectual property indemnity clause for Federally-funded sponsors, state and local governments and public universities. The Contractor is further authorized to include in subcontracts with other domestic sponsors (*i.e.*, private universities and small and large businesses) a warranty provision in lieu of a patent indemnification clause.

(e) *Preparation of Strategic Partnership Projects project proposals.* When the Contractor proposes to perform SPP projects pursuant to this clause, it may assist the project sponsor in the preparation of the proposed SPP project including the preparation of cost estimates.

(f) *Strategic Partnership Projects appraisals.* DOE may conduct periodic appraisals of the Contractor's compliance with its SPP policies, practices and procedures. The Contractor must provide facilities and other support in conjunction with such appraisals as directed by the Contracting Officer or authorized designee.

(g) *Annual Strategic Partnership Projects report.* The Contractor must provide assistance as required by the Contracting Officer or authorized designee in the preparation of a DOE Annual Summary Report of Strategic Partnership Projects Activities under the contract.

(End of clause)

■ 299. Section 970.5217–2 is added to read as follows:

970.5217–2 Agreements for commercializing technology.

As prescribed in 970.1708–3, insert the following clause:

Agreements for Commercializing Technology (Act) [December 2024]

(a) This clause authorizes the use of the mechanism, Agreements for Commercializing Technology (ACT). In accordance with the requirements specified in this clause, the M&O Contractor may conduct third party-sponsored research at the M&O Contractor's risk. While the Department believes ACT has the potential to greatly assist in the commercialization of technologies, it also specifically recognizes that ACT can be used for other engagements with outside entities

that are not necessary aimed at commercialization (*e.g.*, technical assistance, training, studies), but that facilitate access to DOE facilities. In performing ACT work, the M&O Contractor may use staff and other resources associated with this M&O contract for the purposes of conducting technical services, training, studies, performing research and development, and/or furthering the technology transfer mission of the Department, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this M&O contract. Any allocation of resources that adversely affects work for DOE due to performing ACT work is the responsibility of the M&O Contractor. The resources that may be used include Government-owned or leased facilities, equipment, or other property that is either in the M&O Contractor's custody or available to the M&O Contractor under this M&O contract (unless specifically excluded by the Contracting Officer). For M&O Contractor activities conducted under authority of this clause, the M&O Contractor shall provide full-cost recovery, assume indemnification and liability as provided in paragraph (b)(9) below, and may assume other risks normally borne by private parties sponsoring research at the DOE national laboratories and production plants. In exchange for accepting such risks, or for other private consideration provided by the M&O Contractor, the M&O Contractor is authorized to negotiate separate ACT agreements with the sponsoring third parties. Under ACT agreements, the M&O Contractor may charge those parties additional compensation beyond the full costs of the work at the facility.

(b) The following applies to all work conducted under the ACT mechanism, regardless of the source of funding:

(1) *Authority to Perform work under this clause.* Pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) and other applicable authorities, the M&O Contractor may perform work for non-Federal entities, in accordance with the requirements of this clause.

(2) *M&O Contractor's Implementation.* For ACT work conducted under the contract, the M&O Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this clause, which must be approved by the Contracting Officer, and such approval shall not be unreasonably withheld.

(3) *Conditions for Participation in ACT.* The M&O Contractor: (i) Must not perform ACT activities that would place

it in direct competition with the private sector;

(ii) May only conduct work under this clause if the work does not interfere with or adversely affect projects and programs the M&O Contractor conducts on behalf of the DOE under this contract, and complies with the terms and conditions of the prime contract. If the Government determines that an activity conducted under this clause interferes with the Department's work under the M&O contract, or that termination/stay/suspension of work under an ACT agreement is in the best interest of the Government, the M&O Contractor must stop the interfering ACT work immediately to the extent necessary to resolve the interference. At any time, the Contracting Officer may require the use of specified Government-owned or leased property and facilities for the exclusive use of the DOE mission by providing a written notice excluding said property from the M&O Contractor's activities under this clause. Any cost incurred as a result of Contracting Officer decisions identified in this paragraph shall be borne by the M&O Contractor. The Contracting Officer shall provide to the M&O Contractor in writing its decision, identifying the issues and reasons for the decisions. The M&O Contractor shall be provided with a reasonable opportunity to address and resolve the issues identified by the Contracting Officer;

(iii) Except as otherwise excluded in this clause, must perform all ACT activities in accordance with the standards, policies, and procedures that apply to performance under this M&O contract, including but not limited to environmental, safety and health, security, safeguards, conflict of interest and classification procedures, and human and animal research regulations;

(iv) Must maintain and provide when requested by the DOE Contracting Officer, a summary of project information for each active ACT project, consisting of: sponsor name; total estimated costs; project title and description; project point of contact; and estimated start and completion dates;

(v) Is responsible for addressing the following items in ACT agreements as appropriate: disposition of property acquired under the agreement; export control; notice of intellectual property infringement; and a statement that the Government and/or the M&O Contractor shall have the right to perform similar services in the Statement of Work for other Parties as otherwise authorized by this M&O contract subject to applicable data restrictions;

(vi) Must include a standard legal disclaimer notice on all publications generated under ACT activities. Each DOE M&O Contractor has its own pre-approved publications statement, and this should be included; and

(vii) Must insert the following disclaimer in each agreement under ACT, which must be conspicuous (*e.g.*, bold type, all capital letters, or large font) in all Agreements under ACT so as to meet the standards of due notice.

DISCLAIMER

THIS AGREEMENT IS SOLELY BETWEEN [INSERT NAME OF THE M&O CONTRACTOR] AND [THE OTHER IDENTIFIED PARTY]. THE UNITED STATES GOVERNMENT IS NOT A PARTY TO THIS AGREEMENT. THIS AGREEMENT DOES NOT CREATE ANY OBLIGATIONS OR LIABILITY ON BEHALF OF THE GOVERNMENT AND THE GOVERNMENT MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE GOVERNMENT SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT. THIS DISCLAIMER DOES NOT AFFECT ANY RIGHTS THE GOVERNMENT MAY HAVE AGAINST THIRD PARTIES ARISING FROM WORK CONDUCTED IN CONNECTION WITH THIS AGREEMENT.

(4) *Contracting Authority.* (i) Subject to DOE approval as described in this paragraph, the M&O Contractor is hereby authorized to negotiate terms and conditions between the M&O Contractor and third parties when entering into ACT agreements. The M&O Contractor will have no authority to bind the Government in any way with such terms and conditions. The

Government will have no obligation to the M&O Contractor due to such terms and conditions.

(ii) The M&O Contractor shall submit an ACT proposal package (Package) to the Contracting Officer for approval prior to beginning work under an ACT agreement.

(A) A complete Package will include at a minimum: the identity of the parties to the ACT agreement; the principal place of performance; any foreign ownership or control of the ACT agreement parties; a Statement of Work; an estimate of costs incurred under the M&O contract; an anticipated schedule; identification of key Government equipment and facilities that will be used under the ACT agreement; a list of expected deliverables; identification of the Intellectual Property (IP) lead and proposed selection of IP rights, as defined in DOE Class Waiver W(C)–2011–013; a signed certification by the private party(ies) that the M&O Contractor offered the option to use Cooperative Research and Development Agreement (CRADA) and Strategic Partnership Project (SPP) alternatives (see paragraph (b)(7)(i) of this clause) sufficiently such that the private parties are aware of the relative costs and other differences between the ACT agreement and the CRADA and SPP alternatives; source of funds, including a statement that no Federal funds, including pass-through funds received as a subcontractor or partner, are being utilized; applicable ES&H and NEPA documentation; a statement of consideration, summarizing the risk and/or consideration offered the ACT participants in exchange for charging beyond full cost recovery or for other compensation provided by the participants; and when multiple third parties are parties to the ACT agreement, or as otherwise requested by the Contracting Officer, an IP Management Plan that sets forth the proposed disposition of IP rights, and income and royalty sharing, among the parties to an ACT agreement.

(B) If the M&O Contractor, the M&O Contractor's parent, member, subsidiary, or other entity in which the M&O Contractor, the M&O Contractor's parent, member or subsidiary has an equity interest, is a party to the ACT agreement, the M&O Contractor shall include as necessary a project-specific addendum to the Master OCI Plan in the Package to address special circumstances not fully anticipated in the prior approved Master OCI Plan (see paragraph (b)(7) of this clause).

(C) If the ACT agreement includes a foreign entity as a party or the statement of work includes the use of human

subjects, animal subjects, classified or sensitive subject matter or describes a work scope involving high risks or hazards including environmental issues, the M&O Contractor shall include additional information as necessary or as requested by the Contracting Officer.

(iii) The Contracting Officer shall use reasonable best efforts to review each complete Package submitted by the M&O Contractor under paragraph (b)(4)(ii)(B) of this clause within 10 business days of receiving the Package and provide the M&O Contractor with approval or non-approval of the Package. The review of the complete Package by the Contracting Officer shall include a determination that the proposed work: is consistent with or complementary to DOE missions and the contract statement of work; will not adversely impact programs under the contract scope of work; will not place the contractor in direct competition with the domestic private sector; and will not create a detrimental future burden on DOE resources.

(iv) Except as conditionally allowed under paragraph (b)(4)(iv)(A) of this clause, the Contracting Officer must approve the Package before the M&O Contractor may begin work under the proposed ACT agreement. If the Contracting Officer rejects the Package, then the Contracting Officer must provide said rejection to the M&O Contractor in writing including the reasons for the rejection. Upon receipt of the Contracting Officer's written rejection, the M&O Contractor agrees to not further pursue the work described in the package or incur additional costs under the M&O contract for the work described in the Package.

(A) The M&O Contractor may request a preliminary determination that the proposed scope of work is consistent with the contract statement of work and the Contracting Officer will use his/her best efforts to provide such a determination within three business days. Upon such a determination from the Contracting Officer, the M&O Contractor may begin work under the ACT agreement at the M&O Contractor's risk pending final approval of the complete Package. The M&O Contractor must submit a complete Package, as identified in paragraph (b)(4)(ii) of this clause, within 10 business days of the preliminary determination. All costs associated with the performance of work under a preliminary determination are the responsibility of the M&O Contractor, as no Federal funds will be used to fund any work conducted under this clause.

(B) If any source affiliated with the M&O Contractor (any division,

subsidiary, or affiliate of the M&O Contractor or its parent company) is a party sponsoring work in connection with the ACT agreement, work may not commence until approval of the complete Package by the Contracting Officer.

(5) *Advance Payment for ACT Projects.* The M&O Contractor shall be responsible for providing adequate advance payment for ACT work conducted under this clause consistent with procedures defined in the Department's Financial Management Handbook. The M&O Contractor shall be solely responsible for collecting payments from third parties for any work conducted under this clause and such collections shall be independent of providing advance payment. For such payments and for any costs, obligations, or liabilities arising due to the M&O Contractor's work under this clause, the M&O Contractor is entirely at risk and the Government shall have no risk.

(6) *Costs and Fee.* (i) All direct costs associated with the M&O Contractor's work conducted under this clause shall be directly charged to separate and identifiable accounts in accordance with the requirements of the Department's Financial Management Handbook. An allocable portion of indirect costs normally applied to equivalent work under this M&O contract shall also be applied to work conducted under this clause in accordance with the requirements of the Financial Management Handbook. As required by the Financial Management Handbook, changes to the Handbook will be incorporated into this clause by a unilateral administrative modification to the contract. In addition, all work must be performed at full costs that would include Federal Administrative Charge (FAC).

(ii) Work conducted under this clause shall be excluded from the M&O contract award fee calculations and such fee shall not be allocable to work conducted under this clause.

(7) *Organizational Conflict of Interest.* The M&O Contractor shall conduct work under this clause in a manner that minimizes the appearance of conflicts of interest and avoids or mitigates actual conflicts of interest with the M&O Contractor's functions under this M&O contract. Accordingly, the M&O Contractor shall develop an Organizational Conflict of Interest Mitigation Plan (OCI Plan). The OCI Plan should address OCI issues that arise as a result of the M&O Contractor taking a financial interest in ACT projects, especially in those cases where the M&O Contractor retains rights in ACT IP. Said OCI Plan shall be provided

to the Contracting Officer for review and approval as soon as practicable after execution of the M&O contract modification incorporating this clause into the M&O contract. Unless provided otherwise by the Contracting Officer, no work on ACT agreements may commence before Contracting Officer approval of the OCI Plan. In addition to those elements expressly stated in the OCI Plan, the Department may condition any ACT transaction on such other mitigating conditions it determines are appropriate. The OCI Plan shall, at a minimum, include elements that address the following:

(i) *Full Disclosure.* Before work can begin under an ACT transaction, all parties to ACT agreements must sign a DOE-approved certification that they have been fully informed about the availability of SPP agreements and CRADAs in addition to ACT. The certification at a minimum shall briefly describe SPP agreements, CRADAs and ACT, and will include the relative disposition of IP rights and the costs (including identification of any additional costs *e.g.*, insurance, and other compensation to the M&O Contractor under ACT) for each type of agreement for the scope of work being proposed.

(ii) *Priority of Work.* The M&O Contractor shall not give work under ACT any special attention or priority over other work under the DOE M&O contract. Work under ACT shall be approved by the Contracting Officer and assigned the same priority relative to other work under the DOE M&O contract that it would normally have if performed under a non-Federal SPP agreement. The Contracting Officer has discretion to determine the agency's priority of work, considering the M&O Contractor's input.

(iii) *Participation by Contractor-affiliated sources:* If any source affiliated with the M&O Contractor (any division, subsidiary, or affiliate of the M&O Contractor or its parent company) is a party to the ACT agreement, the M&O Contractor shall include as necessary an addendum to the OCI Plan to address special circumstances not fully anticipated in the OCI Plan.

(iv) *Right of Inquiry for ACT IP Designation.* The Contracting Officer, upon request of DOE Patent Counsel may inquire into the M&O Contractor's designation of any invention or data as arising under an ACT transaction. The M&O Contractor is responsible for curing any defect identified in such inquiry, and if the M&O Contractor cannot adequately justify the designation or cure the defect, then the parties to the ACT agreement may

receive modified rights in the IP to the degree necessary to resolve the issues identified by the inquiry.

(8) *Intellectual Property*. Disposition of intellectual property (IP) arising from work conducted under this clause shall be governed by Class Waiver W(C)–2011–013 (ACT Class Waiver), which is incorporated herein by reference.

(i) All Contractor ACT inventions shall be reported to DOE pursuant to the requirements of the [cite *Patent Rights—M&O contract, Nonprofit Organization or Small Business Firm Contractor*] clause of this M&O contract.

(ii) In reporting ACT inventions, the M&O Contractor shall identify the ACT agreement under which the invention was made and specify the rights reserved by the Government pursuant to the ACT Class Waiver.

(iii) All technical data identified by the ACT client as Protected ACT Information shall also be marked to identify the ACT agreement under which the data was generated.

(iv) The M&O Contractor shall ensure that all rights and obligations concerning ACT IP, including the appropriate IP provisions authorized in the ACT Class Waiver, are clearly provided in ACT agreements, and that all parties granted any rights in ACT IP are informed of the terms of the waived rights, including the rights reserved by the Government.

(v) Where the M&O Contractor receives ownership or license rights to ACT IP, the M&O Contractor may elect to commercialize the ACT IP consistent with the Technology Transfer Mission clause of this M&O contract.

(vi) As an alternative to paragraph (b)(8)(v) of this clause, if the M&O Contractor has an authorized Private Funded Technology Transfer (PFTT) program, the M&O Contractor may elect to retain private ownership of the ACT IP and commercialize the IP under its applicable PFTT clause, using its private funds, where no costs for developing, patenting, and marketing will be allowable under this M&O contract. The M&O Contractor will share royalties collected on ACT IP with inventors in accordance with paragraph (h) of the Technology Transfer Mission clause of this M&O contract.

(vii) For ACT projects in which the terms of the Agreement provide that the Government reserves the right to use generated data after the particular project expires, the M&O Contractor must provide, to the DOE Office of Technical Information (OSTI), computer software produced under the Agreement in both source and executable object code format.

(viii) Where terms and conditions governing Data and Subject Inventions under this Contract are inconsistent with the terms of the ACT Class Waiver, the ACT Class Waiver will control.

(9) *Contractor Liability and Indemnification*.

(i) *General Indemnity*. (A) The M&O Contractor agrees to indemnify and hold harmless the Government, the Department, and persons acting on their behalf from all liability, including costs and expenses incurred, to any person, including the ACT participants, for injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of an ACT transaction by the Government, the Department, the M&O Contractor, or persons acting on their behalf, or arising out of the use of the services performed, materials supplied, or information given hereunder by any person including the M&O Contractor, and not directly resulting from the fault or negligence of the Government, the Department, or persons (other than the M&O Contractor) acting on their behalf.

(B) Subject to Contracting Officer approval, the General Indemnity set forth in this paragraph (b)(9)(i) may be modified or waived where:

(1) ACT participants are not providing material or equipment to the M&O Contractor to be used in the performance of the Statement of Work under the ACT transaction; and (2) ACT participants are not sending their employees to the M&O facilities as part of the Statement of Work; and (3) the specific activities performed under the ACT transaction are normally performed by the DOE M&O Contractor under the DOE contract.

(C) Notwithstanding the provisions in paragraphs (b)(9)(i)(A) and (B) of this clause, the M&O Contractor shall indemnify and hold harmless the Government, the Department, and persons acting on their behalf for loss, damage, or destruction of Government property resulting from the fault or negligence of the M&O Contractor. Such indemnification shall be subject to a liability limit of \$2,000,000 (two million dollars) per year, or such greater liability limit approved by the cognizant DOE Contracting Officer under the DOE contract. Above the applicable liability limit, the M&O Contractor's responsibility to the Government for such loss, damage or destruction, shall be as set forth in the "Property" clause of this contract.

(ii) *Intellectual Property Indemnity*. The M&O Contractor shall indemnify the Government, its agents, and employees against liability, including

costs, for infringement of any United States patent, copyright, or other intellectual property arising out of any acts required or directed to be performed under the Statement of Work under an ACT transaction to the extent such acts are not already performed at the M&O contract facilities. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the M&O Contractor unless required by a court of competent jurisdiction.

(iii) *Product Liability Indemnity*. (A) Except for any liability resulting from any negligent acts or omissions of the Government, the M&O Contractor agrees to indemnify the Government for all damages, costs, and expenses, including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the ACT participants or the M&O Contractor, their assignees, or licensees, which was derived from the work performed under ACT transactions. With respect to this clause, neither the Government nor the M&O Contractor shall be considered assignees or licensees as a result of reserved Government rights in ACT IP. The indemnity set forth in this paragraph shall apply only if the M&O Contractor shall have been informed as soon and as completely as practical by the Government of the action alleging such claim and shall have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Government shall have provided all reasonably available information and reasonable assistance requested by the M&O Contractor. No settlement for which the M&O Contractor would be responsible shall be made without the M&O Contractor's consent, unless required by final decree of a court of competent jurisdiction.

(B) Where the M&O Contractor assigns the responsibility for indemnifying the Government under paragraph (b)(9)(iii)(A) of this clause to other ACT participants, the M&O Contractor agrees to seek such indemnification from the other ACT participants.

(iv) *Claims and Liabilities*. Claims and liabilities resulting from the M&O Contractor's performance of work under an ACT transaction authorized pursuant to this clause shall not be subject to the M&O contract clause entitled "Insurance—Litigation and Claims." In no event shall the M&O Contractor be reimbursed under the M&O contract for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, and judgment and

settlements) incurred as a result of third party claims related to the M&O Contractor's performance under this clause.

(v) *Government Obligations.* The M&O Contractor shall not include any guarantee or requirement that will obligate the Government to pay or incur any costs or create any liability on behalf of the Government in any ACT agreement or commitment the M&O Contractor executes under authority of this clause. The M&O Contractor agrees if the Contractor does include such a guarantee or requirement, it will have no effect on the Government, such that, the M&O Contractor will be responsible for any costs or liability due to such a guarantee or requirement.

(vi) *Insurance.* Any cost of insurance to cover risks of the M&O Contractor associated with ACT agreements is unallowable under this contract.

(10) *ACT Records.* All records associated with the M&O Contractor's activities conducted under the authority of this clause, with the exception of information required under paragraphs (b)(3)(v), (b)(4)(ii)(A), and (b)(13) of this clause shall be treated as M&O Contractor-owned records under the provisions of the Access to and Ownership of Records clause of this M&O contract. The Government or its designees shall use such records in accordance with applicable Federal laws (including the Privacy Act), as appropriate.

(11) *Termination.* The Government or the M&O Contractor may terminate ACT authority under this contract by providing written notification of termination to the other party (Contracting Officer or the M&O Contractor) as appropriate, no less than 60 days prior to the requested termination date. In such cases, the M&O Contractor shall provide DOE a comprehensive list of active ACT projects. DOE anticipates work commitments under these agreements will be completed regardless of termination. All costs associated with early termination of any ACT agreements prior to the completion shall be the responsibility of the M&O Contractor.

(12) *Successor M&O Contractor.* To minimize the potential for negative Government programmatic impact and to facilitate seamless transition of work to a successor M&O Contractor, ACT agreement(s) executed under this clause and any contractual instruments associated therewith may be novated to the successor M&O Contractor with the mutual consent of the M&O Contractor, the successor M&O Contractor, and the parties to the affected ACT agreement(s).

If the ACT agreement(s) cannot be novated, then the M&O Contractor as a private sponsor shall be permitted to enter into a Non-Federal SPP agreement with the successor M&O Contractor that will enable completion of the statement of work. Such agreements shall be entered into pursuant to DOE SPP policies. DOE shall make good faith efforts to incorporate the terms of the applicable ACT agreement.

(13) *Minimum Reporting requirements.* The M&O Contractor shall maintain records of its activities related to ACT in a manner and to the extent satisfactory to DOE and specifically including, but not limited to the number of ACT agreements, the amount of funds reimbursed to DOE for work under ACT and aggregate funding received beyond costs in the performance of ACT, the number of third party entities engaged through ACT that had not previously sponsored projects under the M&O contract and the number that had not previously sponsored projects under any DOE M&O contract, the amount of funds reimbursed to DOE by newly engaged entities, the number of parties and types of entities engaged in each individual ACT agreement, and the number of invention disclosures, licenses and start-ups arising from ACT. The M&O Contractor shall establish performance metric(s) to measure the time required to negotiate ACT agreements in a manner consistent with the time required to negotiate CRADAs and SPPs. The M&O Contractor shall obtain from each entity engaged in ACT the entity's reason(s) for selecting ACT for performance of work under the M&O contract. Also, the M&O Contractor shall report the above identified data annually to the DOE Contracting Officer and in such a format that will serve to adequately inform DOE of the Contractor's activities under ACT while protecting any data not subject to disclosure under this M&O contract. Such records shall be made available in accordance with the clauses of this M&O contract pertaining to inspection, audit and examination of records.

(End of clause)

■ 300. Section 970.5219 is added to read as follows:

970.5219 Small business subcontracting plan.

As prescribed in 970.1907–8(b), supplement the clause at FAR 52.219–9 with the following:

Small Business Subcontracting Plan [December 2024]

(b) *Definitions.* “First-tier subcontract” means a subcontract

awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that would benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

“*Management and Operating Contractor Subcontract Reporting Capability (MOSRC)*” means a DOE system and associated processes to collect key information about Management and Operating Contractor first-tier subcontracts for reporting to the Small Business Administration.

“*Transaction*” means any contract, order, other agreement or modification thereof (other than one involving an employer-employee relationship) entered into by the Contractor acquiring supplies or services (including construction) required solely for performance of the prime contract.

(1)(3) *MOSRC.* The Contractor shall collect and report data via MOSRC necessary for DOE to meet its agency reporting requirements, as determined by the Small Business Administration. The Contractor shall report first-tier subcontract data in MOSRC. Classified subcontracts shall not be reported. Subcontracts with Controlled Unclassified Information marking shall not be reported if restricted by its category. The Contractor should contact its Contracting Officer if uncertain of reporting requirements. The MOSRC requirement does not replace any other reporting requirements under this clause.

(End of clause)

■ 301. Section 970.5222–1 is amended by revising the introductory text to read as follows:

970.5222–1 Collective Bargaining Agreements Management and Operating Contracts

As prescribed in 970.2201–130, insert the following clause:

* * * * *

■ 302. Section 970.5222–2 is amended by revising the introductory text to read as follows:

970.5222–2 Overtime Management

As prescribed in 970.2201–220, insert the following clause:

* * * * *

■ 303. Section 970.5222–4 is added to read as follows:

970.5222–4 Unemployment compensation.

As prescribed in 970.2270–2, insert the following clause.

Unemployment Compensation
[December 2024]

(a) When under state law the contractor is permitted the option to pay unemployment claims either through the state unemployment insurance tax (pay in) or by reimbursing the state for actual claims paid out to former employees (opt out), the contractor shall provide the following:

(1) *Statement of Coverage.* The statement of coverage shall identify whether the contractor will opt into the state unemployment fund through payment of the unemployment insurance tax or opt out by reimbursing the state(s) for actual claims paid. A statement of coverage shall be provided within (fill in) ____ calendar days of contract award, contract extension, or exercise of an option.

(2) *Change in Election Status.* The contractor shall notify the contracting officer no less than (fill in) ____ calendar days before state approval is sought to change its pay in or opt out election.

(b) The Government reserves the right to request additional information to assess budgetary and programmatic risks and impact when the contractor chooses to opt out.

(End of clause)

■ 304. Redesignate sections 970.5223–3 and 970.5223–4 as sections 970.5226–4 and 970.5226–5, respectively.

970.5223–6 and 970.5223–7 [Removed]

■ 305. Sections 970.5223–6 and 970.5223–7 are removed.

■ 306. Section 970.5226–1 is revised to read as follows:

970.5226–1 Diversity plan.

As prescribed in 970.2671–2, insert the following clause:

Diversity Plan [December 2024]

The Contractor shall submit a Diversity, Equity, Inclusion, and Accessibility (DEIA) Plan to the Contracting Officer for approval within 90 days after the effective date of this contract (or contract modification, if appropriate). The Contractor shall submit an update to its Plan annually or with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in the Appendix _____. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a

minimum, the Contractor's approach for promoting diversity through:

- (1) the Contractor's work force;
- (2) educational outreach;
- (3) community involvement and outreach;
- (4) subcontracting;
- (5) economic development (including technology transfer); and
- (6) the prevention of profiling, harassment, discrimination, and/or retaliation based on protected EEO categories.

(End of clause)

970.5226–4 [Amended]

■ 307. Amend newly redesignated section 970.5226–4, in the introductory text, by removing “970.2305–4(a)” and adding “970.2605–4(a)” in its place.

970.5226–5 [Amended]

■ 308. Amend newly redesignated section 970.5226–5, in the introductory text, by removing “970.2305–4(b)” and adding “970.2605–4(b)” in its place.

■ 309. Amend section 970.5227–1 by:

- a. Revising the clause date and paragraphs (a), (b)(1) introductory text, and (b)(1)(ii);
- b. Adding paragraphs (b)(4) and (c)(3);
- c. Revising paragraph (d)(1);
- d. Removing “(End of clause)” after Alternate I and adding in its place “(End of Alternate)”;
- e. Adding Alternate II after Alternate I.

The revisions and additions read as follows:

970.5227–1 Rights in data-facilities.

* * * * *

Rights In Data—Facilities [December 2024]

(a) *Definitions—Assistant General Counsel for Technology Transfer and Intellectual Property* is the senior intellectual property counsel for the Department of Energy, as distinguished from the NNSA Patent Counsel, and, where used in this clause, indicates that the authority for the activity(ies) being described belongs to DOE.

Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means:

- (1) Computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(2) Data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term “data” does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

Department of Energy (DOE), as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (e) of this clause.

Patent Counsel means the DOE or NNSA Patent Counsel assisting the contracting activity.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) * * *

(1) Except as may be otherwise expressly provided or directed in

writing by the Patent Counsel, the Government shall have:

* * * * *

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by Patent Counsel;

* * * * *

(4) In the performance of DOE contracted obligations, each contractor is required to manage scientific and technical information (STI) produced under the contract as a direct and integral part of the work and ensure its broad availability to all customer segments by making STI available to DOE's central STI coordinating office, the Office of Scientific and Technical Information (OSTI). Requirements for all such reportable information to OSTI are in DOE Order 241.1, or successor version, whether it is publicly releasable, controlled unclassified information, or classified.

(c) * * *

(3) If the Contractor has not been granted permission to copyright technical data or computer software first produced under the contract, and if the Government desires to obtain copyright in such data and computer software, the Patent Counsel may direct the Contractor to establish claim to copyright in such data or computer software and to assign such copyright to the Government or its designated assignee.

(d) * * *

(1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 48 CFR 927.409 including alternates as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternate II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(d). In subcontracts, including subcontracts for related support

services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE, the Contractor shall use the "rights in Data-Facilities" clause at 48 CFR 970.5227-1.

* * * * *

Alternate II (DATE XXXX). As prescribed in 970.2704-3(a), where Government facilities are being constructed, modified, or in decontamination and decommissioning, and it is anticipated that further solicitation may be required to complete the project, insert paragraph (f) in the Limited Rights Notice required by paragraph (e) of the basic clause:

(f) This "limited rights data" may be disclosed in future solicitations for the continuation or completion of the work contemplated under this contract under the restriction that the "limited rights data" be retained in confidence and not be further disclosed.

(End of alternate)

■ 310. Section 970.5227-2 is revised to read as follows:

970.5227-2 Rights in data-technology transfer.

As prescribed in 970.2704-3(b), insert the following clause:

Rights In Data—Technology Transfer [December 2024]

(a) *Definitions—Assistant General Counsel for Technology Transfer and Intellectual Property* is the senior intellectual property counsel for the Department of Energy, as distinguished from the NNSA Patent Counsel, and, where used in this clause, indicates that the authority for the activity(ies) being described belongs to DOE.

Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means:

(1) Computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(2) Data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

Department of Energy (DOE), as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (g) of this clause.

Open source software, as used in this clause, means computer software with its source code that is distributed under a license in which the user is granted the right to use, copy, modify, and prepare derivative works thereof, without having to make royalty payments.

Patent Counsel means the DOE or NNSA Patent Counsel assisting the contracting activity.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (h) of this clause.

Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.* (1) Except as may be otherwise expressly provided or

directed in writing by the Patent Counsel, the Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by Patent Counsel, appropriate instances of the DOE Strategic Partnership Projects Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE

personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. When delivering all Contractor-produced computer software to the DOE Office of Scientific and Technical Information (OSTI), the Contractor shall submit a complete package as prescribed in paragraph (e)(3) of this clause. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (h) of this clause ("Rights in Limited Rights Data") or paragraph (i) of this clause ("Rights in Restricted Computer Software"); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the

markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical works, and works produced by Contractor under 48 CFR 952.204–75 as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(4) In the performance of DOE contracted obligations, each Contractor is required to manage scientific and technical information (STI) produced under the contract as a direct and integral part of the work and ensure its broad availability to all customer segments by making STI available to DOE's central STI coordinating office, OSTI. Requirements for all such reportable information to OSTI are in DOE Order 241.1B, or successor version, whether it is publicly releasable, controlled unclassified information, or classified.

(c) *Copyright (General)*. (1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraph (d), (e), or (f) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with paragraph (d), (e), or (f) of this clause, the Contractor agrees not to include in the data delivered under this Contract

any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(3) If the Contractor has not been granted permission to copyright data or computer software first produced under the contract where such permission is necessary, *i.e.*, for works other than scientific and technical journal articles and data produced under a CRADA, and if the Government desires to obtain copyright in such data or computer software, the Patent Counsel may direct the Contractor to establish claim to copyright in such data or computer software and to assign such copyright to the Government or its designated assignee.

(d) *Copyrighted works (scientific and technical works)*. (1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical works composed under this contract or based on or containing data first produced by the Contractor in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, contributions to chapters of book compilations or similar means of dissemination to make broadly available to the public or scientific community for the purpose of scientific, research, knowledge and education. Such scientific and technical works may be recorded or fixed in any medium including but not limited to print, online, web, audio, video or other medium, and released or disseminated through any communication or distribution channel including but not limited to articles, reports, books, non-architectural drawings, repositories, videos, websites, workshops, or social media. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The

Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) For each scientific or technical work first produced or composed under this contract and submitted for publication or similar means of dissemination, the contractor shall provide notice to the publisher of the Government's license in the copyright that is substantially similar to or otherwise references one of the following notices below:

A suitable notice (long version) reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This work was produced by [insert the name of the Contractor] under contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the work for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this work, or allow others to do so, for United States Government purposes. The Department of Energy will provide public access to these results of federally sponsored research in accordance with the DOE Public Access Plan [insert current link].

(End of notice)

A suitable notice (short version) reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright follows:

Notice: This work was produced by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. Publisher acknowledges the U.S. Government license to provide public access under the DOE Public Access Plan [insert current link].

(End of notice)

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) *Copyrighted works (other than scientific and technical works and data*

produced under a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, when the Contractor needs to control distribution to advance the goals of the technology transfer mission and where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) *Contractor Request to Assert Copyright.* (i) For data other than scientific and technical works under paragraph (d) of this clause and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes;

(B) The program under which it was funded;

(C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement;

(D) Whether the data is subject to export control; and if so, which jurisdiction;

(E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period; and

(F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent

Counsel demonstrating such permission has been obtained.

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined exclusively by DOE will be expressly withheld. Such excepted categories include data whose release:

(A) Would be detrimental to national security, *i.e.*, involve classified information or data or sensitive information under section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes;

(B) Would not enhance the appropriate transfer or dissemination and commercialization of such data;

(C) Would have a negative impact on U.S. industrial competitiveness;

(D) Would prevent DOE from meeting its obligations under treaties and international agreements; or

(E) Would be detrimental to one or more of DOE's programs.

(iv) The Contractor will obtain the advanced written approval of the Patent Counsel to assert copyright where data are determined to be in the following excepted categories:

(A) Under export control restrictions;

(B) Developed with Naval Reactors' funding;

(C) Subject to disposition of data rights under treaties and international agreements. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified at DOE's Office of International Affairs (International Commitments—IEC).

(2) *Patent Counsel Review and Response to Contractor's Request.* The Patent Counsel shall use its best efforts to respond in writing within 60 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that

DOE needs additional time to respond, and the reasons therefor. If Patent Counsel grants permission for the Contractor to assert copyright in computer software, the permission automatically extends to subsequent minor versions (*e.g.*, minor revisions, patches and bug fixes) having the same funding source, same name and substantially same functionality as the original computer software, and may be extended to subsequent major versions representing significant modifications of the program with the approval of Patent Counsel.

(3) *Permission for Contractor to Assert Copyright.* (i) For computer software, the Contractor shall furnish, or make available to the DOE Office of Scientific and Technical Information (OSTI) in accordance with OSTI guidelines at the time permission to assert copyright is given under paragraph (e)(2) of this clause:

(A) Announcement information/metadata contained in the Software Announcement Notice 241.4;

(B) the source code and/or executable file for each software program; and

(C) Documentation, if any, which may consist of a user manual, sample test cases, or similar information, needed by a technically competent user to understand and use the software (whether included on the software media itself or provided in a separate file or in paper format).

(ii) The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(iii) Unless otherwise directed by the Patent Counsel, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause, the Contractor shall within sixty (60) days of obtaining such permission furnish, or make available to OSTI in accordance with OSTI guidelines, a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(iv) Once the Contractor is given permission to assert copyright in data, the Contractor may begin to commercialize the copyrighted data by making copyrighted data available for licensing to third parties and by offering other types of distribution to third parties. During the period in which

commercialization activities pertaining to the copyrighted data are continuing, or for a specified period of time prescribed by Patent Counsel in paragraph (e)(2) of this clause, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. For all previously approved and current copyrighted data that the Contractor is actively commercializing, the Contractor may continue to commercialize in accordance with this paragraph.

(v) When the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright or at the end of the specified period as prescribed by Patent Counsel, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(vi) At any time the Contractor abandons commercialization activities for copyrighted data, the Contractor shall advise OSTI and Patent Counsel and, upon request, assign the copyright to the Government so that the Government can distribute the copyrighted data to the public. When the Contractor abandons commercialization activities, the Contractor will provide to OSTI the latest version of the copyrighted data (for example, source code, object code, minimal support documentation, drawings or updated manuals.) In addition, the Contractor will provide annually to Patent Counsel, if requested, a list of all copyrighted data that the Contractor has abandoned commercial licensing activity during that year.

(vii) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3)(iv) and (v) of this clause. Such action shall be taken when the data are delivered to the Government, licensed or deposited for registration as a published work in the U.S. Copyright Office, or when submitted for publication. The acknowledgment of Government

sponsorship and license rights shall be substantially similar to the following:

Notice: These data were produced by (insert name of Contractor) under Contract No. _____ with the Department of Energy. During the period of commercialization or such other time period specified by the Department of Energy, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. Subsequent to that period the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of notice)

(viii) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the period that Contractor is commercializing the data as provided for in paragraph (e)(3)(iv) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in paragraph (e)(1)(i) of this clause. Before licensing under this paragraph, DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE

to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65—“Appeals.”

(ix) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.

(4) The following notice may be included in computer software prior to any publication or release and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this clause.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of notice)

(5) A similar notice can be used for data, other than computer software, prior to any publication or release and prior to Contractor's obtaining permission of DOE Patent Counsel to assert copyright.

(f) *Open software source.* The Contractor may release computer software first produced by the Contractor in the performance of this contract under an open source software license. Such software shall hereinafter be referred to as open source software or OSS, subject to the following:

(1) *DOE Program notice for copyright assertion for OSS.* (i) The Contractor shall provide written notice (including relevant data such as, for example, the software disclosure form) to each DOE Program or Programs that have provided a substantial portion of the funding (funding source(s)) to develop the software that the Contractor intends to release as OSS unless the funding Program(s) has previously provided

blanket approval for all software developed with funding from that Program or a specific DOE project stipulates the software to be released as OSS. If Program has neither consented nor objected to the assertion of copyright within two weeks of such written notification, the Contractor may assert copyright in the software. If notification of a funding DOE Program(s) is not practicable or DOE Program(s) has objected, the Contractor shall consult with Patent Counsel, which may provide approval. For software developed under a CRADA, Strategic Partnership Projects (SPP), User Facility Agreement, or Agreement for Commercializing Technology (ACT), authorization from the partner of such agreement shall be additionally obtained for OSS release unless such agreement has a provision providing for such copyright assertion.

(ii) If the software is developed with funding from a federal government agency or agencies (funding source(s)) other than DOE, then authorization from all the funding agency(ies) shall be obtained for OSS release, if practicable. Such federal government agency(ies) may provide blanket approval for all software developed with funding from that agency(ies). However, OSS release of any one of such software shall be subject to approval by all other funding sources for the software, if any. If approval from such federal government agency(ies) is not practicable, the Patent Counsel may provide approval instead.

(2) *Assert copyright in the OSS.* Once the Contractor has met the program approval requirements set forth in paragraph (f)(1) of this clause, copyright in the software to be distributed as OSS may be asserted by the Contractor, or, for OSS developed under a CRADA, User Facility Agreement, or SPP Agreement, either by the Contractor, CRADA Participant, User Facility User, or SPP Sponsor, as applicable, which precludes marking such OSS as protectable from public distribution.

(3) *Submit Software Announcement Notice 241.4 to OSTI.* The Contractor must submit Software Announcement Notice (AN) 241.4 (or the current notice as may be required by DOE) to OSTI. In the AN 241.4, the Contractor shall provide the unique URL (*i.e.*, a persistent identifier) from which the software can be obtained so that OSTI can announce the availability of the OSS and the public has access via the URL.

(4) *Maintain OSS record.* The Contractor must maintain a record of all software distributed as OSS. Upon request of the Patent Counsel, the

Contractor shall provide the necessary information regarding any or all OSS.

(5) *Provide public access to the OSS.* The Contractor shall ensure that the OSS is publicly accessible as open source via the Contractor's website, Open Source Bulletin Boards operated by third parties, DOE, or other standard industry methods.

(6) *Select an OSS license.* Each OSS will be distributed pursuant to an OSS license. The Contractor may choose among industry standard OSS licenses or create its own set of Contractor standard licenses. To assist the Contractor, the Assistant General Counsel for Technology Transfer and Intellectual Property, may periodically issue guidance on OSS licenses. Each Contractor-created OSS license, must contain, at a minimum, the following provisions—

(i) A disclaimer or equivalent that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software; and

(ii) A grant of permission for licensee to distribute OSS containing the licensee's derivative works. This provision may allow the licensee and third parties to commercialize their derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions.

(7) *Relationship to other required clauses in the contract.* OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S.

Competitiveness and U.S. Preference, as set forth in paragraphs (f) and (g) of the clause within this contract entitled Technology Transfer Mission (48 CFR 970.5227–3). The requirement for the Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties, as set forth elsewhere in this clause, is not modified by this section.

(8) *Government license.* For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in data copyrighted in accordance with paragraph (f)(2) of this clause to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(9) *Contractor abandons OSS.* If the Contractor ceases to make OSS publicly available, then the Contractor shall submit to OSTI the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised Announcement

Notice 241.4 (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to OSTI.

(g) *Subcontracting.* (1) Unless otherwise directed by the Patent Counsel, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the DOE policy and procedures, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 48 CFR 927.409 including alternates as appropriate with the prior approval of DOE Patent Counsel. The Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternate II or III, respectively, without the prior approval of the Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(d). In subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE, the Contractor shall use the "Rights in Data-Facilities" clause at 48 CFR 970.5227-1.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

(h) *Rights in Limited Rights Data.* Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor

agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice:"

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. _____ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

(End of notice)

(i) *Rights in restricted computer software.* (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice:"

Restricted Rights Notice—Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. _____. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with paragraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. _____ with (name of Contractor).

(End of notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice “Unpublished-rights reserved under the Copyright Laws of the United States.”

(j) *Relationship to patents.* Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of clause)

Alternate I (DEC 2000). As prescribed in 970.2704–3(b), where access to Category C–24 restricted data is contemplated in the performance of a contract the contracting officer shall insert the phrase “and except Restricted Data in category C–24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology” after “laser isotope separation” and before the comma in paragraph (b)(2)(ii) of the clause at 970.5227–2, Rights in Data—Technology Transfer, as appropriate.

(End of clause)

Alternate II (DATE XXXX). As prescribed in 970.2704–3(b), where government facilities are being constructed, modified, or in decontamination and decommissioning, and it is anticipated that further solicitation may be required to complete the project, insert paragraph (f) in the Limited Rights Notice of the basic clause:

(f) This “limited rights data” may be disclosed in future solicitations for the continuation or completion of the work contemplated under this contract under the restriction that the “limited rights data” be retained in confidence and not be further disclosed.

(End of clause)

■ 311. Section 970.5227–3 is revised to read as follows:

970.5227–3 Technology transfer mission.

As prescribed in 970.2770–4(a), insert the following clause:

Technology Transfer Mission [December 2024]

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (sections 3131, 3132, 3133, and 3157 of Pub. L. 101–189 and as amended by Pub. L. 103–160, sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) *Authority.* (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of sections 11(a)(1) and 12(g) of the Stevenson-Wylder Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); section 3132(b) of Public Law 101–189, sections 3134 and 3160 of Public Law 103–160, and of chapter 38 of the Patent Laws (35 U.S.C. 200 *et seq.*); section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); section 102 of the Laboratory Modernization and Technology Transfer Act (Pub. L. 115–246) and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not

limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Strategic Partnership Projects (SPP); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, SPP, science education activities, consulting, personnel exchanges, assignments, and licensing in accordance with this clause.

(3) *Trademarks and service marks.* The Contractor, with notification to DOE Patent Counsel, is authorized to protect goods/services resulting from work at the Laboratory through Trademark and Service Mark protection. The Laboratory name and associated logos are owned by the Department of Energy unless an exception is allowed by the DOE Patent Counsel, and shall be protected by DOE Patent Counsel. In furtherance of the technology transfer mission, should the Contractor want to assert trademark or service mark protection for any word, phrase, symbol, design, or combination thereof that includes or is associated with the Laboratory name, the Contractor must first notify and obtain permission from the Department of Energy Patent Counsel. All marks, whether or not registered with the United States Patent and Trademark Office, are to be included in the “Intellectual property rights” paragraph (i) of this clause, regarding transfer to successor contractor, DOE reserves the right to require the Contractor to cancel registration of the mark or cease use of the mark.

(b) *Definitions—Agreements for Commercializing Technology (ACT)* means any agreement pursuant to the ACT clause, if included in this M&O contract, entered into between the Contractor as operator of the Laboratory and a third party to conduct sponsored research at the M&O Contractor’s risk, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this M&O contract and on a fully reimbursable basis.

Assignment means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

Bailment means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Laboratory Biological Materials or Laboratory Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

Contractor's Laboratory Director means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

Cooperative Research and Development Agreement (CRADA) means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the other parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of title 31 of the United States Code.

Department of Energy (DOE), as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

Intellectual property means data, inventions, patents, patent applications, trademarks, service marks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

Joint Work Statement (JWS) means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the project.

Laboratory Biological Materials means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote

and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.

Laboratory Tangible Research Product means tangible material results of research which

(1) Are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;

(2) Are not materials generally commercially available; and

(3) Were made under this contract by Laboratory employees or through the use of Laboratory research facilities.

Master Scope of Work (MSW) means a detailed description of a routine scope of work containing information sufficient to:

(1) Ensure that the Contractor and the cognizant Contracting Officer (CO) have a common understanding of the work to be performed;

(2) Allow DOE to make all reviews, approvals, determinations, and certifications required pursuant to relevant DOE Orders and policy; and

(3) Enable the CO and the Contractor to agree that the work is suitable for special processing as the subject of Strategic Partnership Project (SPP) agreements or Cooperative Research and Development Agreements (CRADAs) for non-Federal sponsors.

Patent Counsel means the DOE or NNSA Patent Counsel assisting the contracting activity. The Patent Counsel is the first and primary point of contact for activities described in this clause.

Strategic Partnership Projects (SPP) means any agreement pursuant to the SPP clause, if included in this M&O contract, entered into between the Contractor as operator of the Laboratory and a non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this M&O contract and on a fully reimbursable basis.

(c) *Allowable costs.* (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with

the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, widespread notice of technology transfer opportunities, and early stage and precommercial technology demonstration to remove barriers that limit private sector interest and demonstrate potential commercial applications of any research and technologies arising from Laboratory activities, shall be deemed allowable provided that such costs meet the other requirements of the allowable cost provisions of this Contract.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Insurance—Litigation and Claims" of this contract.

(d) *Conflicts of Interest—Technology Transfer.* The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to all persons participating in Laboratory research or related technology transfer activities. Such implementing procedures shall be provided to the contracting officer for review and approval within sixty (60) days after execution of this contract. The contracting officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with research involving non-federal sponsors in accordance with the provisions of paragraph (n)(5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or SPP activities of the Contractor;

(5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts

of interest with non-Government funded work;

(6) Notify the contracting officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the contracting officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the contracting officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any individual who is a current or has been a Laboratory employee within the previous two years or to the company in which the individual is a principal and the Contractor's request should include notice of any SPP, CRADA and/or ACT associated with the Intellectual Property;

(9) Notify non-Federal sponsors of SPP activities of any relevant Intellectual Property interest of the Contractor prior to execution of SPP; and

(10) Notify the Contracting Officer and DOE funding program prior to evaluating a proposal from a third party for DOE, when:

(i) The evaluator is an inventor of a Contractor invention that is the subject matter of the proposal; or

(ii) The evaluator is a principal or has financial interest in the third party; or

(iii) The third party is a licensee of the Contractor.

(e) *Fairness of Opportunity.* In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor.

(f) *U.S. Industrial Competitiveness for licensing and assignments of rights in subject inventions.* In the interest of enhancing U.S. industrial competitiveness, and generating economic and technological benefits to the U.S. economy, the Contractor shall comply with the following in its licensing and assignment involving

Contractor's rights in subject inventions, where the Contractor obtains rights in subject inventions during the course of the Contractor's operation of the facility under this contract:

(1) The Contractor agrees to be bound by:

(i) The provisions of 35 U.S.C. 204 (Preference for United States industry);

(ii) All requirements in applicable Determinations of Exceptional Circumstances; and

(iii) Paragraph (t) U.S. Competitiveness in its Patent Rights provision (*e.g.*, 48 CFR 970.5227–10 or 48 CFR 970.5227–12 as may be modified) as applicable.

(2) When the provisions in paragraph (f)(1) of this section do not apply, the Contractor shall ensure in its license or assignment to comply the provisions of 35 U.S.C. 204 and consider in its decisions, at any tier, the following:

(i) Whether resulting products, and/or embodying parts, including components thereof, will be substantially manufactured in the United States; or

(ii) (A) Whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and

(B) If the proposed licensee or assignee is subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements and has policies to protect United States Intellectual Property rights by relying upon U.S. Trade Representative reports on Foreign Trade Barriers, U.S. Trade Representative Special 301 Report (see U.S. Trade Representative website at: <https://www.ustr.gov>) and other available resources, as necessary, to allow for a complete and informed decision.

(iii) If the Contractor determines that the licensee or assignee does not meet either of the requirements in paragraphs (f)(2)(i) or (ii) of this clause, the Contractor, prior to entering into such an agreement, must obtain the approval of the Contracting Officer after consulting with DOE Patent Counsel. The Contracting Officer shall act on any such requests for approval within thirty (30) days.

(g) *Indemnity—Product Liability.* In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to

include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. Except for CRADA and SPP where the guidance is already provided elsewhere, the Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) *Disposition of Income.* (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and chapter 38 of the Patent Laws (35 U.S.C. 200 *et seq.*) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Laboratory's budget for that fiscal year, 15 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.

(2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no

circumstances shall these royalties and income be used for any purpose inconsistent with DOE mission direction.

(3) The Contractor shall establish subject to the approval of the contracting officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer. The Contractor shall notify the contracting officer of any changes to that policy, and such changes, shall be subject to the approval of the contracting officer.

(i) *Transfer to successor contractor.* In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the contracting officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The Contractor shall transfer title, as one or several packages if necessary, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the contracting officer.

(j) *Technology transfer affecting the national security.* (1) The Contractor shall notify and obtain the approval of the contracting officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under section 148 of the Atomic Energy Act (42 U.S.C. 2168), as amended. Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the

United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) *Records.* The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the contracting officer to enable DOE to maintain the reporting requirements of section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) *Reports to Congress.* To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan, which may be included in the Annual Laboratory Plan, shall be provided to the contracting officer on or before October 1st of each year.

(m) *Oversight and appraisal.* The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the contracting officer as

part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) *Technology transfer through cooperative research and development agreements.* Upon approval of the contracting officer and as provided in DOE approved guidance, the Laboratory Director, or designee, may enter into CRADAs on behalf of the DOE subject to the requirements set forth in this paragraph.

(1) *Review and approval of CRADAs.*

(i) Except as otherwise directed in writing by the contracting officer, each JWS or MSW shall be submitted to the contracting officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the contracting officer in the approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA) a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within thirty (30) days after submission of a JWS, MSW or proposed CRADA, the contracting officer shall approve, disapprove or request modification to the JWS, MSW or CRADA. The contracting officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.

(iv) Except as otherwise directed in writing by the contracting officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA or relevant MSW has been granted by the contracting officer. The Contractor may submit its proposed CRADA to the contracting officer at the time of submitting its proposed JWS, relevant MSW or any time thereafter.

(2) *Selection of participants.* The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United

States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements. The Contractor, in considering these factors, may rely upon the information and same sources as referenced in paragraphs (f)(1)(ii)(C) and (D) of this clause;

(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) *Withholding of data.* (i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced or otherwise as delineated in Stevenson-Wydler, as amended. The DOE shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the contracting officer in advance for a specific CRADA, the Contractor agrees, at the request of the contracting officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) A final technical report, upon completion of a CRADA, shall be provided to DOE's Office of Scientific and Technical Information; reports marked as Protected CRADA Information will not be released to the public for a period in accordance with the terms of the CRADA.

(iv) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include

data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) *SPP, ACT and user facility programs.* (i) SPP, ACT and User Facility Agreements (UFAs) may be available for use by the Contractor in addition to CRADAs. The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, *i.e.*, SPP, ACT and UFA, and of the Class Patent Waiver provisions associated therewith.

(ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in SPP, ACT and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including SPP, ACT and User Class Waivers) or individually negotiated waiver which applies to the agreement.

(5) *Conflicts of interest.* (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the negotiation, approval or performance of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee—

(1) Holds financial interest in any entity, other than the Contractor, that has a substantial interest in the entity of the CRADA; or

(2) Receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the entity of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the entity of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who

has a substantial role (including an advisory role) in the negotiation, approval or performance of the CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of negotiation, approval or performance of the CRADA.

(o) *Technology transfer in other cost-sharing agreements.* In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(p) *Technology partnership ombudsman.* (1) The Contractor agrees to establish a position to be known as "Technology Partnership Ombudsman," to help resolve complaints from outside organizations regarding the policies and actions of the contractor with respect to technology partnerships (including CRADAs), patents owned by the contractor for inventions made at the laboratory, and technology licensing.

(2) The Ombudsman shall be a senior official of the Contractor's laboratory staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the laboratory or facility, shall function as such senior official.

(3) The duties of the Technology Partnership Ombudsman shall include:

(i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the laboratory or facility regarding technology partnerships, patents, and technology licensing;

(ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and

(iii) Submitting a quarterly report, in a format provided by DOE, to the

Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information.

(End of clause)

Alternate I [December 2024]. As prescribed in 970.2770–4(b), add the following definition and new paragraph (q):

Privately funded technology transfer means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.

(q) Nothing in paragraphs (c), (e), (f), (g), (h), and (i) of this clause are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

(End of alternate)

Alternate II (DEC 2000). As prescribed in 970.2770–4(c), the contracting officer shall substitute the phrase “weapon production facility” wherever the word “laboratory” appears in the clause.

■ 312. Amend section 970.5227–4 by revising the introductory text, clause date, and paragraph (c) to read as follows:

970.5227–4 Authorization and consent.

Insert the following clause in solicitations and contracts in accordance with 970.2702–70:

Authorization and Consent [December 2024]

* * * * *

(c)(1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 48 CFR 52.227–1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed the simplified acquisition threshold at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.

(2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed the simplified acquisition threshold.

(3) Omission of an authorization and consent clause from any subcontract, including those valued less than the simplified acquisition threshold does not affect this authorization and consent.

(End of clause)

■ 313. Amend section 970.5227–5 by:

■ a. Revising the introductory text and clause date; and

■ b. In paragraph (c), removing “\$100,000” and adding in its place “the simplified acquisition threshold”.

The revisions read as follows:

970.5227–5 Notice and assistance regarding patent and copyright infringement.

Insert the following clause in solicitations and contracts in accordance with 970.2702–70:

Notice and Assistance Regarding Patent and Copyright Infringement [December 2024]

* * * * *

970.5227–6 [Amended]

■ 314. Amend section 970.5227–6 in the introductory text by removing “970.2702–3” and adding in its place “970.2702–70”.

970.5227–7 [Amended]

■ 315. Amend section 970.5227–7 in the introductory text by removing “970.2702–4” and adding in its place “970.2702–70”.

970.5227–8 [Amended]

■ 316. Amend section 970.5227–8 in the introductory text by removing “970.2702–4” and adding in its place “970.2702–70”.

970.5227–9 [Amended]

■ 317. Amend section 970.5227–9 in the introductory text by removing “970.2702–6” and adding in its place “970.2702–70”.

■ 318. Section 970.5227–10 is revised to read as follows:

970.5227–10 Patent rights—management and operating contracts, nonprofit organization or small business firm contractor.

As prescribed in 970.2703–2(a), insert the following clause:

Patent Rights—Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor [December 2024]

(a) *Definitions—DOE licensing regulations* means the Department of Energy patent licensing regulations at 10 CFR part 781.

Exceptional circumstance subject invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii) and in accordance with 37 CFR 401.3(e).

Initial Patent Application means, as to a given Subject Invention, the first provisional or non-provisional U.S. national application for patent as defined in 37 CFR 1.9(a)(2) and (3), respectively, the first international application filed under the Patent Cooperation Treaty as defined in 37 CFR 1.9(b) which designates the United States, or the first application for a Plant Variety Protection certificate, as applicable.

Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Nonprofit organization means a university or other institution of higher education, or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

Patent Counsel means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity. The Patent Counsel is the first and primary point of contact for activities described in this clause.

Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Small business firm means a small business concern as defined at section 2 of Public Law 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and

subcontracting at 13 CFR 121.3–8 and 121.3–12, respectively, are used.

Statutory Period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112–29.

Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) *Allocation of Principal Rights.* (1) *Retention of title by the Contractor.* Except for exceptional circumstance subject inventions outlined in paragraph (b)(3)(i) of this clause, the contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) *Treaties and international agreements.* Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at DOE's Office of International Affairs (International Commitments—IEC) (<https://energy.gov/ia/iec-documents>), or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions.

(3) *Exceptional circumstance subject inventions.* Except to the extent that rights are retained by the Contractor in a determination of exceptional circumstances or granted to a contractor through a determination of greater rights in accordance with paragraph (b)(4) of this clause, the Contractor does not have a right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions in which the Contractor cannot retain title without specific grant of a waiver from DOE:

(A) Uranium enrichment technology;
(B) Storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) National security technologies classified or sensitive under section 148 of the Atomic Energy Act (42 U.S.C. 2168); and

(D) DOE Steel Initiative and Metals Initiative.

(ii) As determined by the DOE, inventions made under any agreement, contract or subcontract related to the exceptional circumstance subject inventions subject to specific terms outlined in those declarations of exceptional circumstance, the Contractor may take title to these inventions consistent with the terms of the contract. A complete list of declarations of exceptional circumstance, which is maintained by the Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, include but is not limited to the following—

(A) U.S. Advanced Battery Consortium;

(B) Any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI);

(C) Any funding agreement related to Energy Efficiency, Storage, Integration and Related Technologies, Renewable Energy, and Advanced Energy Technologies which is funded by the Office of Energy Efficiency and Renewable Energy (EERE) or the Advanced Research Projects Agency—Energy (ARPA-E);

(D) Solid State Energy Conversion Alliance (SECA), if the Contractor is a participant in the “Core Technology Program”;

(E) Solid State Lighting (SSL) Program, if the Contractor is a participant in the “Core Technology Program.”

(F) Cybersecurity, Energy Security, and Emergency Response;

(G) Quantum Information Science Technologies; and

(H) Domestic Manufacture of DOE Science and Energy Technologies (S&E DEC).

(iii) Inventions subject to “Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies” (S&E DEC) issued June 7, 2021, must comply with

the requirements of paragraph (t) of this section to the maximum extent authorized by the S&E DEC unless otherwise directed by DOE Patent Counsel in writing.

(iv) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, tasks, or other classifications for the purpose of determining DOE exceptional circumstance subject inventions.

(4) *Contractor request for greater rights in exceptional circumstance subject inventions.* The Contractor may request rights greater than allowed by the exceptional circumstance determination in an exceptional circumstance subject invention by submitting such a request in writing to Patent Counsel at the time the exceptional circumstance subject invention is disclosed to DOE or within eight (8) months after conception or first actual reduction to practice of the exceptional circumstance subject invention, whichever occurs first, unless a longer period is authorized in writing by the Patent Counsel for good cause shown in writing by the Contractor. DOE may, in its discretion, grant or refuse to grant such a request by the Contractor.

(5) *Contractor employee-inventor rights.* If the Contractor does not elect to retain title to a subject invention or does not request greater rights in an exceptional circumstance subject invention, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may, in its discretion, grant or refuse to grant such a request by the Contractor employee-inventor.

(6) *Government assignment of rights in Government employees' subject inventions.* If a Government employee is a joint inventor of a subject invention or of an exceptional circumstance subject invention to which the Contractor has rights, the Government may assign or refuse to assign to the Contractor any rights in the subject invention or exceptional circumstance subject invention acquired by the Government from the Government employee, in accordance with 48 CFR 27.304–1(d). The rights assigned to the Contractor are subject to any provision of this clause that is applicable to subject inventions in which the Contractor retains title, including reservation by the Government of a nonexclusive,

nontransferable, irrevocable, paid-up license, except that the Contractor shall file its initial patent application claiming the subject invention or exceptional circumstance invention within one (1) year after the assignment of such rights. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the Government employee.

(c) *Subject invention disclosure, election of title and filing of patent application by contractor*—(1) *Subject invention disclosure.* The contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written or electronic report and shall identify the contract or any other agreement under which the invention was made and the inventor(s) and all sources of funding by Budget and Resources (B&R) code for the invention. The funding program may require other invention identifiers such as related award numbers or funding opportunity announcement numbers. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted or made available for publication at the time of disclosure. The disclosure shall identify if the invention falls within an exceptional circumstance field. DOE will make a determination and advise the Contractor within 30 days of receipt of an invention disclosure as to whether the invention is an exceptional circumstance subject invention. In addition, after disclosure to the Patent Counsel, the Contractor will notify the agency of any accepted manuscript describing the invention for publication or of any on sale or public use planned by the contractor that is 60 days prior to the end of the Statutory Period. The Contractor shall notify Patent Counsel prior to any release or publication of information concerning any nonelectable subject invention such as an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(2) *Election by the Contractor.* Except as provided in paragraph (b)(2) of this clause, the Contractor will elect in

writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) *Filing of patent applications by the Contractor.* The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, or prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding first filed patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) *Contractor's request for an extension of time.* Requests for an extension of the time for disclosure, election, and filing under paragraphs (c)(1), (2), and (3) of this clause may, at the discretion of Patent Counsel, be granted.

(5) *Publication review.* During the course of the work under this contract, the Contractor may desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. Contractor's Invention Identification Procedures under paragraph (f)(5) of this clause should address timely disclosure of inventions, consider whether review is required, and if so, facilitate such review by Contractor personnel responsible for patent matters prior to disclosure of publications in order that public disclosure of such information will not adversely affect the patent interest of DOE or the Contractor.

(6) *Reporting to DOE and Approvals.* Whenever possible in this paragraph (c), the Government electronic reporting system (e.g., iEdison or similar system) shall be used for reporting and approvals.

(d) *Conditions when the Government may obtain title.* The Contractor will convey to the DOE, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.

(2) In those countries in which the Contractor fails to file a patent application within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c), but prior to its receipt of the written request of the DOE, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(4) If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention to which the Contractor had initially retained title or rights, or in an exceptional circumstance subject invention to which the Contractor was granted greater rights, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(5) Upon a breach of paragraph (t) of this clause.

(e) *Minimum rights of the Contractor and protection of the Contractor's right to file*—(1) *Request for a Contractor license.* The Contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. DOE may grant or refuse to grant such a request by the Contractor. When DOE approves such reservation, the Contractor's license will normally extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) *Revocation or modification of a Contractor license.* The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical

application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781. This license will not be revoked in the field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application of the subject invention in that foreign country.

(3) *Notice of revocation of modification of a Contractor license.* Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781 concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor action to protect the Government's interest—(1) Execution of delivery of title or license instruments.* The Contractor agrees to execute or to have executed, and promptly deliver to the Patent Counsel all instruments necessary to accomplish the following actions:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title; and

(ii) Convey title to DOE when requested under paragraph (b) or (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract in order that the Contractor can

comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) *Notification of discontinuation of patent protection.* The contractor will notify the Patent Counsel of any decision not to file a patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 60 days before the expiration of the response period required by the relevant patent office.

(4) *Notification of Government rights.* The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

(5) *Invention identification procedures.* The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a written description of such procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

(6) *Patent filing documentation.* If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:

(i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);

(ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and

(iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(7) *Duplication and disclosure of documents.* The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to the confidentiality provision at 35 U.S.C. 205 and 37 CFR part 401.

(g) *Subcontracts—(1) Subcontractor subject inventions.* The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) *Inclusion of patent rights clause—non-profit organization or small business firm subcontractors.* Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 37 CFR 401.14 with Alternate I of 48 CFR 952.227–11, Patent Rights—Retention by the Contractor, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and paragraph (b)(3) of this clause. The subcontractor retains all rights provided for the contractor in the patent rights clause at 37 CFR 401.3(a) and 401.14. If the S&E DEC, or any other related DEC, is applicable (see paragraph (b)(3)(iii) of this clause), the Contractor shall use Alternate II of DEAR 952.227–11, Patent Rights—Retention by the Contractor.

(3) *Inclusion of patent rights clause—subcontractors other than non-profit organizations and small business firms.* Except for the subcontracts described in paragraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227–13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work. For subcontracts subject to a patent waiver granted by DOE Patent Counsel, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause. For subcontracts subject to exceptional circumstances, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause which may require the use of Alternate II of 48 CFR 952.227–13 Patent Rights—Acquisition by the Government.

(4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor, and the

Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) *Subcontractor refusal to accept terms of patent clause.* If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) *Notification of award of subcontract.* Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) *Identification of subcontractor subject inventions.* If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit to DOE on request, periodic reports, no more frequently than annually, on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. In addition, the Contractor shall provide data to DOE for the annual data call for the Department of Commerce report that includes the number of patent applications filed, the number of patents issued, licensing activity, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to

persons outside the Government without permission of the Contractor.

(i) *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in Rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right under 35 U.S.C. 203 and in accordance with the procedures in 37 CFR 401.6 and any DOE supplemental regulations to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself under applicable law stated above.

(k) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) *DOE approval of assignment of rights.* Rights to a subject invention in the United States may not be assigned by the Contractor without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions of this clause as the Contractor.

(2) *Small business firm licensees.* It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely

to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this paragraph (k)(2).

(3) *Contractor licensing of subject inventions.* To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(l) *Communications.* The Contractor shall direct any notification, disclosure or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity.

(m) *Reports—(1) Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period under which a subject invention was reported, or a statement that no such subject inventions under subcontracts were reported during the contract performance period.

(n) *Examination of Records Relating to Subject Inventions—(1) Contractor compliance.* Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including

laboratory notebooks), records, documents, and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor compliance with any requirement of this clause.

(2) *Unreported inventions.* If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, including exceptional circumstance subject inventions, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) *Power of inspection.* With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(o) *Facilities License.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or product manufactured at the facility.

(1) To practice or have practiced by or for the Government at the facility; and

(2) To transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(p) *Atomic Energy*—(1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or

conceived in the course of or under this contract.

(2) *Patent agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of paragraph (p)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(q) *Classified inventions*—(1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) *Inclusion of clause in subcontracts.* The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(r) *Patent functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(s) *Educational awards subject to 35 U.S.C. 212.* The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) which is subject to treaties or international agreements as set forth in paragraph (b)(3) of this clause or agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(t) *U.S. Competitiveness.* (1) Consistent with 48 CFR 970.5227–3(f) U.S. Industrial Competitiveness, for all subject inventions under the S&E DEC, the Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., alternative binding commitments to provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. In the event that the Contractor or other such entity receiving rights in the Subject Invention undergoes a change in ownership amounting to a controlling interest, the Contractor or other such entity receiving rights shall ensure continual compliance with the requirements of this paragraph (t)(1) and shall inform DOE, in writing, of the change in ownership within six months of the change. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph (t)(1). The Contractor will include this paragraph (t) in all subawards/contracts, regardless of tier, for experimental, developmental or research work.

(2) The requirements, rights and administration of paragraph (t)(1) of this clause are further clarified as follows:

(i) *Waivers.* The Contractor (or any entity subject to this paragraph) may request a waiver or modification of paragraph (t)(1) of this clause. Such waivers or modifications may be granted when DOE determines that:

(A) The Contractor (or any entity subject to paragraph (t)(1) of this clause) has demonstrated, with quantifiable data, that manufacturing in the United States is not commercially feasible; and

(B) A waiver or modification would best serve the interests of the United States and the general public.

(ii) *Final determination of breach of paragraph (t)(1) of this clause.* If DOE determines the Contractor is in breach of paragraph (t)(1) of this clause, the Department may issue a final written determination of such breach. If such determination includes a demand for title to the subject inventions under the award, the demand for title will cause an immediate conveyance and

assignment of all rights to all subject inventions subject to the breach to the United States Government, including all pending U.S. and foreign patent applications and all U.S. and foreign patents that cover any subject invention, without compensation. Any such final determination shall be signed by the cognizant DOE Contracting Officer with the concurrence of the Assistant General Counsel for Technology Transfer & Intellectual Property. Advanced notice will be provided for comment to the Contractor before any final written determination by DOE is issued.

(iii) Pursuant to Contractor's agreement in paragraph (t)(1) of this clause to not license, assign or otherwise transfer rights to subject inventions at any tier unless the entity agrees to paragraph (t)(1) of this clause: any such license, assignment, or other transfer of right to any subject invention developed under the award shall contain paragraph (t)(1) of this clause suitably modified to properly identify the parties. If a licensee, assignee, or other transferee of rights to any subject invention is finally determined by DOE in writing to be in breach of paragraph (t)(1) of this clause, the applicable license, assignment or other transfer shall be deemed null and void. Advanced notice will be provided for comment to the non-complying party before any final written determination by DOE is made.

(iv) For clarity, if the forfeiture of title to any subject invention is due to a breach of paragraph (t)(1) of this clause, the Contractor shall not be entitled to any compensation, or to a license to the subject invention including the reserved license in paragraph (e)(1) of this clause, unless DOE grants a license through a separately agreed upon licensing agreement.

(u) *Annual appraisal by Patent Counsel.* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(v) *Unauthorized Access.* The contractor will protect all invention reports, unpublished patent applications and other invention related information from unauthorized access and disclosure using at least commonly available techniques and practices. In the event that the Contractor becomes aware of unauthorized access to invention reports, unpublished patent applications and other invention related information, the Contractor shall notify Patent Counsel within 7 days.

(End of clause)

Alternate 1 Weapons Related Subject Inventions. As prescribed at 970.2703–2(g), insert the following definition in paragraph (a) and add paragraph (b)(7), respectively:

(a) *Definitions—Weapons related subject invention* means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.

(b) *Allocation of Principal Rights—(7) Weapons related subject inventions.* Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have the right to retain title to any weapons related subject inventions.

(End of alternate)

■ 319. Amend section 970.5227–11 by:

- a. Revising the introductory text, clause heading and date, and paragraphs (a), (c)(2) introductory text, (c)(2)(vii), (c)(5), (f)(2), and (f)(3); and
- b. Adding paragraph (o).

The revisions and addition read as follows:

970.5227–11 Patent rights—management and operating contracts, for-profit contractor, no patent waiver.

As prescribed in 970.2702–2(b), insert the following clause:

Patent Rights—Management and Operating Contracts, for-Profit Contractor, No Patent Waiver [December 2024]

(a) *Definitions—Department of Energy (DOE),* as used in this clause, includes the National Nuclear Security Administration (NNSA), and unless otherwise identified or indicated, includes the coordinated efforts of the DOE and NNSA.

DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR part 781.

DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR part 784.

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Patent counsel means DOE Patent Counsel assisting the contracting activity. The Patent Counsel is the first and primary point of contact for activities described in this clause.

Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

* * * * *

(c) * * *

(2) *Subject invention disclosure.* The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after the subject invention is reported to Contractor personnel responsible for patent matters, in accordance with paragraph (c)(1) of this clause, or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event no less than 60 days before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:

* * * * *

(vii) All sources of funding by Budget and Resources (B&R) code. The funding program may require other invention identifiers such as related award numbers or funding opportunity announcement numbers; and

* * * * *

(5) *Contractor procedures for reporting subject inventions to DOE.* The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting

Officer. Whenever possible in this paragraph (c), the Government electronic reporting system (*e.g.*, iEdison or similar system) may be used for reporting and approvals.

* * * * *

(f) * * *

(2) *Inclusion of patent rights clause—non-profit organization or small business firm subcontractors.* Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 37 CFR 401.14 with Alternate I of 48 CFR 952.227–11 Patent Rights—Retention by the Contractor, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202. If the Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies” (S&E DEC) issued 6/7/2021, or any related DEC, is applicable, the Contractor shall use Alternate II of 48 CFR 952.227–11 Patent Rights—Retention by the Contractor.

(3) *Inclusion of patent rights clause—subcontractors other than non-profit organizations and small business firms.* Except for the subcontracts described in paragraph (f)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227–13, suitably modified to identify the parties and any applicable patent waiver granted by DOE Patent Counsel, in any contract for experimental, developmental, demonstration or research work. If the S&E DEC, or any related DEC, is applicable, the Contractor shall use Alternate II of 48 CFR 952.227–13 Patent Rights—Acquisition by the Government.

* * * * *

(o) *Unauthorized Access.* The contractor will protect all invention reports, unpublished patent applications and other invention related information from unauthorized access and disclosure using at least commonly available techniques and practices. In the event that the Contractor becomes aware of unauthorized access to invention reports, unpublished patent applications and other invention related information, the Contractor shall notify Patent Counsel within 7 days.

(End of clause)

■ 320. Section 970.5227–12 is revised to read as follows:

970.5227–12 Patent rights—management and operating contracts, for-profit contractor, patent waiver.

As prescribed in 970.2703–2(c), insert the following clause:

Patent Rights—Management and Operating Contracts, For-Profit Contractor, Patent Waiver [December 2024]

(a) *Definitions—Department of Energy (DOE)*, as used in this clause, includes the National Nuclear Security Administration (NNSA), and unless otherwise identified or indicated, includes the coordinated efforts of the DOE and NNSA.

DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR part 781.

DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR part 784.

Exceptional Circumstance Subject Invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR 401.3(e).

Initial Patent Application means, as to a given Subject Invention, the first provisional or non-provisional U.S. national application for patent as defined in 37 CFR 1.9(a)(2) and (3), respectively, the first international application filed under the Patent Cooperation Treaty as defined in 37 CFR 1.9(b) which designates the United States, or the first application for a Plant Variety Protection certificate, as applicable.

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Patent counsel means DOE Patent Counsel assisting the contracting activity. The Patent Counsel is the first and primary point of contact for activities described in this clause.

Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the

invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112–29.

Subject invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) *Allocation of principal rights—(1) Assignment to the Government.* Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to paragraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

(2) *Advance class waiver of Government rights to the contractor.* DOE may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in paragraph (b)(3) of this clause, paragraph (t) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(3) *Government license.* With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to paragraph (b)(2) or a determination of greater rights pursuant to paragraph (b)(7) of this clause, the Government has a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(4) *Foreign patent rights.* If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in paragraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(5) *Treaties and international agreements.* Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at DOE's Office of International Affairs (international commitments—IEC) (<https://energy.gov/ia/iec-documents>), or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions.

(6) *Exceptional circumstance subject inventions.* Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with paragraph (b)(7) of this clause, the Contractor does not have the right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions in which the Contractor cannot retain title without specific grant of a waiver from DOE:

(A) Uranium enrichment technology;

(B) Storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) National security technologies classified or sensitive under section 148 of the Atomic Energy Act (42 U.S.C. 2168); and

(D) DOE Steel Initiative and Metals Initiative.

(ii) As determined by the DOE, inventions made under any agreement, contract or subcontract related to the exceptional circumstance subject inventions subject to specific terms outlined in those declarations of exceptional circumstance, the Contractor may take title to these inventions consistent with the terms of

this contract. A complete list of declarations of exceptional circumstance, which is maintained by the Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, include but is not limited to the following—

(A) U.S. Advanced Battery Consortium;

(B) Any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI);

(C) Any funding agreement related to Energy Efficiency, Storage, Integration and Related Technologies, Renewable Energy, and Advanced Energy Technologies which is funded by the Office of Energy Efficiency and Renewable Energy (EERE) or the Advanced Research Projects Agency—Energy (ARPA-E);

(D) Solid State Energy Conversion Alliance (SECA), if the Contractor is a participant in the “Core Technology Program”;

(E) Solid State Lighting (SSL) Program, if the Contractor is a participant in the “Core Technology Program.”

(F) Cybersecurity, Energy Security, and Emergency Response;

(G) Quantum Information Science Technologies; and

(H) Domestic Manufacture of DOE Science and Energy Technologies (S&E DEC).

(iii) Inventions subject to “Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies” (S&E DEC) issued 6/7/2021, including as applied through DOE policy, must comply with the requirements of paragraph (t) of this clause to the maximum extent authorized by the S&E DEC unless otherwise directed by DOE Patent Counsel or the funding source (*e.g.* Work Authorization or Annual Operating Plan). Notwithstanding paragraph (b)(7) of this clause, inventions subject to the S&E DEC may continue to be retained by the Contractor (subject to the requirements of paragraph (t) of this clause) without a request for greater rights, unless subject to another Determination of Exceptional Circumstances.

(iv) Exceptional circumstances subject inventions are as set forth in the applicable patent waiver. In addition, DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of

defining DOE exceptional circumstance subject inventions.

(7) *Contractor request for greater rights.* The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE pursuant to paragraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in paragraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(8) *Contractor employee-inventor rights.* If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may grant or refuse to grant such a request by the Contractor employee-inventor.

(9) *Government assignment of rights in Government employees' subject inventions.* If a DOE employee is a joint inventor of a subject invention to which the Contractor has rights, DOE may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE employee to the Contractor, consistent with 48 CFR 27.304–1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in paragraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed

appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE employee.

(c) *Subject invention disclosure, election of title, and filing of patent application by Contractor*—(1) *Subject invention disclosure.* The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event no less than 60 days before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written or electronic report and shall include:

(i) The contract number under which the subject invention was made;

(ii) The inventor(s) of the subject invention;

(iii) A description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;

(iv) The date and identification of any publication, on sale or public use of the invention;

(v) The date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;

(vi) A statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;

(vii) All sources of funding by Budget and Resources (B&R) code. The funding program may require other invention identifiers such as related award numbers or funding opportunity announcement numbers; and

(viii) The identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Strategic Partnership Projects agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph

are deemed made in the manner specified in sections (a)(1) and (2) of 42 U.S.C. 5908.

(2) *Publication after disclosure.* After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement. Notwithstanding the above, inventions subject to the S&E DEC do not require approval from Patent Counsel prior to any release or publication of information.

(3) *Election by the Contractor under an advance class waiver.* If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with paragraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE within two (2) years of the date of the disclosure of the subject invention to DOE, in accordance with paragraph (c)(1) of this clause. The notification shall identify the advance class waiver, state the countries, including the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the statutory period under 35 U.S.C. 102(b), the period for election may be shortened by DOE to a date that is no more than sixty (60) days prior to the end of the statutory period.

(4) *Filing of patent applications by the Contractor under an advance class waiver.* If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to paragraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the subject invention or prior to

the end of any statutory period, whichever occurs first. Any patent applications filed by the Contractor in foreign countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy Order, within six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.

(5) *Submission of patent information and documents.* If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:

(i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);

(ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and

(iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(6) *Contractor's request for an extension of time.* Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under paragraphs (c)(1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE.

(7) *Duplication and disclosure of documents.* The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR part 40.

(8) *Reporting to DOE and Approvals.* Whenever possible in this paragraph (c), the Government electronic reporting system (e.g., iEdison or similar system) may be used for reporting and approvals.

(d) *Conditions when the Government may obtain title notwithstanding an advance class waiver*—(1) *Return of title to a subject invention.* If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention, including an exceptional circumstance subject invention, to which the Contractor retained title or rights under paragraph (b)(2) or (7) of this clause, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title

or rights from the Contractor, at DOE's sole discretion.

(2) *Failure to disclose or elect to retain title.* Title vests in DOE and DOE may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in paragraphs (c)(1) and (3) of this clause.

(3) *Failure to file domestic or foreign patent applications.* In those countries in which the Contractor fails to file a patent application within the times specified in paragraph (c)(4) of this clause, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; provided, however, that if the Contractor has filed a patent application in any country after the times specified in paragraph (c)(4) of this clause, but prior to its receipt of DOE's written request for title, the Contractor continues to retain title in that country.

(4) *Discontinuation of patent protection by the Contractor.* If the Contractor decides to not file a non-provisional application, or to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE.

(5) *Termination of advance class waiver.* DOE may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE, if the advance class waiver granted under paragraph (b)(2) of this clause is terminated under paragraph (v) of this clause.

(6) Upon a breach of paragraph (t) of this clause.

(e) *Minimum rights of the Contractor*—(1) *Request for a Contractor license.* Except for subject inventions that the Contractor fails to disclose within the time periods specified at paragraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the

Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

(2) *Transfer of a Contractor license.* Contractor must obtain DOE approval of any transfer of the Contractor's license in a subject invention, and DOE may determine that the Contractor's license is non-transferrable, on a case-by-case basis.

(3) *Revocation or modification of a Contractor license.* DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(4) *Notice of revocation or modification of a Contractor license.* Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations.

(f) *Contractor action to protect the Government's interest*—(1) *Execution and delivery of title or license instruments.* The Contractor agrees to execute or have executed, and to deliver promptly to DOE all instruments necessary to accomplish the following actions:

(i) Establish or confirm the Government's rights throughout the

world in subject inventions to which the Contractor elects to retain title;

(ii) Convey title in a subject invention to DOE pursuant to paragraph (b)(5) and paragraph (d) of this clause; or

(iii) Enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.

(2) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) *Contractor procedures for reporting subject inventions to DOE.* The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.

(4) *Notification of discontinuation of patent protection.* With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than 60 days before the expiration of the response period for any action required by the corresponding patent office.

(5) *Notification of Government rights.* With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, "This invention was made with

Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention.”

(6) *Avoidance of royalty charges.* If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.

(7) *DOE approval of assignment of rights.* Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE.

(8) *Small business firm licensees.* The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.

(9) *Contractor licensing of subject inventions.* To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(g) *Subcontracts—(1) Subcontractor subject inventions.* The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) *Inclusion of patent rights clause—non-profit organization or small business firm subcontractors.* Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 37 CFR 401.14, with Alternate I of 48 CFR 952.227–11 Patent Rights—Retention by the Contractor, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or

research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and paragraph (b)(6) of this clause. If the S&E DEC, or any related DEC, is applicable (see paragraph (b)(6)(iii) of this clause), the Contractor shall use Alternate II of 48 CFR 952.227–11 Patent Rights—Retention by the Contractor.

(3) *Inclusion of patent rights clause—subcontractors other than non-profit organizations or small business firms.* Except for the subcontracts described in paragraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227–13, suitably modified to identify the parties and any applicable patent waiver granted by DOE Patent Counsel, in any contract for experimental, developmental, demonstration or research work. If the S&E DEC, or any related DEC, is applicable (see paragraph (b)(6)(iii) of this clause), the Contractor shall use Alternate II of 48 CFR 952.227–13 Patent Rights—Acquisition by the Government.

(4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such refusal and including relevant information for expediting disposition of the matter; and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) *Notification of award of subcontract.* Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the

Contractor shall furnish a copy of a subcontract.

(7) *Identification of subcontractor subject inventions.* If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.

(h) *Reporting on utilization of subject inventions.* Upon request by DOE, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its licensees or assignees to obtain utilization of the subject invention. In addition, the Contractor shall provide data to DOE for the annual data call for the Department of Commerce report that included the number of patent applications filed, the number of patents issued, licensing activity, gross royalties received by the Contractor, and other data and information reasonably specified by DOE. Upon request by DOE, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE agrees not to disclose such information to persons outside the Government, to the extent permitted by law.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, DOE may waive the requirement for such an agreement upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-In rights.* With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE may, in accordance with the procedures in the DOE patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself under the patent waiver.

(k) *Communications.* The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.

(l) *Reports.*—(1) *Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of paragraphs (f)(3) and (4) of this clause.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(m) *Facilities License.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or

embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility:

(1) To practice or have practiced by or for the Government at the facility; and

(2) To transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(n) *Atomic energy.*—(1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) *Patent agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of paragraph (o)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(o) *Classified inventions.*—(1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) *Inclusion of clause in subcontracts.* The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(p) *Records relating to inventions.*—(1) *Contractor compliance.* Until the expiration of three (3) years after final

payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.

(2) *Unreported inventions.* If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) *Power of inspection.* With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(q) *Patent functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(r) *Educational awards subject to 35 U.S.C. 212.* The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task:

(1) Related to exceptional circumstance technology; or

(2) Any person who is subject to treaties or international agreements as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(s) *Annual appraisal by Patent Counsel.* Patent Counsel may conduct

an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(t) *U.S. Competitiveness.* (1) Consistent with 48 CFR 970.5227–3(f) U.S. Industrial Competitiveness, for all subject inventions under the S&E DEC, the Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., alternative binding commitments to provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. In the event that the Contractor or other such entity receiving rights in the Subject Invention undergoes a change in ownership amounting to a controlling interest, the Contractor or other such entity receiving rights shall ensure continual compliance with the requirements of this paragraph (t)(1) and shall inform DOE, in writing, of the change in ownership within six months of the change. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph (t)(1). The Contractor will include this paragraph (t) in all subawards/contracts, regardless of tier, for experimental, developmental or research work.

(2) The requirements, rights and administration of paragraph (t)(1) of this clause are further clarified as follows:

(i) *Waivers.* The Contractor (or any entity subject to this paragraph) may request a waiver or modification of paragraph (t)(1) of this clause. Such waivers or modifications may be granted when DOE determines that (A) the Contractor (or any entity subject to paragraph (t)(1) of this clause) has demonstrated, with quantifiable data, that manufacturing in the United States is not commercially feasible and (B) a waiver or modification would best serve the interests of the United States and the general public.

(ii) *Final determination of breach of paragraph (t)(1) of this clause.* If DOE determines the Contractor is in breach of paragraph (t)(1) of this clause, the Department may issue a final written determination of such breach. If such

determination includes a demand for title to the subject inventions under the award, the demand for title will cause an immediate conveyance and assignment of all rights to all subject inventions subject to the breach to the United States Government, including all pending U.S. and foreign patent applications and all U.S. and foreign patents that cover any subject invention, without compensation. Any such final determination shall be signed by the cognizant DOE Contracting Officer with the concurrence of the Assistant General Counsel for Technology Transfer & Intellectual Property. Advanced notice will be provided for comment to the Contractor before any final written determination by DOE is issued.

(iii) *License, Assignment, or Transfer.* Pursuant to Contractor's agreement in paragraph (t)(1) of this clause to not license, assign or otherwise transfer rights to subject inventions at any tier unless the entity agrees to paragraph (t)(1) of this clause: any such license, assignment, or other transfer of right to any subject invention developed under the award shall contain paragraph (t)(1) of this clause suitably modified to properly identify the parties. If a licensee, assignee, or other transferee of rights to any subject invention is finally determined by DOE in writing to be in breach of paragraph (t)(1) of this clause, the applicable license, assignment or other transfer shall be deemed null and void. Advanced notice will be provided for comment to the non-complying party before any final written determination by DOE is made.

(iv) *Compensation.* For clarity, if the forfeiture of title to any subject invention is due to a breach of paragraph (t)(1) of this clause, the Contractor shall not be entitled to any compensation, or to a license to the subject invention including the reserved license in paragraph (e)(1) of this clause, unless DOE grants a license through a separately agreed upon licensing agreement.

(u) *Publication.* The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent rights of DOE or the Contractor. At the discretion of the Patent Counsel, authority to review publications prior to release may be delegated to the Contractor.

(v) *Termination of contractor's advance class waiver.* If a request by the Contractor for an advance class waiver pursuant to paragraph (b)(2) of this

clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

(w) *Unauthorized Access.* The contractor will protect all invention reports, unpublished patent applications and other invention related information from unauthorized access and disclosure using at least commonly available techniques and practices. In the event that the Contractor becomes aware of unauthorized access to invention reports, unpublished patent applications and other invention related information, the Contractor shall notify Patent Counsel within 7 days.

(End of clause)

Alternate 1 Weapons Related Subject Inventions. As prescribed at 970.2703–2(g), insert the following definition in paragraph (a) and add paragraph (b)(10) respectively:

(a) *Definitions—Weapons Related Subject Invention* means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.

(b) *Allocation of Principal Rights.* (10) *Weapons related subject inventions.* Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.

(End of alternate)

■ 321. Section 970.5232–1 is amended by revising the introductory text to read as follows:

970.5232–1 Reduction or suspension of advance, partial, or progress payments upon finding of substantial evidence of fraud.

As prescribed in 970.3200–11, insert the following clause:

* * * * *

■ 322. Section 970.5232–2 is revised to read as follows:

970.5232–2 Payments and advances.

As prescribed in 970.3270(a)(1), insert the following clause:

Payments and Advances [December 2024]

(a) *Installments of fixed-fee.* The fixed-fee payable, if applicable, under this contract shall become due and payable in periodic installments in accordance with a schedule determined by the Contracting Officer. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the Contracting Officer.

(b) *Payments on Account of Allowable Costs.* The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government funds.

(c) *Timing of payments.* Funds for payments of allowable costs, including payments for pension plan contributions, shall be drawn from the special financial institution account when those payments are made, not when the costs are accrued.

(d) *Special financial institution account—use.* All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution

account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix—“_____”. The contractor will follow current procedures and requirements for establishing and managing the special financial institution account that are stated in the Department’s Financial Management Handbook and relevant Department of Treasury rules.

(e) *Use of the special financial institution account for unallowable costs.* Government funds in the special financial institution account shall be used only for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer.

(f) *Title to funds advanced.* Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

(g) *Financial settlement.* The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after—

(1) Compliance by the Contractor with DOE’s patent clearance requirements; and

(2) The furnishing by the Contractor of—

(i) An assignment of the Contractor’s rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled “Property”; and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor’s right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see Contract Clause, 48 CFR 970.5228–1, Insurance—Litigation and Claims);

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

(3) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(i) Any claim which the Government may have against the Contractor in connection with this contract; and

(ii) Deductions due under the terms of this contract and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due, and any balance shall be returned to the Government forthwith.

(h) *Claims.* Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.

(i) *Discounts.* The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.

(j) *Collections.* All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor’s fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted

for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.

(k) *Direct payment of charges.* The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor.

(l) *Determining allowable costs.* Regardless of contractor type, the Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

(End of clause)

Alternate I (DEC 2000). As prescribed in 970.3270(a)(1)(i), if a separate fixed-fee is provided for a separate item of work, paragraph (a) of the basic clause should be modified to permit payment of the entire fixed-fee upon completion of that item.

Alternate II [December 2024]. As prescribed in 970.3270(a)(1)(ii), when total available fee provisions are used, replace paragraph (a) of the basic clause with the following paragraph (a):

(a) *Payment of Total available fee: Base Fee and Performance Fee.* (1) The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee

amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the contracting officer.

(2) *Provisional fee.* Additionally, if the Contracting Officer authorizes provisional payment of fee and for only as long as the Contracting Officer authorizes it, the Contractor may withdraw from funds advanced on the last working day of each month a provisional fee equal to 6 percent of the annual total available fee amount. The Contracting Officer may for any reason withdraw his/her authorization allowing the Contractor's withdrawal of provisional fee if at any time in his/her judgement the Contractor will not earn the provisional fee. The Contracting Officer's decision to authorize the Contractor's withdrawal of provisional fee or to withdraw such authorization is solely within the Contracting Officer's discretion. Following the Government's determination of total available fee amount earned, the Contractor may withdraw from funds advanced the amount by which earned fee exceeds provisional fee; and must immediately return to funds advanced the amount by which provisional fee exceeds earned fee.

(End of alternate)

Alternate III [December 2024]. As prescribed in 970.3270(a)(1)(iii), the following paragraph (k) shall be included in management and operating contracts with integrated accounting systems:

(k) *Review and approval of costs incurred.* The Contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 308), as amended, and the False Claims Act (31 U.S.C. 3279, *et seq.*). DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the Contractor in accordance with DOE accounting policies, but will not relieve the Contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

(End of alternate)

Alternate IV [December 2024]. As prescribed in 970.3270(a)(1)(iv), the following paragraph (k) shall be included in management and operating contracts without integrated accounting systems:

(k) *Certification and penalties.* The Contractor shall prepare and submit a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures incurred for the period covered by the Cost Statement. It is anticipated that this will be an annual submission unless otherwise agreed to by the Contracting Officer. The Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 308), as amended.

(End of alternate)

■ 323. Amend section 970.5232–3 by revising the clause date and paragraphs (a), (c), and (h)(1) to read as follows:

970.5232–3 Accounts, records, and inspection.

* * * * *

Accounts, Records, and Inspection [December 2024]

(a) *Accounts.* The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting; all allowable costs; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

* * * * *

(c) *Audit of subcontractors' incurred costs.* If the subcontractor's incurred costs are a factor in determining the amount the Contractor pays the subcontractor and submits to the Government for reimbursement, the Contractor shall: perform a sufficient amount of audit work (that the Contractor's auditor or the Contracting Officer agrees is sufficient) of its subcontractor's incurred costs to provide reasonable assurance the costs are allowable; or arrange for an audit by the cognizant government audit agency

through the Contracting Officer of its subcontractor's incurred costs.

* * * * *

(h) * * *

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's or subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any employee regarding such transactions.

* * * * *

■ 324. Section 970.5232–5 is amended by revising the introductory text to read as follows:

970.5232–5 Liability with respect to cost accounting standards.

As prescribed in 970.3270(a)(4), insert the following clause:

* * * * *

■ 325. Section 970.5232–6 is amended by revising the introductory text to read as follows:

970.5232–6 Strategic partnership project funding authorization.

As prescribed in 970.3270(a)(5), insert the following clause:

* * * * *

■ 326. Section 970.5232–7 is revised to read as follows:

970.5232–7 Financial management system.

As prescribed in 970.3270(b)(1), insert the following clause:

Financial Management System
[December 2024]

(a) The Contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements. In addition, the Contractor shall maintain and administer a financial management system that is in accordance with Generally Accepted Accounting Principles (GAAP) for Federal entities, as defined by the Federal Accounting Standards Advisory Board and implemented by the DOE Financial Management Handbook and other implementing policies. The financial system will also permit the proper allocation of costs to separately funded activities consistent with Cost Accounting Standards (CAS), as defined by 48 CFR part 9900 and any implementing DOE policies and ensures that accountability for the assets can be maintained.

(b) The Contractor shall submit to the Contracting Officer for written approval an annual plan for new financial

management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The Contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial changes to the plan and, as requested by the Contracting Officer, shall submit any such changes to the Contracting Officer for written approval before implementation.

(End of clause)

■ 327. Amend section 970.5235–1 by revising the clause date and paragraphs (c) and (d) to read as follows:

970.5235–1 Federally funded research and development center sponsoring agreement.

* * * * *

Federally Funded Research and Development Center Sponsoring Agreement [December 2024]

* * * * *

(c) Unless otherwise provided by the contract, the Contractor may accept work from a nonsponsor (as defined in 48 CFR 35.017) in accordance with the requirements and limitations of 48 CFR 970.3501, and the clause at 48 CFR 970.5217–1, Strategic Partnership Projects Program. Only the Contracting Officer can place work on the contract; and obligate the Government to reimburse the contractor for the work.

(d) As an FFRDC, the Contractor shall not use its privileged information or access to government facilities to compete with the private sector. Specific guidance on restricted activities is contained in DOE Order 481.1, Strategic Partnership Projects (Non-Department of Energy Funded Work)), or its successor version.

* * * * *

■ 328. Amend section 970.5242–1 by revising the introductory text to read as follows:

970.5242–1 Penalties for unallowable costs.

As prescribed in 970.4207–370, insert the following clause:

* * * * *

■ 329. Amend section 970.5244–1 by revising the clause date and paragraphs (a), (c), (e), (f), (h)(1), (l), (w), and (x) to read as follows:

970.5244–1 Contractor purchasing system.

* * * * *

Contractor Purchasing System
[December 2024]

(a) *General.* The Contractor shall develop, implement, and maintain formal policies, practices, and

procedures to be used in the award of subcontracts consistent with this clause and 48 CFR subpart 970.44, as well as 48 CFR subpart 44.3. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401–1. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's obligations include, among other things, retaining documentation to justify the cost on any flexibly priced subcontract or any subcontract with a flexibly priced element. DOE reserves the right at any time to require that the Contractor submit for approval any or all subcontracts or purchases under this contract. The Contractor shall not purchase any item or service, the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the Contractor's purchasing function, including the Contractor's compliance with its approved system and methods. Such appraisals shall be performed against the criteria and measures set forth in 48 CFR part 44, subpart 44.3. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

* * * * *

(c) *Acquisition of real property.* Real estate or real property interests shall be acquired in accordance with 48 CFR part 917, subpart 917.74.

* * * * *

(e) *Audit of subcontractors.* (1) The Contractor shall provide for—

(i) Periodic post-award audit—or a sufficient amount of audit work (that the Contractor's auditor or the Contracting Officer agrees is sufficient)—to provide reasonable assurance that all claimed subcontract costs are allowable for: flexibly priced subcontracts at all tiers; and the flexibly priced elements in any subcontracts at all tiers (“flexibly priced” subcontracts and elements include Cost-Reimbursement subcontracts, Time-and-Materials subcontracts, cost-reimbursement elements in Fixed-Priced contracts, etc.); and

(ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely joint involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability. In no case, however, shall the Contractor's subcontract audit arrangements preclude the Contracting Officer's determination of the allowability or unallowability of the subcontract costs the Contractor claims for reimbursement.

(3) Where audits of subcontractors at any tier are required, the Contractor shall consult with the DOE Contracting Officer on the best approach for obtaining an audit; this may involve employing external auditors. The Contractor shall interact with the cognizant Federal agency in a manner appropriate to the magnitude and nature of the subcontracted work. In no case, however, shall subcontractor auditing arrangements preclude determination by the DOE Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 31.205-26(e).

(f) *Bonds and insurance.* (1) The Contractor shall require performance bonds in amounts as set forth in 48 CFR 28.102-2(b) for all fixed-priced and unit-priced construction subcontracts in excess of \$150,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$150,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than \$35,000, but not greater than \$150,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular

consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

* * * * *

(h) * * *

(1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted that is expected to exceed the simplified acquisition threshold.

* * * * *

(l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Head of the Contracting Activity, in consultation with local legal counsel.

* * * * *

(w) *Unclassified controlled nuclear information.* Subcontracts involving unclassified controlled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) *Subcontract flowdown requirements.* In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:

(1) Construction Wage Rate requirements, formerly known as Davis-Bacon, clauses prescribed in 48 CFR 22.407.

(2) Foreign Travel clause prescribed in 48 CFR 952.247-70.

(3) Counterintelligence clause prescribed in 48 CFR 904.404(d)(7).

(4) Service Contract Labor Standards, formerly known as Service Contract Act, clauses prescribed in 48 CFR 22.1006.

(5) State and local taxes clause prescribed in 48 CFR 970.2904-1.

(6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-201.

(7) Workforce Restructuring and Displaced Employee Hiring Preference clause prescribed in 48 CFR 970.2672-3.

(8) Service Contract Reporting clause prescribed in 48 CFR 4.1705.

(9) Contract Work Hours and Safety Standards—Overtime Compensation as prescribed in 48 CFR 22.305.

(10) Paid Sick leave under Executive Order 13706 as prescribed in 48 CFR 22.2110.

(11) Collective Bargaining Agreements Management and Operating Contracts as prescribed in 48 CFR 970.2201-130.

(12) Workplace Substance Abuse Programs at DOE Sites as prescribed in 48 CFR 970.2605-4.

(13) Contracts for Materials, Supplies, Articles, and Equipment clause prescribed in 48 CFR 22.610.

* * * * *

■ 330. Section 970.5245-1 is revised to read as follows:

970.5245-1 Property.

As prescribed in 970.4501-2, insert the following clause:

Property [December 2024]

(a) *Application of regulations.* The Contractor shall comply with the applicable requirements in 41 CFR chapters 101, 102 and 109 in addition to this clause.

(b) *Furnishing of Government property.* The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(c) *Title to property.* Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon:

(1) Issuance for use of such property in the performance of this contract; or

(2) Commencement of processing or use of such property in the performance of this contract; or

(3) Reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or

become a fixture or lose its identity as personal property by reason of affixation to any realty.

(d) *Identification.* To the extent directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

(e) *Disposition.* The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all government property which had come into the possession or custody of the Contractor under this contract.

(f) *Protection of government property—management of high-risk property and classified materials.* (1) The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Contracting Officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Contractor's possession or custody.

(2) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management Regulations (41 CFR chapter 101), the Department of Energy (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the

unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(g) *Risk of loss of Government property.* (1)(i) The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following—

(A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;

(B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property and classified materials; or

(C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with 41 CFR chapter 109.

(ii) If, after an initial review of the facts, the Contracting Officer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for the loss, destruction, or damage.

(2) In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with this clause, the Contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of

destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in this clause is not allowable.

(h) *Steps to be taken in event of loss.* In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor—

(1) Shall immediately inform the Contracting Officer of the occasion and extent thereof;

(2) Shall take all reasonable steps to protect the property remaining; and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contracting Officer. The Contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(i) *Government property for Government use only.* Government property shall be used only for the performance of this contract.

(j) *Property Management—(1) Property Management System.* (i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The Contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the Contracting Officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for—

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) [Reserved]

(C) Full integration with the Contractor's other administrative and financial systems; and

(D) A method for continuously improving property management

practices through the identification of best practices established by “best in class” performers.

(iii) Approval of the Contractor’s property management system shall be contingent upon the completion of the baseline inventory as provided in paragraph (i)(2) of this clause.

(2) *Property Inventory.* (i) Unless otherwise directed by the Contracting Officer, the Contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the Contractor is succeeding another contractor in the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as

well as information for closeout of the predecessor contract.

(k) The term “contractor’s managerial personnel” as used in this clause means the Contractor’s directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor’s business; or

(2) All or substantially all of the Contractor’s operations at any one facility or separate location to which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract; or

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or

(5) A separate and discrete major task or operation in connection with the performance of this contract.

(l) The Contractor shall include this clause in all cost reimbursable subcontracts.

(End of clause)

Alternate I [December 2024]. As prescribed in 970.4501–2, when the award is to a nonprofit contractor, replace paragraph (k) of the basic clause with the following paragraph (k):

(k) The term “contractor’s managerial personnel” as used in this clause means the Contractor’s directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of—

(1) The Contractor’s business; or

(2) The Contractor’s operations at any one facility or separate location at which this contract is being performed; or

(3) The Contractor’s Government property system and/or a Major System Project as defined in DOE Order 413.3B, or successor version (Version in effect on effective date of contract).

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Part III

Federal Communications Commission

47 CFR Part 20

Achieving 100% Wireless Handset Model Hearing Aid Compatibility; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 23–388; FCC 24–112; FR ID 257122]

Achieving 100% Wireless Handset Model Hearing Aid Compatibility

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (“Commission”) adopts a 100% hearing aid compatibility requirement that applies to all future wireless handset models offered for sale or use in the United States and implementation provisions related to this 100% requirement, including a Bluetooth coupling requirement.

DATES: Effective December 13, 2024, except for amendatory instructions 3 and 4 which are delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective dates of these amendments. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 3, 2021.

FOR FURTHER INFORMATION CONTACT: Eli Johnson, Eli.Johnson@fcc.gov, Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, (202) 418–1395.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Report and Order, in WT Docket No. 23–388; FCC 24–112, adopted October 17, 2024, and released on October 18, 2024. The full text of the document is available for download at <https://docs.fcc.gov/public/attachments/FCC-24-112A1.pdf>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format, etc.), and reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) may be requested by sending an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530. The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, 45 L Street NE, Room 1.150, Washington, DC 20554, (202) 418–0270.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as

amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this final rule.

Paperwork Reduction Act. The requirements in revised § 20.19(b)(3)(iii), (f), (h), and (i)(4) and (5) constitute new or modified collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. They will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. This document will be submitted to OMB for review under section 3507(d) of the PRA. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes more businesses with fewer than 25 employees, in the FRFA.

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will include a copy of the Report and Order in a report sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Synopsis:

I. Introduction

In this final rule, we advance our goal of ensuring that all Americans can access communications services on an equal basis by fulfilling the Commission’s longstanding commitment to establish a 100% hearing aid compatibility requirement that applies to all future wireless handset models offered for sale or use in the United States. By our actions in this final rule, 48 million Americans with hearing loss will be able to choose

among the same handset models that are available to consumers without hearing loss. No longer will they be limited in their choice of technologies, features, and prices available in the handset model marketplace. Further, our rules will encourage handset manufacturers to move away from proprietary Bluetooth coupling standards and ensure more universal connectivity between handset models and hearing aids, including over-the-counter hearing aids. In order to ensure that older hearing aid compatible handset models, which tend to be lower priced, continue to be available for consumers to purchase, we provide for a phase-out period while these handset models are gradually replaced with new handset models that meet the latest certification standards. In addition, we strengthen wireless handset accessibility to encompass not only compatibility that benefits consumers who use hearing aids, but also a 100% volume control requirement for new handsets that benefits all consumers with hearing loss. Finally, we adopt revised labeling and website posting requirements that allow consumers to have access to the information that they need to make informed handset model purchasing decisions.

The revisions that we adopt to our hearing aid compatibility rules are based in part on the collaborative efforts of members of the Hearing Aid Compatibility Task Force (HAC Task Force), who worked together over a period of years to reach a consensus on how the Commission could achieve its long held goal of a 100% hearing aid compatibility benchmark for all handset models offered for sale or use in the United States. The HAC Task Force, an independent organization composed of groups who represent the interests of people with hearing loss, wireless service providers, and wireless handset manufacturers, was formed for the purpose of reporting to the Commission on whether requiring 100% of all handset models to be certified as hearing aid-compatible is an achievable objective. The HAC Task Force’s Final Report represents consensus recommendations for how the Commission can achieve this objective.

We are committed to continuing to ensure that our wireless hearing aid compatibility provisions evolve to keep pace with technological advances in the ways handset models pair with hearing aids, and we will continue to monitor and update our hearing aid compatibility rules as circumstances warrant.

The ANSI C63.19 standards, developed by IEEE, are referenced in the

amendatory text (§ 20.19) of this document; they were previously approved for incorporation by reference in that section.

II. Summary

Based on the HAC Task Force's recommendations and the record in this proceeding, we determine that requiring 100% of all handset models to be certified as hearing aid-compatible is consistent with section 710(e) of the Communications Act of 1934, amended. As part of this determination, we adopt the forward-looking definition of hearing aid compatibility that the HAC Task Force recommends, and we incorporate this definition into our rules. In order to keep pace with consumer pairing preferences, we adopt a coupling requirement based on Bluetooth technology standards that meet the requirements of our expanded definition of hearing aid compatibility and certain functional requirements. Further, as we proposed in the *100% HAC Notice of Proposed Rulemaking (100% HAC NPRM)*, 89 FR 5152 (January 26, 2024), we require handset manufacturers to transition to our 100% hearing aid compatibility requirement within a 24-month transition period and nationwide service providers to do so within a 30-month transition period. We will allow non-nationwide service providers to transition to our 100% hearing aid compatibility requirement over a 42-month transition period. These robust transition periods will ensure that consumers with hearing loss promptly receive the benefits of our 100% hearing aid compatibility requirement.

After the applicable 100% hearing aid compatibility transition period ends, all handset models offered for sale or use in the United States must be hearing aid-compatible. Any non-hearing aid compatible handset models cannot obtain a certification under 47 CFR part 2, subpart J, and handset manufacturers and service providers must remove all non-hearing aid-compatible handset models from their portfolios without exceptions. Further, after passage of the relevant transition period, handset manufacturers and service providers must ensure that each handset model in their portfolios has at least two ways to pair with hearing aids. Specifically, after the relevant transition period is completed, 100% of all handset models in a portfolio must meet acoustic coupling standards and 85% of these same handset models must also meet telecoil coupling standards. The remaining 15% of these handset models must meet our new Bluetooth coupling requirement, along with acoustic

standards; these handsets may also contain telecoils, but they are not required to include them.

We also adopt a 48-month transition period to a non-proprietary Bluetooth coupling requirement. During this 48-month transition period, handset manufacturers and service providers may meet our 15% Bluetooth coupling requirement using either proprietary or non-proprietary Bluetooth coupling technology. Once the 48-month transition period expires, only non-proprietary Bluetooth coupling technology that meets our new definition of hearing aid compatibility and specified Bluetooth functionality requirements will satisfy our 15% Bluetooth coupling requirement. The non-proprietary Bluetooth coupling technology must be completely independent of proprietary standards and could be met, for example, by using such standards as Bluetooth Low Energy Audio (Bluetooth LE Audio) and the related Bluetooth Hearing Access Profile (Bluetooth HAP). Our approach will benefit consumers by ensuring more universal connectivity between handset models and hearing aids, including over-the-counter hearing aids, and will help to address the issue of certain handset models only being able to pair with certain hearing aids.

After the relevant 100% hearing aid compatibility transition period ends, any new handset model that handset manufacturers and service providers add to their handset model portfolios must meet applicable volume control requirements, as well as the other technical requirements of the 2019 ANSI Standard that is currently used for certification purposes. The volume control requirement may be met using the volume control waiver standard adopted by the Wireless Telecommunications Bureau (WTB) in September 2023 ("*HAC Waiver Order*"), 88 FR 70891 (October 13, 2023), as long as it remains in effect. This decision to impose a 100% volume control benchmark on handset models added to handset model portfolios after the applicable 100% hearing aid compatibility transition period ends allows handset manufacturers and service providers to continue to offer handset models certified under the 2011 ANSI Standard or older standards. Handset manufacturers and service providers will be able to count as hearing aid-compatible those handset models certified under the 2011 ANSI Standard or older standards for handset model deployment purposes as long as those handset models were being offered for sale or use in the United States prior to the expiration of the

relevant 100% hearing aid compatibility transition period. Rather than requiring handset models certified under the 2011 ANSI Standard or older standards to be removed from handset model portfolios, these handset models will be gradually replaced with new handset models that meet 2019 ANSI Standard requirements, including volume control requirements, through the typical handset model product cycle. This approach will ensure that older hearing aid compatible handset models, which tend to be lower priced, continue to be available for consumers to consider for purchase during the remaining product cycle.

In addition to the above handset model requirements, we adopt other updates and revisions to our wireless hearing aid compatibility rules that are consistent with our decision to adopt a 100% hearing aid compatibility requirement and the related handset model deployment benchmarks and transition periods. These changes include:

- After the expiration of the handset manufacturer 100% hearing aid compatibility transition period, handset manufacturers must ensure that all new handset models by default come out-of-the-box with acoustic coupling and volume control certification requirements fully turned on. We will allow, however, secondary settings to turn on the handset model's telecoil or Bluetooth coupling functions, depending on the secondary capability included in a particular handset model.

- We revise our handset model external printed package label requirements and our related requirements concerning information that must be included within the handset model's packaging in the form of either a printed insert or a printed handset manual. We update these requirements to reflect our new coupling standards to ensure that consumers are fully informed about the pairing capabilities of handset models they are considering for purchase.

- We continue to require the use of external printed package labels, but will allow the information that must be included within a handset model's packaging, either in the form of a printed insert or a printed handset manual, to be delivered using digital labeling technology as long as companies choosing this option maintain publicly accessible websites where consumers can easily locate the required information and the information is presented in a straightforward fashion using plain language. Handset manufacturers and service providers choosing this option must provide consumers with both a Quick-

Response (QR) code and the related website address where the required information can be found.

- We determine that in cases where a handset manufacturer or service provider recertifies a handset model using an updated certification standard, the company does not need to assign the handset model a new model number designation, unless the handset model's hardware or software has been physically altered in form, features, or capabilities in order to meet the requirements of the new certification standard.

- As part of our implementation of a 100% hearing aid compatibility requirement, we revise our website posting and record retention requirements to ensure that handset manufacturers and service providers comply with our new standard and to ensure that consumers have access to the information that they need to make informed purchasing decisions.

- After the handset manufacturer's 100% hearing aid compatibility transition period ends, we will eliminate FCC Form 655 that handset manufacturers currently file for reporting purposes and instead require handset manufacturers to annually file FCC Form 855 for compliance purposes. Beginning at the time handset manufacturers start filing FCC Form 855, we will align their compliance filing deadline and reporting period for this form with those used for service providers who will continue to annually file this form, as updated to reflect our new hearing aid compatibility requirements.

- We decline to adopt the HAC Task Force's recommendation that we permit service providers to rely on the information linked to in the Commission's Accessibility Clearinghouse as a legal safe harbor for purposes of meeting handset model deployment benchmarks. We further decline to adopt the HAC Task Force's recommendation that we establish a 90-day shot clock for resolving hearing aid compatibility waiver requests.

- We require handset manufacturers and service providers to post on their publicly accessible websites point-of-contact information that consumers can use to contact knowledgeable company employees with hearing aid compatibility questions about the company's handset models.

- We eliminate the *de minimis* exception in our hearing aid compatibility rules for handset manufacturers and service providers using a three-step process that is consistent with the 100% hearing aid compatibility transition periods.

- We revise the heading of § 20.19 of our rules from "Hearing aid-compatible mobile handsets" to "Hearing loss compatible wireless handsets," or "HLC" for short, in order to ensure that the heading more accurately reflects the scope of the section.

- Finally, we determine that our decision to adopt a 100% hearing aid compatibility requirement is consistent with and furthers our goal to advance digital equity and inclusion for all.

III. Background

Over time, the Commission has progressively increased the deployment benchmarks for hearing aid-compatible wireless handset models. In 2016, the Commission reconfirmed its commitment to pursuing 100% hearing aid compatibility to the extent achievable. The 2016 HAC Order, 81 FR 60625 (September 2, 2016), supported this objective by increasing the number of hearing aid-compatible handset models that handset manufacturers and service providers were required to offer by adopting two new handset model deployment benchmarks and related transition periods. In October 2018, the handset model deployment benchmark for handset manufacturers increased to 66%, and in October 2021 it increased to 85%. Similarly, in April 2019 the handset model deployment benchmark for nationwide service providers increased to 66%, and in April 2022 it increased to 85%. Likewise, in April 2020 the handset model deployment benchmark for non-nationwide service providers increased to 66%, and in April 2023 it increased to 85%. Currently, the generally applicable handset model deployment benchmark is 85% for handset manufacturers and service providers, unless they qualify for *de minimis* status.

In that same order, the Commission established a process for determining whether a 100% hearing aid compatibility requirement is "achievable." The Commission stated that it wanted to continue the "productive collaboration between stakeholders and other interested parties" that had been part of the process for enacting the two new handset model deployment benchmarks. The Commission noted the stakeholders' proposal to form a task force independent of the Commission to "issue a report to the Commission helping to inform" the agency "on whether 100 percent hearing aid compatibility is achievable." Part of this process included determining whether the hearing aid compatibility requirements should be modified to include alternative technologies such as

Bluetooth. The Commission stated that it was deferring action on compliance processes, legacy models, burden reduction, the appropriate transition periods, and other implementation issues until after it received the HAC Task Force's Final Report on achievability. The Commission added that it intended to decide by 2024 whether to require 100% of covered wireless handset models to be hearing aid compatible. The Commission indicated that it would make its determination as to whether this goal is achievable by relying on the factors identified in section 710(e) of the Communications Act. After the 2016 HAC Order was released, stakeholders convened the independent HAC Task Force and filed progress updates with the Commission.

In 2018, the Commission imposed new website posting requirements and took steps to reduce regulatory burden on service providers by allowing them to file a streamlined annual certification under penalty of perjury stating their compliance with the Commission's hearing aid compatibility requirements. As part of the 2018 HAC Order, 83 FR 8624 (February 28, 2018), the Commission noted that, in the 100% hearing aid compatibility docket, it was considering broader changes to the hearing aid compatibility rules that may be appropriate in the event it adopted a 100% hearing aid compatibility requirement. The Commission indicated that the website, record retention, and certification requirements it was adopting as part of the 2018 HAC Order would remain in place unless and until the Commission took further action in the 100% hearing aid compatibility docket and that its decisions did not "prejudge any further steps we may take to modify our reporting rules in that proceeding."

In February 2021, the Commission adopted the 2019 ANSI Standard for determining hearing aid compatibility (86 FR 23614 (May 4, 2021)). The 2019 ANSI Standard was to replace the existing 2011 ANSI Standard after a 24-month transition period that was set to end on June 5, 2023. Like the 2011 ANSI Standard, the 2019 ANSI Standard addresses acoustic and inductive coupling between wireless handset models and hearing aids but uses heightened testing methodologies intended to ensure handset models offer a better listening experience for consumers. In addition, the 2019 ANSI Standard includes for the first time a volume control requirement. The standard specifically incorporates by reference the TIA 5050 Standard that addresses volume control requirements

for wireless handset models. As part of the order adopting the 2019 ANSI Standard and the related TIA 5050 Standard, the Commission reiterated its goal “to continue on the path to making 100% of wireless handsets hearing aid compatible.”

In December 2022, the HAC Task Force filed with the Commission its Final Report, which makes five central recommendations. The report recommends that the Commission: (1) adopt a more flexible, forward-looking definition of hearing aid compatibility; (2) adjust current technical standards; (3) allow for exploration of changes in coupling technology (e.g., by additional exploration of Bluetooth and alternative technologies); (4) allow reliance on information linked in the Commission’s Accessibility Clearinghouse; and (5) set a 90-day shot clock for the resolution of petitions for waiver of the hearing aid compatibility requirements.

The Final Report also recommends that the Commission grant the volume control waiver request that the Alliance for Telecommunications Industry Solutions (ATIS) filed the same day that the HAC Task Force filed its Final Report. In its waiver request, ATIS asserted that the testing performed by the HAC Task Force revealed that the TIA 5050 Standard for volume control was fundamentally flawed because it required the use of a pulsed-noise signal, which ATIS claimed was insufficiently voice-like to be compatible with many modern codecs. ATIS also stated that the standard’s use of a pulsed-noise signal resulted in none of the handsets that it tested passing the standard. As a result, ATIS requested that the Commission allow handsets to be certified as hearing aid-compatible using a modified volume control testing methodology.

On March 23, 2023, WTB released a Public Notice in WT Docket No. 15–285 seeking comment on the HAC Task Force’s Final Report (DA 23–251). The Public Notice sought comment generally on the report’s recommendations and whether they furthered the Commission’s goal of attaining 100% hearing aid compatibility. The Public Notice also asked whether the report’s recommendations were consistent with the policy goals the Commission has historically outlined in its hearing aid compatibility-related proceedings and with the Commission’s statutory duties under section 710 of the Communications Act. The Commission received three comments and three replies in response to the Public Notice.

On April 14, 2023, WTB released an order extending the transition period for exclusive use of the 2019 ANSI

Standard from June 5, 2023, to December 5, 2023 (88 FR 25286 (April 26, 2023)). WTB took this step to ensure that handset manufacturers could continue to certify new handset models with hearing aid compatibility features under the 2011 ANSI Standard while the Commission considered ATIS’s waiver petition. WTB stated that continuing to allow new handset models to be certified as hearing aid-compatible was essential as the Commission moves to its goal of all handset models being hearing aid compatible.

On September 29, 2023, WTB conditionally granted in part ATIS’s request for a limited waiver of the 2019 ANSI Standard’s volume control testing requirements (88 FR 70891 (October 13, 2023)). Under the terms of the waiver, a handset model may be certified as hearing aid-compatible under the 2019 ANSI Standard if it meets the volume control testing requirements described in the *HAC Waiver Order* as well as all other aspects of the 2019 ANSI Standard. This waiver will remain in place for 24 months from the release date of the Order to allow time for the development of a new, full volume control standard and for its incorporation into the wireless hearing aid compatibility rules.

Subsequently, on December 14, 2023, the Commission released a notice of proposed rulemaking (*100% HAC NPRM*) seeking to develop a record with respect to the HAC Task Force’s proposal on how the Commission can achieve its long held goal of a 100% hearing aid compatibility benchmark for all handset models offered for sale or use in the United States. The *100% HAC NPRM* proposed to adopt the HAC Task Force’s proposal with certain modifications in order to ensure that all handset models provide full accessibility for those with hearing loss while at the same time ensuring that our rules not discourage or impair the development of improved technology. Specifically, the *100% HAC NPRM* tentatively concluded that requiring 100% of all handset models to be certified as hearing aid compatible is an achievable objective under the factors set forth in section 710(e) of the Communications Act. As part of this determination, the *100% HAC NPRM* sought comment on adopting the more flexible “forward-looking” definition of hearing aid compatibility that the HAC Task Force recommends, and proposed to broaden the current definition of hearing aid compatibility to include Bluetooth coupling technology, and to require at least 15% of offered handset models to pair with hearing aids

through Bluetooth coupling technology. The *100% HAC NPRM* sought comment on the Bluetooth coupling technology that the Commission should adopt to meet this requirement and how it should incorporate this requirement into the Commission’s hearing aid compatibility rules.

Further, the *100% HAC NPRM* explored ways to reach the 100% hearing aid compatibility benchmark and proposed a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers to transition to a 100% hearing aid compatibility requirement for all handset models offered for sale or use in the United States. In addition, the *100% HAC NPRM* sought comment on certain implementation proposals and updates to the hearing aid compatibility rules related to the proposed 100% hearing aid compatibility requirement. These proposals included requirements for hearing aid compatibility settings in handset models, revised website posting, labeling and disclosure rules, and revised reporting requirements along with seeking comment on revising the heading of § 20.19 of the Commission’s rules to better reflect the scope of its requirements.

IV. Discussion

A. Establishing a 100% Hearing Aid Compatibility Requirement

We find that establishing a 100% hearing aid compatibility requirement for all handset models offered for sale or use in the United States meets the requirements of section 710(e) of the Communications Act. In the *100% HAC NPRM*, we stated that we would use a section 710(e) analysis to evaluate whether a 100% hearing aid compatibility requirement is achievable, and we tentatively concluded that requiring 100% of all handset models to be certified as hearing aid-compatible is an achievable objective. In reaching this tentative conclusion, we noted that the Commission had previously decided that it would make a determination of whether a 100% hearing aid compatibility requirement is achievable utilizing a section 710(e) analysis.

We find that section 710(e) provides the appropriate standard for evaluating whether 100% hearing aid compatibility is an achievable objective. The Commission has used a section 710(e) analysis when considering whether to adjust handset model deployment benchmarks. Continuing to use this standard to determine whether to adopt a 100% hearing aid compatibility

requirement is consistent with Commission precedent, and the record supports our decision. Commenters agree that adopting a 100% hearing aid compatibility requirement is consistent with the requirements of section 710(e) and that adopting a 100% hearing aid compatibility requirement will benefit consumers with hearing loss. Further, commenters state that adopting a 100% hearing aid compatibility requirement will encourage the use of currently available technology and will not discourage or impair the development of improved technology.

Section 710(e) requires the Commission, in establishing regulations to help ensure access to telecommunications services by those with hearing loss, to “consider costs and benefits to all telephone users, including persons with and without hearing loss,” and to “ensure that regulations adopted to implement [the Hearing Aid Compatibility Act] encourage the use of currently available technology and do not discourage or impair the development of improved technology.” Section 710(e) further directs the Commission to use appropriate timetables and benchmarks to the extent necessary due to technical feasibility or to ensure marketability or availability of new technologies to users.

We find that the benefits of adopting a 100% hearing aid compatibility requirement for all handset models offered for sale or use in the United States will exceed the costs. As the record reflects, a 100% hearing aid compatibility requirement will provide significant benefits to those with hearing loss by ensuring that all handset models offered for sale or use in the United States are hearing aid-compatible rather than only a certain percentage of these handset models. Under this final rule, consumers with hearing loss will be able to consider any handset model for purchase rather than just a limited number of handset models. We agree with Accessibility Advocates that, given that two-thirds of all households are wireless only and that most people, including those with hearing loss, rely solely on wireless handsets for their telecommunication needs, a 100% hearing aid compatibility requirement has become essential. Further, we do not anticipate any costs for those with or without hearing loss if non-compliant handset models are discontinued, considering the overwhelming share of wireless handset models already meet acoustic and telecoil standards and most include some form of Bluetooth coupling technology. In addition, given our

decision below to allow the grandfathering of existing hearing aid-compatible handset models, we do not find that our 100% compliance standard will reduce the affordability of lowest-cost handset models or adversely affect low-income persons.

With respect to the costs and benefits for handset manufacturers and service providers, Accessibility Advocates and the Competitive Telecommunications Industry Association (CTIA) state that the benefits of a 100% hearing aid compatibility requirement will exceed its costs for these types of companies. We find that the costs to handset manufacturers and service providers should be minimally different than they are now. The vast majority of new handset models are already hearing aid-compatible, and, in fact, the great majority of handset manufacturers and service providers are already at the 100% standard. The HAC Task Force states that as of August 2022, about 93% of wireless handset models offered by manufacturers were already certified as hearing aid-compatible under the 2011 ANSI Standard or an older ANSI standard, which exceeds the benchmarks in the Commission’s current rules.

In addition, as required by section 710(e), we find that a 100% compliance standard will encourage the use of currently available technology and will not discourage or impair the development of improved technology. The HAC Task Force, Accessibility Advocates, and CTIA agree with this conclusion. Handset manufacturers, service providers, and consumer organizations that compose the HAC Task Force all unanimously support its consensus proposal for achieving 100% compliance. The HAC Task Force’s Final Report and the record in this proceeding provides no indication or evidence that adopting this new standard will discourage the use of currently available coupling technologies, such as acoustic and telecoil coupling, or the development of improved coupling technologies. Further, as discussed below and consistent with the HAC Task Force’s recommendation, we are adopting a new Bluetooth coupling requirement that commenters indicate will encourage the use of currently available Bluetooth coupling technology and the development of new and advanced Bluetooth coupling technology.

Further, we conclude that adopting a 100% hearing aid compatibility compliance standard in conjunction with the transition periods and handset model deployment benchmarks that we adopt below is consistent with the

requirements of section 710(e). The transition periods that we adopt below will allow sufficient time to expand access to hearing aid-compatible handset models while giving handset manufacturers and service providers sufficient notice and lead time to build hearing aid compatibilities into all future handset models rather than into just a certain percentage of future handset models. Handset manufacturers are familiar with the 2019 ANSI Standard, which is the exclusive testing standard for determining capability. Handset manufacturers are already using this standard to certify new handset models as hearing aid compatible. Similarly, the new Bluetooth coupling requirement allows handset manufacturers to continue to use Bluetooth coupling technology that they already include in their current handset models. As a result, the 100% hearing aid compatibility transition periods that we adopt below take into consideration technical feasibility and will ensure a smooth transition to a 100% hearing aid compatibility requirement.

Finally, the handset model deployment benchmarks we adopt below take into consideration that, while many consumers prefer Bluetooth over telecoil coupling, there are still those who prefer telecoil coupling. Our handset model deployment benchmarks ensure the marketability of new handset models by adopting the HAC Task Force’s recommendation on the appropriate split between future handset models that should be required to include Bluetooth coupling technology and those that should be required to include telecoils. In addition, the Bluetooth coupling functionality requirements that we adopt below will encourage the development of advanced Bluetooth coupling technologies that will further benefit consumers with hearing loss. As a result, we find that our 100% hearing aid compatibility requirement properly considers technical feasibility and ensures the marketability and availability of new hearing aid compatibility technology.

B. Expanding the Definition of Hearing Aid Compatibility

We adopt the HAC Task Force’s expanded definition of hearing aid compatibility, which defines a hearing aid-compatible handset model as: (1) having an internal means for compatibility; (2) meets established technical standards for hearing aid coupling or compatibility; and (3) is usable. Further, we adopt the HAC Task Force’s recommendations on how we

should define each of these terms. This expanded definition of hearing aid compatibility allows us to continue to use ANSI certification standards that we incorporate by reference into our hearing aid compatibility rules to objectively measure acoustic, telecoil, and volume control compatibility. Further, this revised definition allows us to adopt a coupling requirement that is based on Bluetooth coupling technologies that meet certain functional requirements that we expressly incorporate into the Commission's hearing aid compatibility rules without also expressly incorporating a specific Bluetooth coupling technology, such as Bluetooth LE Audio and the related Bluetooth HAP standards.

In the *100% HAC NPRM*, we observed that our existing hearing aid compatibility rules do not contain an express definition of hearing aid compatibility in the definition section of the rules. Rather, we stated that our hearing aid compatibility rules provide that a handset model is considered to be hearing aid-compatible if it has been certified as such under a Commission-approved technical standard that the Commission has expressly incorporated by reference into the hearing aid compatibility rules through notice and comment rulemaking procedures. In the *100% HAC NPRM*, we sought comment on defining hearing aid compatibility in a more flexible manner than whether a handset model merely meets the criteria of a technical certification standard that the Commission has incorporated by reference into the rules. Specifically, we sought comment on whether we should adopt what the HAC Task Force calls a more forward-looking, flexible definition of hearing aid compatibility that reflects changing coupling technologies. This definition would define a hearing aid-compatible handset model as a handset model that: (1) has an internal means for compatibility; (2) meets established technical standards for hearing aid coupling or compatibility; and (3) is usable.

Commenters urge us to adopt the HAC Task Force's flexible and forward-looking revised definition of hearing aid compatibility. In its comments, the HAC Task Force asserts that this revised definition of hearing aid compatibility benefits consumers with hearing loss and meets the needs of handset manufacturers and service providers. We find that this revised definition of hearing aid compatibility allows the Commission's rules to keep pace with evolving coupling technologies and to ensure that consumers with hearing loss have access to the latest handset models

with the most current coupling technology. Further, we find this revised definition is consistent with our 100% hearing aid compatibility requirement because it allows for a wider range of coupling technologies. As discussed below, it permits us to mandate a Bluetooth coupling requirement without specifying a specific Bluetooth coupling technology and gives us the ability to expand our coupling requirements in the future without having to incorporate a specific coupling standard into the hearing aid compatibility rules, as the Commission presently does with respect to acoustic, telecoil, and volume control certification requirements.

We also adopt the HAC Task Force's recommendations for defining each of the terms that comprise the three parts of our new definition of hearing aid compatibility. Commenters support this approach, asserting that the revised definition should be broadly construed to ensure increased innovation that meets the needs of consumers with hearing loss. Competitive Carriers Association (CCA) states that in order to ensure the strongest compatibility framework, the definition must allow for the express incorporation of alternative and innovative coupling technologies.

Part 1: "Having an Internal Means of Compatibility." We adopt the HAC Task Force's recommendation that we define "having an internal means for compatibility" to mean that the compatibility must be provided as an integral part of the handset model rather than through the use of add-on components that significantly enlarge or alter the shape or weight of the handset model as compared to other handset models offered by the same manufacturer. This definition is consistent with section 710(b)(1) of the Communications Act which requires the Commission to ensure that handset models have an internal means for effective use with hearing aids. Further, this definition is consistent with the Commission's past interpretation of this statutory language. In the *2003 HAC Order*, 68 FR 54173 (September 16, 2003), the Commission interpreted this statutory language to mean that the capability must be provided as an integral part of the handset model, rather than through the use of add-on components that significantly enlarge or alter the shape or weight of the handset model as compared to other handset models offered by manufacturers. Further, the Commission stated that many consumers find the use of accessory devices such as neck loops or hands-free headsets to be unduly

restrictive because they are cumbersome, inconvenient, and expensive.

Accessibility Advocates and the Mobile & Wireless Forum (MWF) recognize that this definition of internal compatibility is consistent with our current requirements concerning acoustic and telecoil connectivity, as well as volume control functionality, because these forms of hearing aid compatibility are built into handset models. Further, Accessibility Advocates state that relying on external compatibility solutions does not give consumers with hearing loss equal access to the functionality of handset models that internal solutions provide. Accessibility Advocates also state that external wireless solutions have never been construed as providing "equal access" and should not be now. We agree. As required by section 710(b)(1), we will continue to require that hearing aid capability features in handset models provide an internal means for effective use with hearing aids.

Part 2: "Meets Established Technical Standards for Hearing Aid Coupling or Compatibility." We also adopt the HAC Task Force's recommendation for how we should define the term "meets established technical standards for hearing aid coupling or compatibility." Like the first part of our expanded definition of hearing aid compatibility, this part of our revised definition also incorporates the requirements of section 710(b)(1) of the Communications Act. This section requires the Commission to ensure that handsets must meet established technical standards for effective use of handset models with hearing aids. The Commission interprets this directive to require that handset models work with hearing aids through built-in functionality that is testable to a technical standard to ensure that the compatibility can be objectively measured. The Commission's current rules utilize ANSI standards to satisfy this requirement, which the Commission has incorporated by reference into the hearing aid compatibility rules. ANSI standards provide measurement methodologies and performance criteria testing requirements that are used to objectively measure acoustic and telecoil connectivity and volume control functionality.

The HAC Task Force acknowledges that the reference to established technical standards in our expanded definition of hearing aid compatibility allows the Commission to continue to rely on ANSI standards as currently provided in § 20.19(b) of the Commission's rules. The Commission

has recognized, however, that section 710(e) of the Communications Act requires that the Commission's regulations not discourage or impair the development of improved technology. It is with this statutory directive in mind that we expand our definition of hearing aid compatibility to allow for the use of technical standards that require the effective use of handset models with hearing aids that the Commission does not specifically incorporate by reference into the hearing aid compatibility rules. In these circumstances, the Commission will ensure effective use by adopting functionality requirements that include performance requirements. We agree with the HAC Task Force that these types of technical standards should ensure that the hearing aid compatibility technology is interoperable, non-proprietary, and adopted by industry and consumers alike. Consistent with the HAC Task Force's recommendation, we will consider factors such as ease-of-use, reliability, industry adoption, and consumer use and adoption when evaluating whether technical standards defined by functionality requirements provide for effective use of handset models with hearing aids.

Part 3: "Is Usable." Finally, we adopt the HAC Task Force's recommendation for how we should define the term "is usable." We agree with the HAC Task Force that this term should mean that consumers with hearing loss must have adequate information on how to operate their handset models and access to the full functionality and documentation for their handset models, including instructions, product information (including accessible feature information), documentations, bills, and technical support which is provided to individuals without hearing loss. As Accessibility Advocates recognize, these requirements are consistent with sections 255 and 716 of the Communications Act. Section 255(b) provides that "[a] manufacturer of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if ready achievable." Further, section 255(c) provides that "[a] provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable." In addition, section 716(a)(1) of the Communications Act provides that "a manufacturer of equipment used for advanced communications services, including end user equipment, network

equipment, and software, shall ensure that the equipment and software that such manufacturer offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless the requirements . . . are not achievable." Usability is critically important to consumers with hearing loss, and we will consider usability to be a significant factor in deciding whether to expand our rules to allow for new coupling methodologies that we do not necessarily specifically incorporate into our rules.

C. Adopting a Bluetooth Coupling Requirement

We adopt a Bluetooth coupling requirement that is based on Bluetooth coupling technology that meets the requirements of our expanded definition of hearing aid compatibility that we adopted above and certain functional requirements that we adopt below. In the 100% HAC NPRM, we sought comment on the HAC Task Force recommendation that the Commission adopt a Bluetooth coupling requirement and that the Commission expand the definition of hearing aid compatibility to allow for this requirement. We find that adopting a Bluetooth coupling requirement is consistent with section 710 of the Communications Act. We therefore adopt a Bluetooth coupling requirement that is based on our expanded definition of hearing aid compatibility and on a functional definition of Bluetooth coupling technology.

Sections 710(a) and (c) of the Communications Act require the Commission to establish regulations "to ensure reasonable access to telephone service by persons with impaired hearing" and to "establish or approve such technical standards as are required" to do so. Section 710(c) also provides that the Commission is the final arbiter as to whether standards meet technical standard requirements. The Commission relies on this statutory authority when it incorporates by reference new ANSI standards into the hearing aid compatibility rules. When a new ANSI standard becomes available, the ANSI committee petitions the Commission to adopt the new standard. The Commission seeks comment on the petition and implementation issues related to the new standard. After considering the views of all interested parties, including members of the public with hearing loss, the Commission decides whether to incorporate the new standard into the hearing aid compatibility rules along with any related implementation provisions. The

Commission followed this process when it determined to incorporate by reference the 2019 ANSI Standard into the hearing aid compatibility rules.

In the present case, the HAC Task Force recommends that the Commission adopt Bluetooth coupling methods such as Bluetooth Classic, Made-for-iPhone (MFi), and Audio Streaming for Hearing Aids (ASHA) into the hearing aid compatibility rules for a period of transition. The Commission has twice sought comment on this recommendation. First, WTB issued a Public Notice in WT Docket No. 15–285 asking for comment on the HAC Task Force's Final Report, including its Bluetooth coupling recommendation (DA 23–251 (March 23, 2023)). Based on these comments, we released the 100% HAC NPRM in which we proposed to expand the definition of hearing aid compatibility to include a Bluetooth coupling requirement. As required by sections 710(a) and (c) of the Communications Act, we sought comment on this proposal and on suggestions for how we should implement it. Commenters support this proposal to adopt a Bluetooth coupling requirement and provide comments on how we should implement the requirement. Based on this record, we adopt the HAC Task Force's Bluetooth coupling recommendation.

Bluetooth is an umbrella term for a group of related technical profiles that enable devices to communicate wirelessly with each other over a short distance. Bluetooth coupling has become a popular way to pair wireless handset models with hearing aids, as compared to acoustic and telecoil coupling methods. Bluetooth coupling technology is incorporated into handset models using internal chipsets and antennas. Unlike telecoils, Bluetooth audio transmission methods are expressly designed to transmit and facilitate audio. The vast majority of current handset models include some type of Bluetooth coupling technology. Bluetooth transmission power is generally limited to 2.5 milliwatts, which gives it a limited range of approximately 33 feet. It uses Ultra High Frequency (UHF) radio waves in the Industrial, Scientific, and Medical (ISM) bands from 2.402 GHz to 2.48 GHz. Once a handset is paired with hearing aids, the handset will remember the hearing aids and automatically pair with the hearing aids if the user disconnects the handset from the hearing aids in order to connect the hearing aids to another device, unless the user asks the handset model to forget the pairing.

The Bluetooth Special Interest Group (Bluetooth SIG) is a standards setting

body that manages and oversees the Bluetooth standard. Handset manufacturers must meet Bluetooth SIG standards in order to market their products as Bluetooth enabled devices. A network of patents applies to the technology, which is licensed to individual qualifying devices. Bluetooth SIG works with handset and hearing aid manufacturers when formulating new Bluetooth pairing standards. Recently, Bluetooth SIG worked with hearing aid manufacturers to standardize wireless coupling and wireless streaming for hearing aids using Bluetooth pairing technology that ensures that users have the best opportunity to pair their hearing aids with their handsets. As a result of this work, Bluetooth SIG has introduced Bluetooth LE Audio, Bluetooth HAP, and the Public Access Profile specification for coupling with Auracast (Bluetooth Auracast) that allows wireless broadcast audio streaming from audio sources in public locations. Bluetooth LE Audio, Bluetooth HAP, and Bluetooth Auracast are non-proprietary, low energy Bluetooth coupling standards.

We find that adopting a Bluetooth coupling requirement is supported by the record and is consistent with our revised definition of hearing aid compatibility. Bluetooth coupling technology uses an internal means of pairing handsets with hearing aids without altering the physical shape of the handset or requiring additional equipment. It relies on chipsets and antennas located within a handset model that allow the handset model to wirelessly connect to hearing aids over short distances. The chipsets use a codec to control audio quality, and the Bluetooth LE Audio standard utilizes an updated codec. Bluetooth coupling technology provides a built-in pairing functionality that is not dependent on any add-on components. As a result, we find that Bluetooth coupling technology satisfies the internal requirement of our revised definition of hearing aid compatibility.

We also find that our Bluetooth coupling requirement is based on established technical standards for hearing aid compatibility that provide for effective use of handsets with hearing aids. The Bluetooth standard is maintained and overseen by the Bluetooth SIG standards setting body, which relies on handset and hearing aid manufacturer input when establishing or modifying the standard. The standard uses a measurable performance standard that provides an objective measurement of interoperability to ensure the effective use of handsets with hearing aids. The term “Bluetooth” is a

registered trademark, and the Bluetooth SIG enforces the trademark through a license enforcement program. Handset and hearing aid manufacturers cannot include the registered trademark on their products without ensuring that their products are properly qualified. The Bluetooth SIG monitors the marketplace to ensure that all products being sold as including Bluetooth pairing technology have successfully completed the Bluetooth Qualification Process. For these reasons, we find that our Bluetooth coupling requirement meets the established technical standard for effective use of handsets with hearing aids as required by our revised definition of hearing aid compatibility.

Further, we find that Bluetooth coupling technology is usable, as required by our revised definition of hearing aid compatibility. The record indicates that many consumers prefer to pair their handsets to their hearing aids using a Bluetooth connection rather than an acoustic or telecoil connection. This fact demonstrates that consumers find Bluetooth coupling usable and that they have the information that they need to connect their handsets to their hearing aids. Bluetooth coupling technology is widely included in many, if not most, current handsets, is well known to consumers, and is easy to use in terms of pairing handsets to hearing aids. The new Bluetooth HAP standard is specifically designed to enable handset models to connect directly to hearing aids using Bluetooth LE Audio. Bluetooth coupling technology gives consumers with hearing loss the same access to the functionality of their handsets as consumers without hearing loss. Consumers with hearing loss can connect and disconnect to their hearing aids in the same fashion and in the same time frame as consumers without hearing loss might connect their handsets to earbuds or an external speaker.

Further, unlike with acoustic or telecoil coupling, Bluetooth coupling does not require users to hold the handset next to their ears. Rather, users can place the handset nearby and keep their hands free. This flexibility may in part account for the popularity of Bluetooth coupling. Bluetooth coupling also gives consumers with hearing loss the flexibility to disconnect their handsets from their hearing aids and to easily reconnect their handsets to their hearing aids at a later time. Bluetooth technology remembers established pairings. Finally, Bluetooth coupling delivers a high-quality audio signal that is purposely designed for audio transmission. The quality of this connection is the same for consumers

with hearing loss as it is for consumers without hearing loss. For these reasons, we find that Bluetooth coupling technology is usable and meets the requirements of ease-of-use, reliability, industry adoption, and consumer use and adoption.

While we adopt a Bluetooth coupling requirement that is not based on a specific Bluetooth standard, we agree with Accessibility Advocates that handset manufacturers must consider certain functional requirements when determining which specific Bluetooth coupling technology to include in their future handset models in order to satisfy our new Bluetooth coupling requirement. In order to meet our new Bluetooth coupling requirement, we require handset manufacturers to include Bluetooth coupling technology in their future handset models that: (1) utilizes a global, low power wireless technology standard for high quality audio voice streaming; (2) is a standalone non-proprietary implementation; (3) is a qualified implementation that has undergone testing to verify that the product conforms to the specifications it claims to support; (4) offers full interoperability between hearing aids and handset models to enable inter-network, inter-provider, inter-platform, and inter-handset manufacturer functionality; and (5) uses a design that meets broad, generic hearing aid requirements that addresses needed features when coupling to handset models for all forms of voice calls and associated handset model use. Below we adopt the Bluetooth handset model deployment benchmark that the HAC Task Force recommends, and we adopt a Bluetooth transition period that allows handset manufacturers and service providers sufficient time to adjust their handset model portfolios to meet our new Bluetooth coupling requirement.

Finally, we note that section 710(c) of the Communications Act requires the Commission to establish or approve such technical standards as are required to ensure the compatibility of handsets models with hearing aids. To verify our Bluetooth compatibility requirements, we require handset manufacturers to provide, as part of the statement required pursuant to § 2.1033(d) of our rules, a sworn declaration attesting to the handset model’s compliance with our Bluetooth compatibility requirements. These sworn declarations must be in accordance with § 1.16 of our rules and provide: (1) the specific Bluetooth coupling standard included in each handset model; (2) that the relevant handset model has been tested to ensure compliance with the

designated Bluetooth coupling standard; and (3) after the transition to a non-proprietary Bluetooth requirement, that the included Bluetooth coupling technology is consistent with our Bluetooth functionality requirements.

In addition, as the Commission has in the past, we will continue to monitor the use of Bluetooth coupling technology as an effective means of pairing handsets to hearing aids and should we become aware of an issue with Bluetooth coupling, we will initiate a proceeding to review the requirement. We will monitor compliance with our Bluetooth coupling requirement in part through the Commission's consumer complaint process.

D. Handset Model Deployment Benchmarks

After the applicable 100% hearing aid compatibility transition period ends, all handset models offered for sale or use in the United States must be hearing aid-compatible. Any non-hearing aid compatible handset models cannot obtain a certification under 47 CFR part 2, subpart J, and handset manufacturers and service providers must remove all non-hearing aid-compatible handset models from their portfolios without exception. Further, after passage of the relevant transition period, handset manufacturers and service providers must ensure that each handset model in their handset model portfolios have at least two ways to pair with hearing aids. Specifically, after the relevant transition period is completed, 100% of all handset models in a handset model portfolio must meet acoustic coupling standards and 85% of these same handset models must also meet telecoil coupling standards. The remaining 15% of these handset models must meet our new Bluetooth coupling requirement, along with acoustic standards. The 15% of handset models that must meet the Bluetooth coupling requirement, along with acoustic requirements, can also contain telecoils, but they are not required to do so. If they do include telecoils, then these handset models would meet three pairing requirements, but the 15% requirement only requires these handset models to meet acoustic and Bluetooth coupling requirements.

Further, after the relevant 100% hearing aid compatibility transition period ends, any new handset model that handset manufacturers and service providers add to their handset model portfolios must meet applicable volume control requirements, as well as the other technical requirements of the 2019 ANSI Standard that is currently used for certification purposes. We will allow

the volume control requirement to be met using the volume control waiver standard adopted in the *HAC Waiver Order*, as long as it remains in effect. This decision to impose a 100% volume control benchmark on handset models added to handset model portfolios after the applicable 100% hearing aid compatibility transition period ends allows handset manufacturers and service providers to continue to offer handset models certified under the 2011 ANSI Standard or older standards and to count these handset models for handset model deployment purposes, as long as these handset models were being offered for sale or use in the United States prior to the expiration of the relevant 100% hearing aid compatibility transition period. Finally, we will allow proprietary, as well as non-proprietary, Bluetooth coupling standards to satisfy our new Bluetooth pairing requirement during a 48-month transition period to an exclusively non-proprietary Bluetooth pairing requirement.

In the *100% HAC NPRM*, we sought comment on the HAC Task Force's recommendation that we require all handset models offered for sale or use in the United States to have at least two forms of coupling. Based on the HAC Task Force's recommendation, we proposed to require that: (1) 100% of handset models be required to meet an acoustic coupling requirement; and (2) 100% of handset models be required to meet *either* a telecoil or a Bluetooth coupling requirement. Specifically, at least 85% of handset models would be required to meet a telecoil requirement and at least 15% of handset models would be required to meet a Bluetooth coupling requirement. Handset models meeting the Bluetooth coupling requirement could include telecoils, but would not be required to include telecoils. We also proposed to allow handset manufacturers and service providers to continue to be able to offer for sale or use handset models certified as hearing aid-compatible under the 2011 ANSI Standard or older standards after the end of the relevant transition periods, as long as the handset models were being offered for sale or use prior to the expiration of the relevant transition periods. In addition, we sought comment on whether we should adopt a volume control handset model deployment benchmark.

The record supports our adoption of the handset model deployment benchmarks that we proposed in the *100% HAC NPRM*. This support includes requiring handset manufacturers and service providers to remove from their handset model portfolios all non-hearing aid-

compatible handset models after the expiration of the relevant 100% hearing aid compatibility transition periods. The HAC Task Force's Final Report provides that after passage of the relevant transition period "All handset models must be hearing aid-compatible" The HAC Task Force states that all of its members support 100% hearing aid compatibility, and Accessibility Advocates confirm that 100% hearing aid compatibility was an area of consensus among members of the HAC Task Force. The HAC Task Force's Final Report provides that 93% of the handset models offered by handset manufacturers for the reporting period July 1, 2021, to June 30, 2022, were rated as hearing aid-compatible and more recent reports indicate that this number is higher than 93%. In fact, many handset manufacturers and service providers report that all of the handset models in their handset model portfolios are rated as hearing aid compatible. As a result, the removal of non-hearing aid-compatible handset models from the marketplace has been ongoing for years and is part of the natural progression of handset model development.

With respect to acoustic coupling, there is no disagreement in the record that we should adopt a 100% acoustic coupling benchmark. These same commenters also support our adopting the proposed 85/15% split between telecoil and Bluetooth coupling. One commenter, however, supports a 100% benchmark for telecoil coupling claiming that consumers "who are hard of hearing prefer telecoil technology over Bluetooth technology. We determine to maintain the current 85% benchmark requirement for telecoil coupling. This percentage is supported by the HAC Task Force and other commenters, including Accessibility Advocates. According to a survey the HAC Task Force conducted, most consumers prefer to use Bluetooth connectivity for pairing handsets to hearing aids, as compared to telecoils. The HAC Task Force found that telecoil use is stagnating. The record indicates that consumers prefer Bluetooth coupling over telecoil coupling and that as consumers age into hearing loss they are likely to be more familiar with Bluetooth coupling than with telecoil coupling. Rather than revising the 85% telecoil coupling benchmark at this time, we will maintain it and, as commenters suggest, monitor this issue going forward. In the meantime, maintaining the 85% telecoil coupling requirement gives handset manufacturers space in 15% of their

handset models for technological innovation if they wish to use it for something other than telecoils.

In monitoring this issue going forward, we will consider such factors as consumer and technology trends for Bluetooth and telecoil coupling and take into consideration consumer preferences and trends, changes in the marketplace, and developments in research and technical standards pertaining to hearing aid compatibility. We will monitor this issue in the years leading up to the end of the Bluetooth non-proprietary transition period and continue to monitor the issue thereafter. If we become aware that an adjustment to the handset model deployment benchmarks for telecoil and Bluetooth coupling might be warranted, we will take appropriate action. As always, we are committed to continuing to ensure that our wireless hearing aid compatibility provisions keep pace with technological advances and marketplace realities.

After the applicable 100% hearing aid compatibility transition date ends, handset manufacturers and service providers must ensure that 15% of the total number of handset models in their handset model portfolios meet our new Bluetooth coupling requirement, along with the applicable acoustic coupling requirement. While this set of handset models may include telecoils, they must meet the Bluetooth coupling requirement. We will allow handset manufacturers and service providers to meet the Bluetooth coupling requirement using either proprietary or non-proprietary Bluetooth coupling standards during the 48-month transition period to a non-proprietary Bluetooth coupling requirement, as discussed below. This decision to permit the use of proprietary Bluetooth coupling standards during the 48-month transition period reflects the marketplace reality that Apple and Android handset models use the proprietary Bluetooth coupling technologies MFi and ASHA standards, respectively, and that non-proprietary Bluetooth coupling standards, such as Bluetooth LE Audio, Bluetooth HAP, and the related Bluetooth Auracast, are newer standards that are now gaining market share.

Allowing the continued use of proprietary Bluetooth coupling standards is consistent with section 710(e) of the Communications Act, which requires the Commission to “ensure that [hearing aid compatibility] regulations . . . encourage the use of currently available technology and do not discourage or impair the development of improved technology.”

The HAC Task Force and Accessibility Advocates state that Bluetooth LE Audio and Bluetooth HAP will require some time to be universally adopted and that, in the meantime, we should allow the use of proprietary Bluetooth coupling standards during a transition period to a non-proprietary Bluetooth coupling standard. The HAC Task Force asserts that the non-proprietary Bluetooth coupling standards Bluetooth LE Audio and Bluetooth HAP will become widely available in handset models in a few years. Consistent with the requirements of section 710(e), therefore, we will allow the use of currently available technology by allowing the use of proprietary Bluetooth coupling standards without discouraging or impairing the development of improved coupling technology such as Bluetooth LE Audio and Bluetooth HAP.

We will not require handset manufacturers and service providers to stop offering handset models certified under the 2011 ANSI Standard or older standards after passage of the relevant 100% hearing aid compatibility transition periods, if these handset models were being offered for sale or use in the United States prior to the expiration of the relevant transition period. This approach is consistent with our traditional grandfathering rule that allows handset models certified as hearing aid-compatible to continue to be used to satisfy handset model deployment benchmarks as long as the handset models were being offered for sale or use in the United States prior to the transition date for exclusive use of the new certification standard. We will allow handset manufacturers and service providers to keep offering handset models that meet this grandfathering requirement in their handset model portfolios, and we will allow them to count these handset models for purposes of complying with the 100% acoustic coupling requirement and the 85% telecoil coupling requirement. We will also allow these handset models to be counted for purposes of meeting the 15% Bluetooth coupling requirement if these grandfathered handset models contain Bluetooth coupling technology that meets our Bluetooth coupling requirements.

With respect to the volume control benchmark, we adopt a 100% volume control benchmark requirement that applies to all new handset models that handset manufacturers and service providers add to their handset model portfolios after the passage of the relevant 100% hearing aid compatibility transition period. The 2019 ANSI Standard is currently the exclusive

certification standard, and this standard includes a volume control requirement. After the relevant 100% hearing aid compatibility transition period ends, all new handset models that handset manufacturers and service providers add to their handset model portfolios must meet the requirements of the 2019 ANSI Standard, including the volume control requirements. By taking this approach we allow handset manufacturers and service providers to maintain grandfathered handset models in their handset model portfolios until they are replaced with handset models meeting the requirements of the 2019 ANSI Standard. As these grandfathered handset models are replaced through the natural handset model product cycle, an increasing number of handset models in handset model portfolios will meet volume control requirements. This result will benefit consumers by giving them more handset model options to choose from that meet volume control requirements.

We disagree with CTIA that it is premature to adopt a volume control benchmark, and that we should wait until the Commission adopts a new volume control standard before adopting a volume control benchmark. The 2019 ANSI Standard is the exclusive certification standard in effect at this time, and this standard includes volume control certification requirements. In order to be certified as hearing aid-compatible, new handset models must meet the 2019 ANSI Standard’s acoustic and telecoil certification requirements, as well as the standard’s volume control requirements as recently modified by the *HAC Waiver Order*. As of now, a new handset model cannot be certified as hearing aid-compatible without meeting volume control requirements. Therefore, adopting a 100% volume control benchmark for all new handset models added to handset model portfolios after passage of the relevant 100% hearing aid compatibility transition period is consistent with current certification requirements.

We also agree with those commenters who argue that if we adopt a volume control benchmark it should be based on the volume control waiver standard adopted in the *HAC Waiver Order*. We will allow the volume control requirements to be met using the volume control waiver standard, as long as that standard remains in effect. Specifically, we will allow new handset models that handset manufacturers and service providers add to their handset model portfolios to meet the volume control waiver standard as long as it remains in effect, as well as the full

volume control standard or any new volume control standard the Commission adopts in the future. We agree with Accessibility Advocates that a volume control requirement is particularly important for consumers with hearing loss who primarily rely on acoustic coupling or who do not use hearing aids.

CTIA expresses concern that “there is likely to be a gap between the expiration of the current waiver and recognition by the Commission of the new ANSI volume control standard.” CTIA requests that the Commission direct WTB to extend the waiver deadline as appropriate pending adoption of the new volume control standard. We decline to take this step at this time. The *100% HAC NPRM* did not seek comment on the issue of extending the volume control waiver deadline. We do not have a record on which to evaluate the merits of this request and to determine whether it is consistent with the public interest. Accessibility Advocates have also responded to CTIA’s request and asked that the Commission conduct a thorough review of the facts and circumstances before granting an extension to the waiver. We encourage CTIA and its members to continue actively working towards the development of a new volume control standard. If CTIA believes that the Commission should extend the waiver deadline, it can file a waiver request asking the Commission to take this step and WTB will evaluate the request based on the waiver standard in the Commission’s rules.

We will not require handset models certified under the 2011 ANSI Standard or older standards to be recertified under the 2019 ANSI Standard. These handset models were not designed to meet the testing requirements of the 2019 ANSI Standard and, in order for these handset models to pass the 2019 ANSI Standard’s testing requirements, they might have to be physically altered. Requiring these handset models to be physically altered would be costly and burdensome to handset manufacturers and inconsistent with our traditional grandfathering rule. In addition, older hearing aid-compatible handset models tend to be lower priced than newer hearing aid-compatible handset models and requiring them to be removed from the marketplace or physically altered would deprive consumers of low price options.

We also emphasize that consistent with past practice, handset manufacturers and service providers that choose to offer compliant handset models through a central distribution point, rather than through individual

retail outlets, must do so in a timely fashion. Specifically, the Commission has stated that it expects service providers to make their best efforts to provide compliant handset models to consumers that order them within 48 hours to an address designated by the consumer. The Commission has specifically stated that using a central distribution point does not alter a service provider’s existing obligation to provide compliant handset models in their retail stores for consumers to test as set forth in § 20.19(c)(4). To the contrary, the central distribution point approach merely provides the flexibility to offer compliant handset models through a central distribution point. As a result, handset manufacturers and service providers may not simply list a handset model as available on its website in order to meet our handset model deployment benchmarks. Rather, handset manufacturers and service providers must make their best efforts to ensure that all of the handset models they offer can be in the hands of consumers within 48 hours of the consumer ordering the handset model. Further, all handset manufacturers and service providers must use their best efforts to make available all hearing aid-compatible handset models that they offer for sale or use to consumers to test, in each retail store owned or operated by the handset manufacturer or service provider. We take these steps to ensure that the hearing aid-compatible handset models that handset manufacturer and service providers indicate that they offer for sale or use are actually available to consumers to test and purchase.

CTIA objects to handset manufacturers being required to make available for consumers to test, in each retail store owned or operated by the handset manufacturer, all hearing aid-compatible handset models that they offer for sale or use. In addition, CTIA objects to handset manufacturers and service providers being required to make their best efforts to ensure that all of the handset models they offer can be in the hands of consumers within 48 hours of the consumer ordering the handset model. We note that service providers are already required to make available for consumers to test, in each retail store owned or operated by the service provider, all of its handset models that are hearing aid-compatible under the Commission’s hearing aid compatibility rules. In addition, the Commission adopted the 48-hour policy in the *2003 HAC Order* and handset manufacturers and service providers have been required to abide by this requirement for over twenty years.

We acknowledge CTIA’s concerns about the practical effect of the in-store testing requirement now that 100% of handset models offered for sale or use in the United States must be hearing aid compatible. Given supply chain challenges, it may be difficult for service providers and handset manufacturers to make available all of their handset models in every retail store at all times. On the other hand, we agree with the Accessibility Advocates on the value of in-store testing “so that consumers can make informed decisions about which phones will meet their HAC needs.” Accordingly, while we maintain an in-store testing requirement, we will modify the rule to require handset manufacturers and service providers to *use best efforts* to make available for consumers to test, in each retail store owned or operated by the service provider, all of its handset models that are hearing aid-compatible under the Commission’s hearing aid compatibility rules. If a handset model is not available in-store for testing, the handset manufacturer or service provider must use its best efforts to make the handset model available for the consumer to test within 48 hours either by shipping the handset model to the store or to the consumer’s home. We maintain the 48-hour central distribution policy and include it in our rules to make clear the obligation that service providers and handset manufacturers that choose to offer compliant handsets through a central distribution point, rather than through individual retail outlets, must do so in a timely fashion.

We find these requirements to be reasonable because if a handset manufacturer or service provider lists a handset model as available for sale or use in the United States on its publicly accessible website or counts the handset model for handset model deployment benchmark purposes, then the handset model should be available to consumers with hearing loss in a timely manner for testing and purchase. We also note that the Commission’s mandatory handset model disclosure language requires handset manufacturers and service providers to notify consumers when a handset model includes air interfaces or frequency bands not covered by the applicable certification standard and “to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interference noise.” As the Commission has previously stated, in-store testing ensures that persons with hearing aids have a meaningful opportunity to identify and become comfortable with a

handset model. Further, in-store testing allows consumers to evaluate volume and interference levels of a given handset model they are considering for purchase and may allow consumers to avoid restocking fees. We also continue to encourage 30-day trial periods and flexible return policies for consumers seeking to obtain hearing aid-compatible handset models, as well as the use of in-store call-out cards that provide information about the compatibility of handset models.

Finally, we will allow handset manufacturers and service providers to round down to the nearest whole number of handset models to meet the 85% telecoil benchmark requirement and to round up to the nearest whole number of handset models to meet the 15% Bluetooth coupling requirement. We will allow rounding in order to avoid the partial compliance issue that would result without rounding. For instance, if a handset manufacturer or a service provider adds three new handset models to its handset model portfolio that already includes two handset models, four of these five handset models would have to meet the telecoil certification requirement and the remaining one would have to meet the Bluetooth coupling requirement. Each of these handset models would also have to meet the relevant acoustic coupling requirement and, if certified under the 2019 ANSI Standard, volume control requirements. After the relevant 100% hearing aid compatibility transition period passes, any rounding for the 85/15% split must still ensure that a handset manufacturer or service provider's entire handset model portfolio meets the requirement that *all* handset models in the portfolio include at least two forms of coupling. In other words, all handset models in a handset manufacturer or service provider's handset model portfolio must meet either: (1) the relevant acoustic and telecoil coupling requirements or (2) the relevant acoustic and Bluetooth coupling requirements. A handset model could meet all three coupling requirements, but it is only required to meet two of the coupling requirements.

E. Transition Periods for 100% Hearing Aid Compatibility

We adopt the 100% hearing aid compatibility transition periods that we proposed in the *100% HAC NPRM*. Specifically, we adopt a 24-month transition period for handset manufacturers to meet the 100% hearing aid compatibility requirement, starting from the effective date of the amended rule adopting the 100% hearing aid compatibility requirement, and a 30-

month transition period for nationwide service providers. Further, we adopt a 42-month transition period for non-nationwide service providers. Once the applicable transition period ends, handset manufacturers and service providers must meet the handset model deployment benchmarks discussed above. Handset manufacturers and service providers must remove all non-hearing aid-compatible handset models from their handset model portfolios without exception.

In the *100% HAC NPRM*, we recognized that our proposed transition periods were shorter than the 48-month transition period the HAC Task Force recommends for handset manufacturers and the 60-month transition period it recommends for service providers. The Commission noted, however, that it has previously relied on 24-month transition periods when transitioning to new technical standards and that the Commission has previously found that 24-month transition periods provide the appropriate balance between product development cycles for handset manufacturers and the needs of consumers with hearing loss to receive the benefits of the new technical standard. The Commission also observed that the transition periods it was proposing for service providers would allow these companies to make handset models certified using the latest certification standards available to consumers faster than would be the case if the Commission accepted the HAC Task Force's longer 60-month transition period recommendation.

While the 100% hearing aid compatibility transition periods that we are adopting are shorter than the 48- and 60-month transition periods proposed by the HAC Task Force, we agree with Accessibility Advocates that the transition periods are reasonable. Despite CTIA's assertion that the 48- and 60-month transition periods were carefully negotiated and represent a consensus position, we note that Hearing Loss Association of America (HLAA), which was a member of the HAC Task Force, supports our shorter transition periods. Further, contrary to CTIA's assertion, we find our transition periods reflect real-world realities. Our transition periods are based on handset manufacturers being able to use: (1) the existing 2019 ANSI Standard for acoustic and telecoil certification requirements; (2) the volume control waiver standard adopted in the *HAC Waiver Order*; and (3) a Bluetooth standard of their own choosing, including the continued use of proprietary Bluetooth standards during a 48-month transition period to a non-

proprietary requirement, as discussed below.

The Commission adopted the 2019 ANSI Standard in February 2021, and it has been the exclusive hearing aid compatibility testing standard since December 5, 2023. Further, in September 2023, WTB granted a limited waiver of the 2019 ANSI Standard's volume control testing requirements at the request of handset manufacturers and service providers. Therefore, the current hearing aid compatibility testing standards are well known to handset manufacturers and will have been in place well before our 100% hearing aid compatibility transition periods start to run. Indeed, new handset models can only be certified as hearing aid-compatible using the 2019 ANSI Standard and new handset models are already being marketed as meeting the requirements of the 2019 ANSI Standard. In addition, we are allowing handset manufacturers to satisfy our new Bluetooth coupling requirement using Bluetooth coupling standards that they already include in their current handset models. This allowance includes both proprietary and non-proprietary Bluetooth coupling standards.

The vast majority of handset models currently being offered for sale or use in the United States already meet current hearing aid compatibility certification requirements and include some form of Bluetooth coupling technology. By adopting our proposed transition periods, we are ensuring that the benefits of our revised hearing aid compatibility rules reach consumers sooner than would be the case using the HAC Task Force's longer transition periods of 48 months for handset manufacturers and 60 months for service providers. Further, as the Commission has previously found when adopting new technical standards, we find that a 24-month transition period for handset manufacturers provides the appropriate balance between product development cycles and ensuring that consumers with hearing loss gain the benefits of our new standards in a timely manner. In addition, the transition periods we adopt for nationwide and non-nationwide service providers will allow these companies time to adjust their handset model portfolios to meet our 100% hearing aid compatibility requirement while also ensuring faster consumer access to the latest hearing aid-compatible handset models than would be the case using the HAC Task Force's longer 60-month transition period recommendation.

F. Non-Proprietary Bluetooth Standard Benchmark and Transition Period

With respect to the Bluetooth coupling requirement, we adopt a 48-month transition period from the effective date after which handset manufacturers and service providers will have to ensure that 15% of the handset models in their handset model portfolios include non-proprietary Bluetooth coupling technology that meets our new definition of hearing aid compatibility and our Bluetooth functionality requirements. After this 48-month transition period ends, we will not allow proprietary Bluetooth coupling technologies to meet the 15% Bluetooth coupling requirement. Only handset models with non-proprietary Bluetooth coupling technology that meets our new definition of hearing aid compatibility and our Bluetooth functionality requirements will be allowed to satisfy the 15% requirement. These handset models may also include proprietary Bluetooth coupling technology if technically feasible, but they must contain a non-proprietary Bluetooth coupling standard that is completely separate from the proprietary standard.

The HAC Task Force recommends allowing the use of both proprietary and non-proprietary Bluetooth standards, at least through a transition period to a non-proprietary Bluetooth requirement. The HAC Task Force, however, does not recommend a transition period for transitioning to a non-proprietary Bluetooth requirement. Rather, the HAC Task Force states that the Commission should assess whether new non-proprietary Bluetooth specifications have become more widespread. In the *100% HAC NPRM*, we sought comment on whether we should mandate that only non-proprietary Bluetooth standards could be used to meet our proposed new Bluetooth coupling requirement. We further sought comment on whether we should permit the use of proprietary Bluetooth standards on an interim basis as the industry transitions to full use of non-proprietary standards, such as Bluetooth LE Audio, Bluetooth HAP, and the related Bluetooth Auracast. In response to the *100% HAC NPRM*, MWF and Samsung argue that the Commission should allow the use of proprietary Bluetooth standards at least on an interim basis in order to allow new handset models with non-proprietary Bluetooth standards to come to market. Neither commenter, however, states how long of a transition period we should allow.

As the HAC Task Force requests, we have assessed the development of non-proprietary Bluetooth coupling standards and based on this assessment, we adopt a 48-month transition period after which only non-proprietary Bluetooth coupling technology that meets our new definition of hearing aid compatibility and our Bluetooth functionality requirements may be used to satisfy the Bluetooth coupling requirement. The HAC Task Force states that it “anticipates that handset and hearing device manufacturers will widely adopt the Bluetooth LE Audio framework and HAP specification.” In fact, the HAC Task Force cites a report that annual Bluetooth LE Audio device shipments will reach three billion by 2027. Further, the HAC Task Force states that Bluetooth LE Audio and Bluetooth HAP specifications are recognized industry standards, are non-proprietary, and will be interoperable across many devices. Further, the HAC Task Force asserts that “[o]ngoing improvements to Bluetooth LE Audio add functionality that has the potential to greatly benefit hearing device users and enhance compatibility, namely standardized profiles for Bluetooth hearing aids, a modern codec (LC3), and multi-stream support and broadcast audio.”

Bluetooth SIG states that Bluetooth LE Audio, Bluetooth HAP, and the related Bluetooth Auracast coupling technologies are currently in place and freely available. Bluetooth SIG confirms that these standards are non-proprietary, low energy coupling standards that directly support and will satisfy the Commission’s 100% hearing aid compatibility requirement. Further, Bluetooth SIG asserts that these coupling standards were developed with open participation from mobile handset and hearing aid manufacturers. Bluetooth SIG states that that these coupling standards will not impact the affordability of low-cost handset models or adversely affect low-income consumers. Similarly, Accessibility Advocates assert that it is anticipated that the communications industry will adopt Bluetooth LE Audio and Bluetooth HAP profiles going forward. Accessibility Advocates state that if Bluetooth LE Audio and Bluetooth HAP are rolled out as a universal solution to Bluetooth coupling with hearing aids, it has every reason to expect wide consumer adoption and use of these coupling standards.

Based on the above comments, we find that adopting a non-proprietary Bluetooth coupling requirement after a 48-month transition period is supported by the record. Commenters indicate that

Bluetooth LE Audio and Bluetooth HAP will be widely available in handset models over the next few years. Permitting the use of proprietary Bluetooth coupling technology, during this 48-month transition period simply reflects the marketplace reality that Apple and Android handsets use proprietary Bluetooth coupling technology for hearing aid coupling. According to the HAC Task Force, 56% of the handset models that they analyzed supported one of the proprietary Bluetooth coupling methods and that this support was increasing over time. Further, the HAC Task Force states that: “All models of iPhone support Apple’s MFi protocol (available since 2013), and most recent Android handsets support the Google ASHA protocol (available on handsets since 2018).”

While the HAC Task Force does not recommend a transition period to a non-proprietary Bluetooth coupling requirement, it does recommend that we adopt a 48-month transition period before we require handset manufacturers to meet our 100% hearing aid compatibility requirement. Our 48-month transition period to a non-proprietary Bluetooth coupling requirement is consistent with this 48-month transition recommendation. Given that the average handset model development cycle is 24 months, we find that a 48-month transition period should provide more than enough time for handset manufacturers to produce new handset models that include non-proprietary Bluetooth coupling technology meeting our requirements. In addition, adopting a 48-month transition period will encourage handset manufacturers to incorporate non-proprietary Bluetooth standards, such as Bluetooth LE Audio, Bluetooth HAP, and Bluetooth Auracast, into their handset models. This result will benefit consumers with hearing loss by ensuring the development of more universal connectivity between handset models and hearing aids, including over-the-counter hearing aids, and reduce the issue of certain handset models only being able to pair with certain hearing aids. Our 48-month transition period will reduce fragmentation in the marketplace and will benefit consumers by giving them a wider selection of handset models that will pair with their hearing aids.

At the end of the 48-month transition period, handset manufacturers will continue to have the freedom to choose which non-proprietary Bluetooth coupling technology they incorporate into their handset models, as long as the technology meets our new definition of

hearing aid compatibility and the related Bluetooth functionality requirements mean that after the 48-month transition period ends, the Bluetooth coupling requirement may only be met using Bluetooth coupling technology that: (1) utilizes a global, low power wireless technology standard for high quality audio voice streaming; (2) is a standalone non-proprietary implementation; (3) is a qualified implementation that has undergone testing to verify that the product conforms to the specifications it claims to support; (4) offers full interoperability between hearing aids and handset models to enable inter-network, inter-provider, inter-platform and inter-handset manufacturer functionality; and (5) uses a design that meets broad, generic hearing aid requirements that addresses needed features when coupling to handset models for all forms of voice calls and associated handset model use.

After the transition period, handset manufacturers and service providers will be able to continue to include proprietary Bluetooth coupling technology in their handset models, as long as 15% of their handset models in their handset model portfolios include non-proprietary Bluetooth coupling technology that meets our requirements. We will also allow handset models to include both proprietary and non-proprietary Bluetooth coupling technology if technically feasible, but only non-proprietary Bluetooth coupling technology that meets our requirements can be used to satisfy the 15% Bluetooth coupling requirement. After the 48-month transition period ends, handset manufacturers and service providers must ensure that 15% of the handset models in their handset model portfolios include non-proprietary Bluetooth coupling technology that complies with our requirements. We will not allow handset manufacturers and service providers to use handset models with only proprietary Bluetooth coupling technology to meet our 15% non-proprietary Bluetooth coupling requirement. If we were to allow it, we would undercut our non-proprietary requirement and our goal of increasing universal connectivity between handset models and hearing aids.

We are aware that proprietary Bluetooth coupling standards are extensions of non-proprietary Bluetooth standards, such as Bluetooth Classic. We will not allow a proprietary Bluetooth coupling standard, however, to satisfy our non-proprietary Bluetooth coupling requirement on the basis that

the proprietary Bluetooth coupling standard is simply an extension of a non-proprietary Bluetooth coupling standard. Proprietary Bluetooth coupling standards, such as the MFi and ASHA standards, cannot be used to satisfy our 15% non-proprietary Bluetooth coupling requirement. After the 48-month transition period, the 15% non-proprietary Bluetooth coupling requirement may only be satisfied by an exclusively non-proprietary Bluetooth coupling standard that meets our new definition of hearing aid compatibility and our Bluetooth functionality requirements.

G. Hearing Aid Compatibility Settings for Handset Models

After the expiration of the handset manufacturers' 100% hearing aid compatibility transition period, we require that all new handset models must come out-of-the-box with their hearing aid compatibility related acoustic coupling and volume control functions turned on by default. We will allow, however, secondary settings to turn on the handset model's telecoil or Bluetooth coupling functions, depending on the secondary capability included in a particular handset model. If one of these secondary settings is turned on by the consumer, we will allow the hearing aid compatibility related acoustic coupling function to be turned off. We will also allow volume control compliance to be altered to the extent technically necessary to meet full telecoil connectivity requirements as long as consumers and the Commission are fully informed of this alteration. We will not allow volume control functionality to be altered to meet Bluetooth or acoustic coupling requirements. We require handset manufacturers to ensure that their handset models have settings for acoustic, telecoil, or Bluetooth coupling (depending on the coupling functionality included) and volume control functionality that are clearly labeled and allow consumers to easily find these settings and to turn these functions on or off as they desire.

In the *100% HAC NPRM*, we observed that our hearing aid compatibility rules do not address whether a handset model by default must come out-of-the-box with its hearing aid compatibility functions fully turned on, or whether it is permissible for handset manufacturers to require users to turn these functions on by going into the handset model's settings. We also observed that our rules do not address whether a handset model can have two different settings—one setting that turns on acoustic coupling and volume

control, but not telecoil coupling, and a second separate setting that turns on the handset model's telecoil coupling capabilities. Further, we observed that our rules do not address whether a handset model in telecoil mode has to continue to fully meet acoustic and volume control requirements. Finally, we observed that while the HAC Task Force did not address this settings issue, the HAC Task Force recommends that the Commission adopt an additional form of connectivity in the form of a Bluetooth coupling requirement. This recommendation means that handset models would have to meet acoustic coupling and volume control requirements and—depending on the handset model—would also have to meet either a telecoil or Bluetooth coupling requirement. As a result of these potential alternative coupling requirements, we sought comment on the related handset model settings issue.

Accessibility Advocates state that they “support a requirement for handset models to come out-of-the-box with their acoustic and telecoil functions fully turned on as default features so long as this is technically feasible.” Accessibility Advocates also assert that “[a]dditionally, phones should be in compliance with the acoustic RF and volume control requirements right out-of-the-box.” MWF argues that flexibility and options are in the best interests of consumers and states that there should be separate settings for acoustic, telecoil, and Bluetooth coupling. MWF further argues that it does not support Accessibility Advocates' position that handset models should come out-of-the-box with their acoustic and telecoil functions turned on by default. MWF expresses concern that having these functions turned on out-of-the-box could lead to acoustic shock and to higher battery usage than the user might anticipate. MWF believes that a better course of action is for users to opt-in to the features offering higher volume and telecoil operation.

After considering the record on this issue, we decide that, after the handset manufacturer 100% hearing aid compatibility transition period ends, all handset models must come out-of-the-box with acoustic coupling and volume control certification requirements fully turned on by default. This decision is consistent with our proposal in the *100% HAC NPRM*. We find that having handset models come out-of-the-box with acoustic coupling and volume control functionality turned on by default benefits consumers with hearing loss who use hearing aids and those consumers with hearing loss who do not use hearing aids. This requirement will

improve the listening experience of consumers who have hearing loss, and it does not impact the listening experience of consumers who do not use hearing aids or do not have hearing loss.

Further, requiring volume control functionality to be fully turned on by default allows all consumers, regardless of whether they have hearing loss, to adjust the speech level of their handsets during voice calls to their preferred, comfortable listening level. Volume control functionality provides a range over which the level of speech can be increased and decreased to a level that meets the needs of consumers no matter whether they use hearing aids or have hearing loss. Further, requiring volume control functionality to be turned on by default benefits consumers who do not use hearing aids and, therefore, might not know to look under a setting marked as hearing aid compatibility to turn on the handset model's volume control functionality. While we require handset models to come out-of-the-box with volume control functionality turned on by default, we will allow handset models to have a setting whereby consumers can turn this functionality off. This requirement allays concerns with respect to acoustic shock and battery usage. Consumers will have the ability not only to adjust the volume of their handset models to meet their listening needs, but also to turn this function off if they so desire.

In addition to these default out-of-the-box requirements, handset models may have a separate setting that turns on a handset model's hearing aid compatibility related telecoil coupling functionality if the handset model includes telecoil coupling capability. Acoustic and telecoil coupling represent two separate ways for handset models to pair with hearing aids. Hearing aids operating in acoustic coupling mode receive sounds through a microphone and then amplify all sounds surrounding the consumer, including both desired and unwanted ambient noise. Hearing aids operating in telecoil coupling mode turn off their microphone to avoid amplifying unwanted ambient noise, and instead use a telecoil to receive only audio signal-based magnetic fields generated by telecoil coupling capable handset models. When a handset model is paired with hearing aids using telecoils it is not necessary for the handset's acoustic coupling function to be left on because the hearing aids microphone has been turned off.

We will also allow a separate setting for Bluetooth coupling that is a distinct setting from the default out-of-the-box

acoustic and the alternative telecoil settings. This approach is consistent with allowing consumers to have a choice as to how they pair their handsets with their hearing aids. Most consumers are already familiar with how to connect their handsets to their hearing aids using Bluetooth coupling and, therefore, there is less concern about consumers being able to locate this feature as compared to the other two methods of pairing handsets with hearing aids. Since Bluetooth coupling represents an alternative way to pair handsets to hearing aids, we will allow handset models in Bluetooth coupling mode to turn off acoustic and telecoil coupling functionality. Handset models only need to pair with hearing aids through one coupling method at a time.

As discussed above, we require new handset models to come out-of-the-box with volume control functionality turned on by default. This requirement means that, if a new handset model is paired to hearing aids using acoustic, telecoil, or Bluetooth coupling technology the handset model's volume control functionality must be turned on, unless the consumer has turned it off. While the handset model must have a setting that allows the consumer to turn this functionality off, the handset model must meet volume control certification requirements in each of these pairing modes. We are aware, however, that when a handset model is paired to hearing aids using telecoil coupling, not all volume control certification requirements may be met. In that situation, we will allow a slight deviation from volume control certification requirements only to the extent absolutely necessary to meet full telecoil coupling requirements. Any handset model that does not meet full volume control requirements in telecoil coupling mode must fully disclose this information to consumers and explain how this affects the handset model's operations in telecoil mode. A consumer must be able to understand that the handset model in telecoil coupling mode does not meet full volume control certification requirements and understand how this deviation affects the handset model's operation in telecoil mode. Further, we require that handset manufacturers disclose this information in their handset model equipment certification authorization application along with supporting documentation explaining why the handset model cannot meet full volume control functionality in telecoil coupling mode and how much of a deviation there is from fully meeting the volume control requirement.

We are not aware of a similar issue with respect to volume control functionality when a handset model is paired with hearing aids using Bluetooth coupling technology. We did not receive any comments on this issue even though the *100% HAC NPRM* sought comment on the issue. Therefore, we require handset models to meet the full volume control standard that the handset model was certified as meeting when paired with hearing aids using Bluetooth coupling technology. Given that Bluetooth coupling is similar to acoustic coupling in that neither method requires any additional equipment, as compared to telecoil coupling, we do not anticipate any issues with handset models meeting the full volume control requirement that the handset model was certified as meeting when pairing with hearing aids using the Bluetooth coupling mode.

After the handset manufacturers' 100% hearing aid compatibility transition date ends, we require handset manufacturers to ensure that all new handset models that they add to their handset model portfolios have settings for each coupling method included in the handset model, as well as a setting for volume control functionality, if the handset model is certified under the 2019 ANSI Standard. Each of these settings must be clearly labeled and usable. Consumers must be able to easily find these settings without the settings being obscured or hidden by sub-menus. The settings must allow consumers to be able to turn each of these functions on or off as they wish in order to meet their individual listening needs. At this time, we will not establish standard hearing aid compatibility settings or nomenclature for each setting. We will continue to allow handset manufacturers flexibility in this manner as long as the settings are easy to find and allow consumers the freedom to adjust the settings as they wish. We also note that below we establish updated labeling and disclosure requirements, as well as website posting requirements, for handset manufacturers and service providers. These requirements ensure that consumers have the information they need to understand the hearing aid compatibility functions of their handset models and how to find and use these compatibility features.

H. Consumer Notification Provisions

1. Labeling and Disclosure Requirements

We revise our external printed package label requirements and our related requirements concerning

information that must be included within the handset model's packaging in the form of either a printed insert or a printed handset manual. We update these requirements to reflect our new handset model certification standards related to our 100% hearing aid compatibility requirement. Section 20.19(f) of the Commission's rules provides that certain handset model information must be included on a handset model's external printed package label and additional handset model information must be included within a handset model's packaging. In the 100% HAC NPRM, we tentatively concluded that we would revise these requirements to require a handset model's external printed package label to state whether the handset model includes telecoil or Bluetooth coupling technology or both types of coupling technology and, if the handset model includes Bluetooth coupling technology, which Bluetooth coupling technology the handset model includes. We also tentatively concluded that we should revise the consumer information that must be included within a handset model's packaging to require the printed insert or the printed handset manual to include this same information. Further, we tentatively concluded that, if we decided to allow handset models to have default and secondary compatibility settings, we would modify our internal packaging requirements to require the printed insert or printed handset manual to include an explanation of each of these settings, what each setting does and does not include, and how to turn these settings on and off.

Accessibility Advocates and MWF support modifying our labeling and disclosure requirements to include information about a handset model's telecoil and Bluetooth coupling technology. Accessibility Advocates argue, however, that we should modify our proposal to require the handset model's external package label and the related internal packaging material to indicate whether or *not* the handset model includes telecoil coupling capability that meets certification requirements. Similarly, Accessibility Advocates argue that we should modify our proposal to require the handset model's external package label and the related internal packaging material to indicate whether or *not* the model includes Bluetooth coupling technology as a replacement for meeting telecoil certification requirements or whether the handset model meets both telecoil and Bluetooth coupling requirements. Accessibility Advocates support our

proposal that if we allow handset models to have a secondary hearing aid compatibility setting, the printed package insert or printed handset manual must provide an explanation of each of these settings, what each setting does and does not include, and how to turn these settings on and off. CTIA, however, states that we should reject calls to expand our labeling requirements. CTIA argues that requiring additional, granular information creates additional burdens without consumer benefits, especially as the industry transitions to a 100% hearing aid compatibility requirement.

Based on our tentative conclusion and the record, we revise our external printed package label requirements to incorporate our tentative conclusion with modifications to address Accessibility Advocates' comments. We require a handset model's external printed package label to provide: (1) that the handset model is certified as hearing aid compatible; (2) whether or not the handset model meets telecoil or Bluetooth coupling requirements or both requirements and, in the case of Bluetooth coupling requirements, which Bluetooth coupling standard the handset model includes; and (3) the handset model's actual conversational gain with and without hearing aids, if certified under the 2019 ANSI standard, with the actual conversational gain that is displayed being the lowest rating assigned to the handset model for any covered air interface or frequency band.

Further, based on our tentative conclusion and the record, we revise the information that must be included inside a handset model's packaging, either in the form of a printed insert or a printed handset manual (or through the use of digital labeling, as discussed below), to include the following new information:

- An explanation of what it means that the handset model is certified as hearing aid-compatible and which ANSI standard was used for certification purposes;
- An explanation of what acoustic, telecoil, and Bluetooth coupling are and which of these coupling capabilities the handset model includes and, in the case of Bluetooth coupling, which Bluetooth coupling standard the handset model includes;
- If the handset model was certified under the 2019 ANSI standard, an explanation of the handset model's volume control capabilities, an affirmative statement of the handset model's conversational gain with and without hearing aids, and an explanation of how to turn the handset

model's volume control capabilities on and off;

- An explanation of how to turn each of the handset model's coupling functions on and off and an explanation that by default the handset model comes with its acoustic and volume control functions turned on;

- If the handset model has been certified as hearing aid-compatible under special testing circumstances or contains operations or frequency bands that are not certified as hearing aid-compatible, an explanation of how this affects the handset model's operations. Under these circumstances, the included printed package insert or printed handset manual must include the following disclosure statement:

This phone has been tested and certified for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or the handset manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer.

We find that these external and internal labeling and disclosure requirements are consistent with section 710(d) of the Communications Act, which directs the Commission to establish requirements for labeling "as are needed to provide adequate information to consumers on the compatibility between telephones and hearing aids." Our revised external printed package label rule ensures that the most pertinent handset model information appears on the handset model's printed package label. Consumers can read the external package label and determine the coupling technology that the handset model includes and, if it includes Bluetooth coupling technology, which standard the handset model incorporates. In addition, for handset models certified as hearing aid-compatible under the 2019 ANSI Standard, consumers can easily ascertain the conversational gain that the handset model provides both with and without hearing aids. Consumers can use this information to determine whether a handset model meets their listening needs and to compare handset models when considering which handset model to purchase. We continue to allow handset manufacturers and service providers

flexibility in designing their handset model printed package labels as long as the labels include the required information in a clear and straight-forward fashion that consumers can easily find and understand.

Our revised internal printed package insert or printed handset manual requirements allow consumers who are interested in more detailed information about a handset model's hearing aid compatibility to find this additional information in the printed package insert or the printed handset manual—whichever the handset manufacturer or service provider chooses to include in the handset model's packaging. Consumers can consult the included printed insert or printed handset manual to understand what type of coupling technology the handset model includes and how to turn these coupling functions on and off, and, if applicable, how to turn the volume control function on and off. In addition, consumers will be able to determine whether the handset model has been certified under special testing circumstances, what this means in terms of the handset model's operations, and whether the handset model includes frequency bands or air interfaces that are not certified as hearing aid compatible. As with our external printed package label requirements, we continue to require that printed inserts or printed handset manuals included inside a handset model's packaging be written in a clear, straight-forward fashion using plain language that consumers can easily understand. We find all of these requirements to be consumer friendly and, therefore, in the public interest, and consistent with section 710(d) of the Communications Act.

We disagree with CTIA concerning our revised external and internal package labeling content requirements. We find that these revised content requirements are consistent with section 710(d) of the Communications Act, which requires the Commission to establish requirements for labeling “as are needed to provide adequate information to consumers on the compatibility between telephones and hearing aids.” The information that we are requiring handset manufacturers and service providers to provide to consumers allows consumers to be fully informed about a handset model's functions and capabilities and to make informed purchasing decisions. Further, we disagree with CTIA's statement that “[c]onsumers today do not shop for modern phones by picking up boxes in the store” The HAC Task Force specifically states that one of the ways consumers can learn about the hearing

aid compatibility of a handset model is to look at the handset's packaging. While we require handset manufacturers to provide hearing aid compatibility information about their handset models through other means too, it is reasonable to assume that consumers might read the information provided on a handset model's external printed package label and to compare this information with the information on a competing handset model's external printed package label. Our labeling requirements allow us to ensure that consumers have adequate information about the hearing aid compatibility of the handset models they are considering for purchase.

We decide, however, to eliminate one current requirement from our printed package insert or printed handset manual requirements. We will no longer require the printed package insert or the printed handset manual to provide the M/T ratings of handset models certified under the 2011 ANSI Standard or older ANSI standards or to provide an explanation of the ANSI M/T rating system. The 2019 ANSI Standard does not use the M/T rating system that older versions of the ANSI standard used. Under the 2019 ANSI Standard handset models are certified without an assigned rating. Currently, the 2019 ANSI Standard is the exclusive testing standard for determining hearing aid compatibility. As a result, we find the M/T rating requirements to be outdated and unnecessary, given the fact that all new handset models must be compliant with the 2019 ANSI Standard. We are concerned that continuing to require this outdated information to be included in printed package inserts or printed handset manuals will confuse consumers. We eliminate this requirement as handset manufacturers continue to certify handset models under the 2019 ANSI Standard. By doing so, we reduce regulatory burden on handset manufacturers and service providers and avoid confusing consumers with outdated and unnecessary information.

Transition Period for Revised Labeling and Disclosure Requirements. As requested by CTIA, in order to align the effective date of the revised labeling requirements with the start of the handset manufacturer's 100% hearing aid compatibility requirement, we will make the effective date of our revised labeling requirements the later of either the date the Commission publishes a notice in the **Federal Register** announcing that the Office of Management and Budget (OMB) has concluded its review of these requirements or the effective date of the

handset manufacturer 100% hearing aid compatibility requirement. We take this step to reduce regulatory burden and consumer confusion. The handset manufacturer 100% hearing aid compatibility requirement will be effective 25 months after a summary of the Report and Order is published in the **Federal Register**. This delayed effective date relates only to the revised rules that will be in § 20.19(f)(1) and (2) of the Commission's rules and does not apply to the effective date of the other revised paperwork requirements requiring OMB review. These other revised paperwork requirements include the new digital labeling requirements in § 20.19(f)(3) of the Commission's rules. The digital labeling requirements will become effective with the rest of the paperwork requirements (other than § 20.19(f)(1) and (2)) once the Commission publishes a notification in the **Federal Register** announcing OMB has completed its review of these requirements.

2. Use of Digital Labeling Technology

We will continue to require the use of external printed package labels, but will allow the handset model information that must be included inside a handset model's packaging to be delivered using digital labeling technology as an alternative to including either a printed insert or printed handset manual as long as the company using this option maintains a publicly accessible website where consumers can easily locate the required information. Handset manufacturers and service providers choosing this option must provide consumers with both a Quick-Response (QR) code and the related website address where the required handset model information can be found. The required information must be presented in a straight-forward fashion using plain language that is easy for consumers to understand. Handset manufacturers and service providers choosing this option must update the required information within 30 days of any relevant changes, and they must ensure that they are in full compliance with our website posting requirements.

As discussed above, § 20.19(f) of the Commission's rules requires the use of an external printed package label and either an internal printed insert or printed handset manual. In the *100% HAC NPRM*, we sought comment on whether we should permit handset manufacturers and service providers to use digital labeling technology, such as QR codes, as an alternative to external printed package labels and internal printed inserts or printed handset manuals. We noted that the Commission previously considered whether to allow

the use of websites as an alternative to printed materials, but decided not to adopt this approach because consumers may not necessarily visit a handset manufacturer's or service provider's website before purchasing a handset. In the *100% HAC NPRM*, we proposed to reconsider this decision and allow handset manufacturers and service providers to meet the information requirements of § 20.19(f) through the use of digital labeling technology.

External Printed Package Labels. After considering the record in this proceeding, we continue to require handset manufacturers and service providers to use external printed package labels to deliver the handset model information that we require to be on external package labels. Accessibility Advocates agree with this decision. As we discussed above, we require the most important handset model information to be on external printed package labels. This approach allows consumers with hearing loss to pick-up a handset model in its original packaging and read its external label. This label will allow consumers to easily ascertain whether a handset model they are considering for purchase will meet their listening needs and to easily compare the hearing aid compatibility features of one handset model with another handset model by reading the information required to be on the external labels. We continue to believe that requiring an external printed package label serves the interest of consumers. We, therefore, will continue to require the use of external printed package labels to deliver the handset model information that we require to be on a handset model's external package label. We will not allow handset manufacturers and service providers to deliver this information to consumers using digital labeling technology.

Internal Packaging Information. While we require the continued use of external printed package labels, we will allow handset manufacturers and service providers to use digital labeling technology to deliver to consumers the information that would otherwise have to be provided using a printed insert or printed handset manual, as long as companies utilizing this approach maintain publicly accessible websites where consumers can easily find the information required by our rules. The information that handset manufacturers and service providers can provide to consumers using digital labeling technology is the same information that they would otherwise have to deliver to consumers using printed package inserts or printed handset manuals. Handset

manufacturers and service providers choosing this option must provide consumers with both a QR code and the related website address where the required information can be found. We require both a QR code and the related website address in order to ensure that consumers who may not be comfortable using QR codes have another way to access the on-line information. In addition to providing this information using QR codes and website addresses, handset manufacturers and service providers choosing to use this option must comply with all of our other website posting requirements. Further, they must ensure that consumers can easily find the required information and that the required information is presented in a clear, straight-forward fashion using plain language that consumers can easily understand.

When the Commission previously determined not to allow the use of digital labeling technology, the Commission based its decision on finding that consumers may not necessarily visit the websites of handset manufacturers or service providers before going to the company's store and purchasing a hearing aid-compatible handset. We find in this final rule, however, that digital labeling is ubiquitous and can be found on many consumer products, including electronic products. Further, the use of digital labeling technology allows consumers to visit a company's publicly accessible website and access the required information at the point-of-sale while consumers are in stores making purchasing decisions. We agree with commenters that consumers are now more familiar with digital labeling and accessing a company's website using their handsets. QR codes are easy to use and merely require hovering a handset's camera over the QR code and tapping the website that appears or, under our digital labeling rule, consumers can type the required website link into their handset's web browser.

We agree with the commenters who state that digital labeling is a more consumer friendly way to deliver the information that is required to be included in a printed insert or printed handset manual. Digital labeling allows consumers to get up-to-date product information and embedded website links can be used to provide additional information or to define terms. For instance, companies can use embedded links to define terms such as "air interface," "ANSI standards," "codecs," "conversational gain," "frequency bands," and values such as "MHz/GHz," and "dBm." By using embedded links to define legal and technical terms

and to provide additional information, handset manufacturers and service providers can use plain and clear language to meet their disclosure requirements. In addition, digital labeling allows consumers to use the accessibility features on their handsets to review hearing aid compatibility information. Printed package inserts and printed handset manuals tend to be small, use tiny print, and be difficult to read. Allowing the use of digital labeling will allow consumers, especially older consumers, to use their handsets to enlarge the print online. Further, consumers often throw away or misplace package inserts and handset manuals, and are used to using a company's website to look up information when necessary.

Accessibility Advocates caution the Commission that older people may not be comfortable or familiar with using QR codes, and that it is concerned that if QR codes are the only means of acquiring information that some people will not be able to independently access needed information. We find, however, that just as consumers are familiar with Bluetooth coupling as they age into hearing loss they will also be familiar with QR codes and searching handset manufacturers' and service providers' publicly accessible websites for handset model hearing aid compatibility information. Further, we find that digital labeling will help senior citizens who might find the size and print of printed inserts and printed handset manuals difficult to read. Senior citizens will be able to use their handsets to enlarge print to make it easier to read, or they could use the type-to-speech function of their handsets to have the information read to them. To the extent that a senior citizen or a consumer has difficulty using digital labeling or does not possess a smartphone, a store employee at the point-of-sale can help the senior citizen or the consumer with the process. Alternatively, senior citizens or consumers can directly contact handset manufacturers or service providers using our new point-of-contact information to have their hearing aid compatibility questions answered. This new contact information requirement includes a texting option that Accessibility Advocates requested that we adopt to help ensure that those who may have difficulty hearing a phone conversation can contact a company by texting the company. We find, therefore, that electronic labeling will help consumers access handset model hearing aid compatibility information, and that we are providing multiply

ways for consumers to access handset model hearing aid compatibility information.

Our decision to allow the use of digital labeling as an alternative to printed inserts or printed handset manuals is consistent with our revised website posting requirements. Consumers can go to handset manufacturers' and service providers' publicly accessible websites to find hearing aid compatibility information about each handset model that these companies offer for sale or use in the United States. Further, digital labeling is less burdensome on handset manufacturers since they do not have to align testing, certification, and printing schedules, and it saves paper, making it a more environmentally friendly way of providing information. We will not require handset manufacturers and service providers who choose to use this digital labeling option to also continue to include a printed insert or printed handset manual within the handset model's packaging. Such an approach would be duplicative and would undercut our findings concerning the benefits of allowing digital labeling to be used to deliver the information required to be included within a handset model's packaging. We remind handset manufacturers and service providers, however, that our rules require these companies to ensure access to information and documentation it provides to its customers, if readily achievable. Our rules also require handset manufacturers to provide end-user product documentation, including accessibility and compatibility information, in alternate formats or alternate modes upon request at no additional charge, if readily achievable. We also encourage handset manufacturers and service providers who use digital labeling to provide the required information in languages in addition to English, such as Spanish.

3. Handset Model Number Designation Requirements

We determine that in cases where a handset manufacturer or service provider recertifies a handset model using an updated certification standard, the company does not need to assign the handset model a new model number designation, unless the handset model has been physically altered to meet the requirements of the new standard. Currently, § 20.19(g) of the Commission's rules provides that "[w]here a manufacturer has made physical changes to a handset that result in a change in the hearing aid compatibility rating under the 2011

ANSI standard or an earlier version of the standard, the altered handset must be given a model designation distinct from that of the handset prior to its alteration." The *100% HAC NPRM* sought comment on how this rule should apply in cases where a handset model that has passed the 2011 ANSI Standard and has an assigned model number subsequently passes the 2019 ANSI Standard. MWF, the only party to comment on this issue, states that handset models that are recertified under updated certification standards should not be required to have a new model number as long as there is no physical change to the handset model. Instead, MWF states that consumers can be notified of this certification change by updating the handset model's labeling, and that it is not necessary to also update the handset model number designation.

We agree with MWF that, unless the handset model is physically altered to meet the updated certification standard, there is no need to give the recertified handset model a new model number designation. Consistent with established Commission precedent, we will continue to define a physical change to a handset model to be a change in the handset model's hardware or software that causes a variation in the form, features, or capabilities of the handset model. As long as the handset manufacturer or service provider does not physically alter the handset model through a hardware or software change that causes a variation in the form, features, or capabilities of the handset model, the handset manufacturer or service provider does not need to assign the handset model a new model number designation. While we will not require the handset model to be assigned a new model number designation, we do require that the handset manufacturer or the service provider update the handset model's labeling, disclosures, and website posting information to reflect the handset model's updated certification and to explain how this updated certification affects the handset model's operations. We agree with MWF that our consumer notification provisions are sufficient under these circumstances to notify consumers of the certification change and that there is no need to also assign the handset model a new model number designation.

While handset manufacturers and service providers do not have to assign unaltered handset models new model number designations, they may assign handset models new designation numbers if they choose to for business reasons. We are aware that handset

manufacturers and service providers sometimes assign handset models different model number designations to distinguish units sold to different service providers, or for other reasons that are not related to the handset model's form, features, or capabilities. If, under these circumstances, a handset manufacturer or a service provider chooses for its own business reasons to assign a handset model multiple model number designations, the company may only count the handset model once for purposes of our handset model deployment benchmarks. As the Commission has previously found, "for purposes of the hearing aid compatibility rules, a manufacturer may not characterize as separate models any devices that do not in fact possess any distinguishing variation in form, features, or capabilities." As a result, unless the handset models are distinguishable in form, features, or capabilities, the handset model can only be counted once for purposes of our handset model deployment benchmarks.

While we allow hearing aid-compatible handset models to be recertified under updated certification standards, we note that handset models may not be certified as hearing aid-compatible using parts of two different ANSI standards. A handset model must meet all aspects of the updated certification standard in order to be certified as hearing aid-compatible under the updated standard. We also note that hearing aid-compatible handset models cannot be modified through a software push that results in the handset model no longer meeting hearing aid compatibility certification standards. Consumers purchase hearing aid-compatible handset models with the understanding that the handset model meets certain hearing aid compatibility certification standards, and handset manufacturers and service providers may not modify handset models through a software push that results in the handset model no longer meeting hearing aid compatibility certification standards after the software push is installed. We also emphasize that if a software push adds operations or frequency bands that are not covered by the applicable ANSI standard and, therefore, these new operations or frequency bands do not meet hearing aid compatibility certification standards, handset manufacturers and service providers must inform consumers of this fact before they choose to update their handset model's software.

Finally, handset manufacturers and service providers may not lower a handset model's conversational gain

through a software push, subject to a *de minimis* exception as described below. Just as consumers purchase hearing aid-compatible handset models with the expectation that the handsets meet certain certification standards, consumers purchase handsets with the understanding that the handsets provide a certain level of conversational gain. This expectation may be especially true for consumers with hearing loss who do not use hearing aids. CTIA suggests that the Commission should allow software pushes that lower a handset model's conversational gain in ways that are "immaterial" or "imperceptible." CTIA, however, does not define or explain what handset manufacturers or service providers might consider as an immaterial or imperceptible reduction in a handset model's conversational gain or whether such a reduction would be permissible under the Commission's permissive change rules. In addition, Accessibility Advocacy and Research Organizations "oppose any changes that would allow software updates to alter the model's HAC rating, certification, or capability." We are concerned that perceptibly lowering the conversational gain of handset models through software pushes could frustrate the expectations of consumers who may have purchased a specific handset model because it provides a certain level of conversational gain, including representations of that level on the handset model's printed external package label or representations of that level on a handset manufacturer's or service provider's publicly accessible website. At the same time, we recognize CTIA's concerns that there may be necessary software pushes that have a minimal impact on volume control. Given these facts, we conclude that our rule should prohibit handset manufacturers or service providers from lowering a handset model's conversational gain through a software push, except for software pushes that would have a *de minimis* impact on the handset model's conversational gain. We seek to minimize the impact on consumers with hearing loss while also avoiding unnecessary impacts on the flexibility of manufacturers and service providers to deploy software updates. We will closely monitor the experiences of consumers, manufacturers, and service providers in implementing this rule.

We delegate authority to WTB, in coordination with the Office of Engineering and Technology, to further define the scope of the *de minimis* exception as needed, including through

modifications to the rule after notice and comment.

I. Website Posting, Record Retention, and Reporting Requirements

1. Website Posting and Record Retention Requirements

We revise our website posting and record retention requirements to ensure handset manufacturer and service provider compliance with our 100% hearing aid compatibility requirement and to ensure that consumers have access to the information that they need to make informed purchasing decisions. Section 20.19(h) of the Commission's rules requires handset manufacturers and service providers to post on their publicly accessible websites certain information and to maintain certain records related to the handset models that they offer. In the *100% HAC NPRM*, we tentatively concluded that we should revise these requirements to require handset manufacturers and service providers to identify on their publicly accessible websites those handset models in their handset model portfolios that meet telecoil certification requirements. For those handset models that do not meet telecoil certification requirements, we tentatively concluded that handset manufacturers and service providers must affirmatively state that the handset model does not meet telecoil certification requirements and identify which Bluetooth coupling technology the handset model meets instead. We also tentatively concluded that handset manufacturers and service providers must identify on their publicly accessible websites the conversational gain with and without hearing aids for each handset model that they offer that was certified under the 2019 ANSI Standard. In addition to seeking comment on these revisions to our website posting requirements, we sought comment on ways to streamline our website posting and record retention requirements.

After reviewing the record, we update and streamline our existing website posting requirements by adopting our tentative conclusions. As a result, once the applicable 100% hearing aid compatibility transition period passes, handset manufacturers and service providers are required to provide the following information on their publicly accessible websites: (1) a list of all currently offered handset models, including each model's marketing name/number(s) and the FCC ID number, along with the ANSI standard used to certify the handset model as hearing aid-compatible; (2) for each handset model, an affirmative statement

of whether or not the handset model meets telecoil certification requirements; (3) for each handset model, an affirmative statement of whether or not the handset model includes Bluetooth coupling technology and, if so, which Bluetooth coupling technology the handset model includes; (4) for each handset model certified under the 2019 ANSI standard, an affirmative statement of the handset model's conversational gain with and without hearing aids with the actual conversational gain that is displayed being the lowest rating assigned to the handset model for any covered air interface or frequency band; (5) if a handset model has been certified as hearing aid-compatible under special testing circumstances or contains operations or frequency bands that are not certified as hearing aid-compatible, an explanation of how this affects the handset model's operations; and (6) a link to the Commission's wireless hearing aid compatibility web page.

All of this information must be easy for consumers to locate on handset manufacturers' and service providers' publicly accessible websites and not hidden behind hard to locate links. Further, this information must be presented to consumers using plain straightforward language that consumers can easily understand. We also require handset manufacturers and service providers who choose to utilize digital labeling technology as an alternative to printed package inserts or printed handset manuals to post the information that is required to be included within a handset model's packaging on their publicly accessible websites, as discussed above. Further, handset manufacturers and service providers must post on their publicly accessible websites the company point-of-contact information that we adopt below. The digital labeling information and company point-of-contact information must be presented to consumers in the same fashion as we require other website posting information to be presented to consumers. This information must be easy for consumers to locate and displayed in an easy to understand straightforward manner using plain language, and we encourage handset manufacturers and service providers to provide this information in languages in addition to English, such as Spanish. Consistent with current website posting requirements, handset manufacturers and service providers must update their websites within 30 days of any relevant changes, and date stamp their website pages. This date stamp requirement allows consumers to

see how current the information is that they are viewing.

Along with the revisions to our website posting requirements, we eliminate the following website posting requirements: (1) handset manufacturers and service providers will no longer be required to list a handset model's M/T ratings for handset models certified using the 2011 ANSI Standard or older ANSI standards or provide an explanation of the M/T rating system; (2) service providers will no longer be required to post a list of all the non-hearing aid-compatible handset models that they offer, including the marketing model name/number(s) and FCC ID number, or a list of all hearing aid-compatible handset models that they offered in the past 24 months but no longer offer; and (3) service providers will no longer be required to post a link to a third-party website as designated by the Commission or the Wireless Telecommunications Bureau, with information regarding hearing aid-compatible and non-hearing aid-compatible handset models.

Additionally, we eliminate our record retention requirement that requires service providers to retain certain information about handset models they no longer offer for sale or use in the United States. Specifically, we will no longer require service providers to retain internal records for discontinued handset models, and the associated information that they presently have to make available to the Commission upon request. This handset model information includes: (1) the month/year each hearing aid-compatible and non-hearing aid-compatible handset model was first offered; and (2) the month/year each hearing aid-compatible and non-hearing aid-compatible handset model was last offered for all discontinued handset models until a period of 24 months has passed from that date. The Commission adopted these requirements to ensure that "service providers meet numerical and percentage-based handset deployment obligations." Under our 100% hearing aid compatibility requirement, however, removing a handset model from a service provider's handset model portfolio will not impact the service provider's compliance with the 100% handset model deployment benchmark the way it might with respect to the current 85% benchmark. All of the remaining handset models will be hearing aid-compatible and to the extent there is an issue with the telecoil and Bluetooth coupling requirement, Commission staff can review the FCC ID numbers of the remaining handset models to ensure compliance with these

requirements. Further, as the Commission has previously stated, the date that a handset model is first offered and the date that it is discontinued is the type of information that service providers would retain as part of normal businesses operations independent of the Commission's requirements.

We find that these revisions and modifications to our website posting and record retention requirements reduce regulatory burden while ensuring that consumers have access to the information that they need to make informed handset model purchasing decisions. We are updating our website posting requirements to reflect the certification requirements of the 2019 ANSI Standard and our new Bluetooth coupling requirement. Consumers will be able to consult a handset manufacturer's or service provider's publicly accessible website and learn which handset models that they offer include telecoil connectivity and which do not; which ones include Bluetooth coupling technology and which do not; and for those that do include Bluetooth coupling technology, the type of Bluetooth coupling technology that is included. Consumers will also be able to review the conversational gain that handset models certified under the 2019 ANSI Standard offer. In addition, consumers will be able to use company point-of-contact information posted on handset manufacturers' and service providers' publicly accessible websites to contact these companies directly about the hearing aid compatibility of the handset models that they offer. Further, our revisions ensure that handset manufacturers and service providers only have to post pertinent information and not outdated information.

We eliminate the posting and record retention requirements related to non-hearing aid-compatible handset models, as well as information about handset models that are no longer offered. Since all handset models will be hearing aid-compatible, the website posting and record retention requirements related to non-hearing aid-compatible handset models will no longer be relevant. Going forward, the Commission will be able to review a handset manufacturer's or a service provider's publicly accessible website to determine whether a company is currently in compliance with our handset model deployment benchmarks. The Commission will also be able to rely on the annual certifications that handset manufacturers and service providers will be filing to ensure compliance with our hearing aid compatibility rules for the previous calendar year. To the

extent that consumers have questions about handset models that are no longer offered, they can use the handset manufacturer and service provider point-of-contact information to contact these companies to have their questions answered. Our website posting and record retention revisions ensure that consumers have the relevant information that they need to make informed purchasing decisions while also streamlining these requirements to reduce regulatory burden and cost on handset manufacturers and service providers.

2. FCC Forms 655 and 855 Annual Reporting and Certification Requirements

After the handset manufacturer 100% hearing aid compatibility transition period ends, we will eliminate FCC Form 655 that handset manufacturers currently must file for reporting purposes and instead require handset manufacturers to file FCC Form 855 annually for compliance purposes. FCC Form 655 is the form handset manufacturers file containing information about the hearing aid compatibility status of each handset model offered, functionalities and labeling of hearing-aid compatible handsets, and the filing company's consumer outreach efforts. FCC Form 855 is the form that service providers presently file to certify compliance with our hearing aid compatibility requirements, and we will require service providers to continue to file this form after the relevant 100% hearing aid compatibility transition period ends. Further, after the expiration of the manufacturer 100% hearing aid compatibility transition period, we will change the reporting deadline for handset manufacturers from July 31 each year to January 31 each year and change the handset manufacturer reporting period to cover the period of January 1 to December 31 of the previously calendar year, instead of the current period of July 1 of the previous year to June 30 of the current year. These changes will align the reporting deadline and reporting period for handset manufacturers with the reporting deadline and reporting period for service providers. We will also update FCC Form 855 to reflect our 100% hearing aid compatibility requirement and related requirements.

In the *100% HAC NPRM*, we sought comment on our tentative conclusions to move handset manufacturers from FCC Form 655 to FCC Form 855 after the passing of the handset manufacturer 100% hearing aid compatibility transition period and to align the filing

deadline and reporting period for handset manufacturers with the filing deadline and reporting period used for service providers. We noted that § 20.19(i) of the Commission's rules requires handset manufacturers to file FCC Form 655 reports each year and service providers to file FCC Form 855 certifications each year to demonstrate compliance with the Commission's hearing aid compatibility requirements. The 100% HAC NPRM set forth the information that each form collects and summarized the information that handset manufacturers and service providers must provide to the Commission in order to demonstrate compliance with our hearing aid compatibility rules. With respect to FCC Form 855, we specifically noted that our rules require a knowledgeable executive of the service provider to sign the form and to certify under penalty of perjury the service provider's compliance with the Commission's hearing aid compatibility requirements for the relevant reporting period.

Further, in the 100% HAC NPRM, we noted that prior to the 2018 HAC Order the Commission required service providers to demonstrate compliance with the Commission's hearing aid compatibility rules by filing FCC Form 655, but in order to reduce regulatory burden on service providers the Commission moved service providers to FCC Form 855. We further noted that the Commission stated in the 2018 HAC Order that this action would streamline "the Commission's collection of information while continuing to fulfill the underlying purposes of the current reporting regime." Finally, we noted that in the 2018 HAC Order the Commission stated that it might take further steps to reduce regulatory burden, including modify the reporting rules, if it determined to adopt a 100% hearing aid compatibility requirement.

Commenters support moving handset manufacturers from FCC Form 655 to FCC Form 855 for reporting purposes. We agree with these commenters and find that moving handset manufacturers from FCC Form 655 to FCC Form 855 after the manufacturer 100% hearing aid compatibility transition period ends will eliminate unnecessary regulatory burden. With the expiration of the handset manufacturer 100% hearing aid compatibility transition period, it will no longer be necessary to collect the detailed handset model information that FCC Form 655 collects. Under our revised website posting requirements, handset manufacturers will be required to post on their publicly accessible websites all relevant handset model information for the handset models that

they offer for sale or use in the United States. Further, the handset model information that FCC Form 655 collects can be found in the Commission's Equipment Authorization System.

We find that moving handset manufacturers to the streamlined FCC Form 855 will reduce regulatory burden and cost. The Commission estimates that it takes 30 minutes to complete FCC Form 855 as compared to two and half hours to complete FCC Form 655. Therefore, contrary to CTIA's assertion, moving handset manufacturers to FCC Form 855 will reduce regulatory burden for handset manufacturers and not increase regulatory burden for service providers. As discussed below, we will revise FCC Form 855 to reflect the 100% hearing aid compatibility requirement and to streamline the information that the form will collect and to remove outdated questions. The revised form will only collect information that is necessary to ensure handset manufacturers' and service providers' compliance with our hearing aid compatibility rules. In this regard, FCC Form 855 will continue to require a knowledgeable company executive to certify under penalty of perjury that the company on whose behalf the executive is filing is in full compliance with all of the Commission's hearing aid compatibility rules, including handset model deployment benchmarks, labeling and disclosure requirements, as well as website posting requirements. The Commission can rely on these certifications for enforcement purposes, if the need arises.

Accessibility Advocates argue that if the Commission moves handset manufacturers to FCC Form 855, the Commission should require handset manufacturers to post their handset model information on their publicly accessible web pages in order to ensure handset manufacturers are in compliance with the Commission's handset model deployment benchmarks. We agree with Accessibility Advocates and, as discussed above, we are revising our website posting requirements to include this requirement. We will be able to review a handset manufacturer's publicly accessible website and determine if the manufacturer is in compliance with our handset model deployment benchmarks and coupling requirements. We will also be able to review these postings to ensure handset manufacturer compliance with the 85/15% split between telecoil and Bluetooth coupling and, if Bluetooth coupling technology is included in a handset model, what kind of Bluetooth coupling technology is included. Accessibility Advocates acknowledge

that our revised website posting and certification requirements address their concerns.

Further, we note that we continue to require handset manufacturers, as well as service providers, to update their web pages within 30 days of any relevant changes and to date stamp their web pages with the date of the update. As Accessibility Advocates observe, these requirements will ensure that the information that is displayed is current. Finally, we note that the Commission is adopting a new company point-of-contact requirement below that will allow consumers to directly contact handset manufacturers and service providers to ask questions about the hearing aid compatibility of the handset models that these companies offer for sale or use in the United States.

As part of our decision to move handset manufacturers to FCC Form 855 after the handset manufacturer's 100% hearing aid compatibility transition date ends, we will update the form to ensure it collects pertinent compliance information for both handset manufacturers and service providers. Nationwide service providers will begin filing this revised FCC Form 855 after their 100% hearing aid compatibility transition period ends and, likewise, non-nationwide service providers will begin filing the revised form after their 100% hearing aid compatibility transition period ends. Revised FCC Form 855 will require the following information to be provided:

- An affirmative statement as to whether the filer is a handset manufacturer, a nationwide service provider, or a non-nationwide service provider;
- In the case of a handset manufacturer, an affirmative statement as to whether the filer ceased offering handset models during the reporting period or, in the case of a service provider, the filer ceased offering wireless service during the reporting period;
- An affirmative statement that the filer did not offer for sale or use in the United States non-hearing aid-compatible handset models for the reporting period as required § 20.19(c)(2), (4), or (6), as applicable to the filer;
- The total number of hearing aid-compatible handset models the filer offered for sale or use in the United States for the reporting period;
- The number of these handset models that met applicable telecoil requirements;
- The number of these handset models that met the applicable Bluetooth coupling requirement and a

statement as to whether the Bluetooth coupling technology was a proprietary or non-proprietary implementation, the name of the Bluetooth coupling technology, and a statement as to whether the Bluetooth technology met the requirements of § 20.19(b)(3)(ii);

- An affirmative statement that all new handset models added during the reporting period met volume control certification requirements as required by § 20.19(c)(2), (4), or (6), as applicable to the filer;

- An affirmative statement that the filer was in full compliance with the labeling and disclosure requirements in § 20.19(f);

- A statement as to whether the filer used digital labeling technology to deliver to consumers the information required by § 20.19(f)(2), as an alternative to including a printed insert or printed handset manual;

- If the filer maintains a publicly accessible website, the filer must include a link to the website showing compliance with § 20.19(h) or, if the filer does not maintain a publicly accessible website, an affirmative statement that the filer does not maintain a publicly accessible website and has included an attachment with its filing showing the information required by § 20.19(h)(1);

- The name of the signing executive and contact information;

- The company(ies) covered by the certification;

- The FCC Registration Number (FRN); and

- The following language:

I am a knowledgeable executive of [company x] regarding compliance with the Federal Communications Commission's wireless hearing aid compatibility requirements as a company covered by those requirements. I certify that the company was [(in full compliance/not in full compliance)] [choose one] at all times during the applicable reporting period with the Commission's wireless hearing aid compatibility deployment benchmarks and all other relevant wireless hearing aid compatibility requirements.

The company represents and warrants, and I certify by this declaration under penalty of perjury pursuant to 47 CFR 1.16 that the above certification is consistent with 47 CFR 1.17, which requires truthful and accurate statements to the Commission. The company also acknowledges that false statements and misrepresentations to the Commission are punishable under Title 18 of the U.S. Code and may subject it to enforcement action pursuant to Sections 501 and 503 of the Act.

- If the company selected that it was not in full compliance with this section, an explanation of which wireless hearing aid compatibility requirements it was not in compliance with, when the

non-compliance began and (if applicable) ended with respect to each requirement.

Collecting this information will aid the Commission in ensuring that handset manufacturers and service providers are in full compliance with our 100% hearing aid compatibility requirement, the related handset model deployment benchmarks, and the labeling, disclosure and website posting requirements. By moving handset manufacturers from FCC Form 655 to FCC Form 855, we reduce regulatory burden and cost for handset manufacturers. Handset manufacturers will spend less time and resources filing FCC Form 855. The information that the form collects is pertinent to ensuring compliance with our 100% hearing aid compatibility requirement and should be readily available to handset manufacturers and service providers.

With respect to handset manufacturers and service providers who do not maintain publicly accessible websites, we require these companies to include an attachment with their FCC Form 855 certification filings that contains all of the handset model information that they would otherwise have to post on their publicly accessible websites. This requirement includes the following information: (1) a list of all currently offered handset models, including each handset model's marketing name/number(s) and the FCC ID number, along with the ANSI standard used to certify the handset model as hearing aid-compatible; (2) for each handset model, an affirmative statement of whether or not the handset model meets telecoil certification requirements; (3) for each handset model, an affirmative statement of whether or not the handset model includes Bluetooth coupling technology and, if so, which Bluetooth coupling technology the handset model includes; (4) for each handset model certified under the 2019 ANSI Standard, an affirmative statement of the handset model's conversational gain with and without hearing aids with the actual conversational gain that is displayed being the lowest rating assigned to the handset model for any covered air interface or frequency band; and (5) if a handset model has been certified as hearing aid-compatible under special testing circumstances or contains operations or frequency bands that are not certified as hearing aid-compatible, an explanation of how this affects the handset model's operations. This attachment requirement will allow the Commission to review the compliance of handset manufacturers and service providers with our hearing aid

compatibility rules who do not maintain publicly accessible websites.

Along with transferring handset manufacturers to FCC Form 855 after the passing of the handset manufacturer's 100% hearing aid compatibility transition period, we align the handset manufacturer filing deadline and reporting period with the service provider filing deadline and reporting period. Currently, handset manufacturer compliance filings are due by July 31 each year and cover the reporting period from the previous July 1 to June 30. Service provider compliance filings are due by January 31 of each year and cover the previous calendar year from January 1 through December 31. By aligning the handset manufacturer filing deadline and reporting period with the current service provider filing deadline and reporting period, we avoid confusion that might develop if we maintained two separate filing deadlines and reporting periods for FCC Form 855.

We are aware that the handset manufacturer 100% hearing aid compatibility requirement will begin during a reporting period. Rather than having these companies file FCC Form 655 to cover part of one reporting period and FCC Form 855 to cover part of another reporting period, we will require handset manufacturers to file FCC Form 855 to cover the entire calendar year that the 100% hearing aid compatibility requirement becomes effective. Likewise, we are aware that this same issue will arise with nationwide and non-nationwide service providers. We will require these companies to file revised FCC Form 855 to cover the entire reporting period that the 100% hearing aid compatibility requirement becomes effective rather than filing the existing FCC Form 855 for part of the reporting period and revised FCC Form 855 for the remaining part of the reporting period. We take these steps to ensure an orderly transition to the new compliance filing requirements. When reviewing the first FCC Form 855 filings by handset manufacturers and the first revised FCC Form 855 by service providers we will recognize the transitional nature of these first certification filings and to the extent we have questions about the filings we will check the filing company's publicly accessible website or attachment to ensure current compliance with the 100% hearing aid compatibility requirement.

Finally, we delegate authority to WTB to revise the information that FCC Form 855 collects, as well as other forms and certifications under this rule section, to ensure that these forms and

certifications collect relevant information from handset manufacturers and service providers that allows WTB to confirm compliance with the hearing aid compatibility rules. These revisions must be consistent with existing hearing aid compatibility requirements as reflected in the rules and the form and certification modifications must not impose new obligations other than the information that must be provided. Any revisions to FCC Form 855 will be done in accordance with Paperwork Reduction Act (PRA) requirements. These requirements include notification requirements. Therefore, the public will have notice of any proposed changes to FCC Form 855 and an opportunity to comment on these proposed changes before the changes become effective. Further, WTB will post revised FCC Form 855 to its wireless hearing aid compatibility website once the Office of Management and Budget completes its review of the form's revisions.

3. Reliance on Accessibility Clearinghouse Information

We decline to adopt the HAC Task Force's recommendation that we permit service providers to legally rely on the information reported in the Global Accessibility Reporting Initiative (GARI) database, which is linked to on the Commission's Accessibility Clearinghouse website. Specifically, the HAC Task Force argues that we should allow service providers to rely on this information as a legal safe harbor for purposes of meeting handset model deployment benchmarks. The HAC Task Force asserts that the GARI database provides a more up-to-date snapshot of hearing aid-compatible handset models than the annual FCC Form 655 reports that handset manufacturers file. Presently, the Commission allows service providers to rely on the information found in FCC Form 655 reports as a legal safe harbor for handset model deployment purposes.

In the *100% HAC NPRM*, we proposed to decline the HAC Task Force's recommendation with respect to the GARI database. The Commission expressed concern about the accuracy of the information in the GARI database and the fact that the Commission does not maintain the database. Further, we proposed to decline the HAC Task Force's recommendation that, if a handset model is not in the GARI database, the Commission "automatically and immediately upload" handset manufacturers' FCC Form 655 reports to the Accessibility Clearinghouse after they are submitted to the Commission. In addition, we sought comment on whether our rules

should continue to require service providers to either link to the GARI database on their publicly accessible websites or provide a list for the past 24 months of hearing aid-compatible handset models that they no longer offer once the relevant 100% transition period ends.

In response to the *100% HAC NPRM*, we received comments from MWF, who is the developer and administrator of the GARI database, and CTIA. MWF and CTIA argue that we should allow service providers to rely on information in the GARI database because the database provides more up-to-date information than FCC Form 655 reports that handset manufacturers file each year. MWF argues that the GARI database is more user-friendly than FCC Form 655 reports and provides a more complete overview of a handset model's accessibility features than FCC Form 655 reports. MWF also states that it is willing to discuss with the Commission ways to address the Commission's reservations concerning the accuracy of the database.

We find this issue to be moot given our decisions above. After the handset manufacturer 100% hearing aid compatibility transition period ends, handset manufacturers will no longer be able to offer non-hearing aid-compatible handset models. Service providers who continue to offer non-hearing aid-compatible handset models will already have the information they need about these models and further will have to stop offering these models once their 100% hearing aid compatibility transition date ends. With respect to hearing aid-compatible handset models, service providers will be able to locate the information that they need from handset manufacturers' publicly accessible websites or from the handset model's package label. Further, the information on handset manufacturers' publicly accessible websites will be current because we require handset manufacturers to update this information within 30 days of any relevant changes and to date stamp their web pages to show the date of the last update.

Further, as we stated in the *100% HAC NPRM*, the GARI database is not a Commission-maintained database, and the Commission does not control who can access the database and what information is added to the database. The Commission has no means of ensuring that the information in the GARI database is accurate, timely, or complete. Moreover, the Commission already allows service providers to rely on the information from a handset manufacturer's FCC Form 655 report as a safe harbor, and we find it

unnecessary to create a second safe harbor that may contain inaccurate information. For these reasons, we decline the HAC Task Force's request that we allow service providers to rely on the information in the GARI database for the purpose of determining handset model deployment compliance.

During the handset manufacturer 100% hearing aid compatibility transition period, handset manufacturers will continue to file FCC Form 655 reports and service providers can continue to rely on the information in these reports as a safer harbor. The Commission will continue to post these reports on the Commission's wireless hearing aid compatibility website and service providers and members of the public can review these reports at this website. Further, the Commission's Accessibility Clearinghouse website links to the Commission's wireless hearing aid compatibility website where the FCC Form 655 reports are posted. As a result, there is no need for the Commission to separately post these reports on the Accessibility Clearinghouse website. Finally, the Commission will post handset manufacturer FCC Form 855 certifications on the Commission's wireless hearing aid compatibility website just as it presently posts handset manufacturer FCC Form 655 reports and service provider FCC Form 855 certifications. Members of the public, as well as handset manufacturers and service providers, will be able to review these certifications after the Commission posts them.

Finally, as discussed above, we will no longer require service providers to either link to the GARI database on their publicly accessible websites or provide a list for the past 24 months of hearing aid-compatible handset models that they no longer offer. Service providers will be required to post all relevant hearing aid compatibility information about the handset models they offer on their publicly accessible websites where members of the public can review this information. Members of the public will also be able to contact handset manufacturers and service providers directly with questions that they might have about the handset models that these companies offer using the point-of-contact information that we adopt below.

4. Company Point-of-Contact Information for Consumer Use

We require handset manufacturers and service providers to post on their publicly accessible websites point-of-contact information that consumers can

use to contact knowledgeable company employees with questions they might have about the hearing aid compatibility of handset models that these companies offer or to resolve pairing issues they are having with one of the company's handset models. Specifically, along with the other information that we require these companies to post to their publicly accessible websites, we require handset manufacturers and service providers to post: (1) the name of a department or a division that is staffed with employees knowledgeable about the hearing aid compatibility of the handset models that they offer; and (2) an email address, mailing address, text number, and a toll free number that consumers can use to contact these employees. We also require handset manufacturers and service providers to respond to these inquiries in a timely fashion and in a manner consistent with CTIA's Consumer Code for Wireless Service.

In the *100% HAC NPRM*, we tentatively concluded that we should require this point-of-contact information on handset manufacturers' and service providers' publicly accessible websites. As part of our tentative conclusion, we stated we would require handset manufacturers and service providers to provide the name of a department or a division that is staffed with knowledgeable employees and provide an email address, mailing address, and a toll free number that consumers could use to contact these employees. We stated that the purpose of this point-of-contact information was to give consumers a way of contacting handset manufacturers and service providers about the hearing aid compatibility of the handset models that they offer and to have their handset model pairing issues resolved. We also stated that we would expect handset manufacturers and service providers to be responsive to consumer questions and to interact with consumers in a manner consistent with the Consumer Code for Wireless Service that can be found on CTIA's website. As an alternative to requiring company point-of-contact information to be posted on company websites, we sought comment on whether we should require handset manufacturers and service providers to enter the required contact information in a Commission-maintained database.

Accessibility Advocates were the only commenter to address our tentative conclusion, and they urge us to adopt our main proposal. They state that point-of-contact information will help consumers, and that it may also help store employees by giving them a resource to assist them in better

answering consumer questions about the hearing aid compatibility of the handset models that their company offers. Accessibility Advocates recommend that we modify our proposal to include not only a phone requirement, but also a text requirement (e.g., text, email, or chat). They argue that adding this additional contact information will aid those consumers who have difficulty hearing over the phone.

We find that adopting our tentative conclusion is consistent with section 710(a) of the Communications Act that requires the Commission to "establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing." We determine that requiring handset manufacturers and service providers to post point-of-contact information on their publicly accessible websites is consistent with ensuring that consumers with hearing loss have reasonable access to telephone service. Consumers with hearing loss will be able to use this contact information to ask knowledgeable company employees about the hearing aid compatibility of the handset models that their company offers and which of these models might best meet their listening needs. These consumers will also be able to use this contact information to ask knowledgeable company employees about pairing issues that they might be having with one of the company's hearing aid-compatible handset models and their hearing aids. In addition, our point-of-contact requirement may help handset manufacturers and service providers reduce consumer frustration and help these companies to sell handsets and wireless services.

We therefore require handset manufacturers and service providers to post on their publicly accessible websites the information that we tentatively concluded that they should post, as well as the additional contact information suggested by Accessibility Advocates. As a result, handset manufacturers and service providers must post on their publicly accessible websites the name of a department or a division within the company that is staffed with knowledgeable employees who can answer consumer questions about the hearing aid compatibility of the handset models that the company offers and related coupling questions. Handset manufacturers and service providers must also post on their publicly accessible websites an email address, a mailing address, a text number, and a toll free phone number that consumers can use to contact these employees. This information must be

posted in a manner that is easy for consumers to locate and in a straightforward, easy to understand fashion using plain language. Further, consistent with our current website posting requirements, we require that handset manufacturers and service providers update this point-of-contact information within 30 days of any relevant changes, and that they date stamp their web pages. We also adopt our proposal that consumer inquiries must be responded to in a timely fashion and in a manner consistent with CTIA's Consumer Code for Wireless Service.

We disagree with CTIA that we should limit the required contact information to only one "text-based option" and allow handset manufacturers and service providers to implement options "based on their business such as text, telephone, email, or chatting." Some consumers with hearing loss may be more comfortable texting rather than emailing or using a chat function. We believe that requiring a broad array of ways for consumers with hearing loss to contact handset manufacturers and service providers is consistent with the public interest. We also note that CTIA's Consumer Code for Wireless Service provides that companies should provide customers with a mailing address, a toll-free telephone number, an internet method, or through other means of communication. In short, providing a broad array of ways to contact knowledgeable company employees is in the best interest of consumers.

We will not require handset manufacturers and service providers to enter their point-of-contact information in a Commission-maintained database. We find that this approach would duplicate our website posting requirement and would be burdensome and unnecessary. Further, we find that our website posting approach is more consumer friendly than creating a Commission-maintained database. Consumers naturally expect to find point-of-contact information on handset manufacturer and service provider publicly accessible websites and would not intuitively look for this contact information in a Commission-maintained database. In addition, when looking at handset manufacturer or service provider publicly accessible websites, consumers may find the answer to their questions on the website without having to contact the company. Our revised website posting requirements will ensure handset manufacturers and service providers post all relevant information about the handset models that they offer,

including coupling information. A Commission-maintained database would not contain specific handset model hearing aid compatibility information. We did not receive comments asking us to create a Commission-maintained database where handset manufacturer and service provider point-of-contact information could be found.

Finally, we determine to maintain the last sentence of § 20.19(j) which provides that for enforcement purposes, if a state does not provide for enforcement, the procedures set forth in part 68, subpart E of the Commission's rules should be followed. In the *100% HAC NPRM*, we proposed to delete this sentence, and we did not receive any comments opposing this change. We are concerned, however, that removing this sentence could harm consumers if a state declines to provide for enforcement of our hearing aid compatibility rules with respect to a consumer complaint. Under these circumstances, the procedures in part 68, subpart E, of the Commission's rules would apply. The Commission has recognized and continues to recognize the essential role consumers play in detecting non-compliance with our hearing aid compatibility rules. As a result, we determine to maintain the last sentence of § 20.19(j). The rules contained in part 68, subpart E, explain the procedures consumers must follow to initiate a complaint and explains the obligations of parties named in those complaints. The deadlines contained in those rules ensure that consumers' complaints will be addressed in an expeditious manner.

J. Sunsetting the Hearing Aid Compatibility De Minimis Exception

We eliminate the *de minimis* exception in our hearing aid compatibility rules using a three step process that is consistent with the 100% hearing aid compatibility transition periods we adopted above. Section 20.19(e) of the Commission's rules contains an exception to the handset model deployment benchmarks based on the number of handset models handset manufacturers and service providers offer for sale or use in the United States. In the *100% HAC NPRM*, we tentatively concluded that we should eliminate the *de minimis* exception because maintaining the exception would be inconsistent with our objective of adopting a 100% hearing aid compatibility requirement. Specifically, we tentatively concluded that we should eliminate the exception based on the applicable 100% hearing aid compatibility transition periods for

handset manufacturers and service providers. We did not receive any comments objecting to our proposal to eliminate the *de minimis* exception or arguing that we should eliminate the exception in a manner different than basing it on the expiration of the relevant 100% hearing aid compatibility transition periods.

We find that eliminating the *de minimis* exception in § 20.19(e) of the Commission's rules is consistent with our adoption of a 100% hearing aid compatibility requirement. If we were to maintain the exception, this would undercut our decision to adopt a 100% hearing aid compatibility requirement. Maintaining the *de minimis* exception or some part of the exception would mean that handset manufacturers and service providers who only offer for sale or use in the United States a limited number of handset models would be able to offer handset models that were not certified as hearing aid compatible. This result would be inconsistent with our decision to require all handset models to be hearing aid compatible. Further, given the number of handset models that are already certified as hearing aid-compatible and the transition periods that we adopted above, there is no reason to believe that our handset model deployment benchmarks will have a disproportionate impact on handset manufacturers or service providers who only offer a limited number of handset models for sale or use in the United States. Additionally, we have not received anything in the record that contradicts our findings.

In addition, we find that it is unnecessary to maintain a *de minimis* exception for new entrants who may only offer a limited number of handset models for sale or use in the United States. With respect to new entrant handset manufacturers, after the effective date of the Commission's 100% hearing aid compatibility requirement, these companies could not offer for sale or use in the United States handset models that do not meet the certification requirements of the 2019 ANSI Standard and the related volume control requirements. To allow new entrant handset manufacturers to offer non-hearing aid-compatible handset models would be inconsistent and undercut our 100% hearing aid compatibility requirement. Further, new entrant service providers can only offer new handset models certified as hearing aid-compatible using the 2019 ANSI Standard and the related volume control standard. The 2019 ANSI Standard and the related volume control standard are the only currently effective hearing aid

compatibility certification standards in place for certifying new handset models as hearing aid compatible.

With respect to new entrant service providers, once the relevant 100% hearing aid compatibility transition period ends, these companies can only offer for sale or use in the United States handset models certified under the 2019 ANSI Standard, including the related volume control standard. Similar to new entrant handset manufacturers, it would be inconsistent with the Commission's 100% hearing aid compatibility requirement to allow these companies to offer non-hearing aid-compatible handset models after the effective date of the new standard. Further, allowing new entrant service providers to offer for sale or use in the United States handset models certified under the 2011 ANSI Standard or older ANSI standards after the passing of the relevant transition date would slow the transition of all handset models offered for sale or use in the United States meeting the latest certification requirements of the 2019 ANSI Standard and our adoption of a 100% volume control standard. This finding is consistent with our decision that existing service providers can only add new handset models to their handset model portfolios after the passing of the relevant 100% hearing aid compatibility transition date that meet the requirements of the 2019 ANSI Standard and the related volume control requirements. We note, however, that a consumer could purchase a grandfathered hearing aid-compatible handset model from a handset manufacturer and bring it to the new entrant's wireless network as long as the handset model is compatible with new entrant's wireless network. This ability to purchase grandfathered hearing aid-compatible handset models ensures that consumers will have the ability to purchase lower cost hearing aid-compatible handset models as long as the handset models are compatible with new entrant's wireless network. For all of the above reasons, we find it in the best interest of consumers with hearing loss to completely eliminate the *de minimis* exception in our hearing aid compatibility rules.

As a result, we will sunset the *de minimis* exception in § 20.19(e) of the Commission's rules using the three-step process that we proposed. Specifically, we will eliminate the exception based on the 100% hearing aid compatibility transition periods that we adopted above. After the 24-month transition period ends for handset manufacturers, the *de minimis* exception for handset manufacturers will end. Likewise, after

the 30-month transition period ends for nationwide service providers, the *de minimis* exception for nationwide service providers will end. Finally, after the 42-month transition period for non-nationwide service providers ends, the *de minimis* exception for non-nationwide service providers will end too. Once the non-nationwide service provider transition period ends, the *de minimis* exception in § 20.19(e) of the Commission's rules will be eliminated for all handset manufacturers and service providers and these companies will no longer be able to claim *de minimis* status.

K. 90-Day Shot Clock for Resolving Hearing Aid Compatibility Waiver Requests

We decline to adopt the HAC Task Force's recommendation that we establish a 90-day shot clock for resolving hearing aid compatibility waiver requests. In the *100% HAC NPRM*, we proposed to decline the HAC Task Force's recommendation because we did not anticipate that establishing a shot clock would be necessary to ensure the timely resolution of potential future waiver requests or to ensure the timely deployment of new hearing aid compatibility technologies. We noted that section 710(f) of the Communications Act requires the Commission to periodically review the regulations established pursuant to the Act, and that this statutory obligation curtails the need for waiver requests.

CTIA, the only party to file comments on this issue, supports the HAC Task Force's recommendation. CTIA argues that handset manufacturers need prompt answers to whether their waiver requests will be granted and that "90 days properly balances (i) expected low number of expected petitions, and, relatedly, the burden on FCC staff, (ii) an opportunity for public notice and comment, with (iii) the need for timely resolution of petitions to ensure the deployment of new technologies is not unduly delayed."

We disagree with CTIA. We do not believe that the establishment of a shot clock is necessary to ensure the timely resolution of potential future waiver requests or to ensure that the deployment of new technologies is not delayed. Section 710(b)(3) of the Communications Act provides that the Commission shall not grant a waiver unless the Commission determines on the basis of evidence in the record that granting the waiver is in the public interest and that the Commission "consider the effect [of the waiver] on hearing-impaired individuals" Given the highly technical nature of the

questions that arise in hearing aid compatibility proceedings, a 90-day shot clock could limit public participation and negatively impact staff's ability to work with affected stakeholders to develop consensus solutions that serve the interest of consumers with hearing loss. In addition to providing time for public participation, the Commission often needs to allow time for petitioners to supplement the record with additional information and data in order for the Commission to have the necessary record evidence to be able to resolve the petition. A 90-day time limit to resolve waiver petitions could directly impact the Commission's ability to fully consider the effect of the waiver request on those with hearing loss and, as a result, the Commission's ability to act in the public interest.

We also note that the Commission's practice when adopting new hearing aid compatibility requirements has been to do so in conjunction with adopting appropriate transition periods. For example, when the Commission adopted the 2019 ANSI Standard the Commission also adopted a 24-month transition period in order to allow handset manufacturers and service providers adequate time to adjust to the new standard. Further, in 2016 when the Commission adopted the 66% and 85% handset model deployment benchmarks, the Commission also adopted a 24-month and 60-month transition period before handset manufacturers had to meet these new benchmarks, respectfully. The Commission extended these compliance deadlines by six months for nationwide service providers and by 18 months for non-nationwide service providers. The Commission's use of appropriate transition periods allows handset manufacturers and service providers time to adjust to new hearing aid compatibility requirements, and avoids the need for waiver requests.

Further, as we did in the *100% HAC NPRM*, we again note that section 710(f) of the Communications Act requires the Commission to periodically review the regulations established pursuant to the Act. As evidenced by the number of actions that the Commission has taken with respect to the hearing aid compatibility rules over the years, the Commission frequently seeks comment on these rules and adopts revisions to the rules where needed. The Commission gives handset manufacturers, service providers, advocacy groups, members of the public, and individuals with hearing loss the opportunity to comment on proposed changes to these rules. This opportunity gives commenters the

ability to inform the Commission of issues that might arise that could lead to waiver petitions. We encourage commenters to file meaningful and thoughtful comments when the Commission solicits comment on proposed hearing aid compatibility rule changes in order to avoid the need to file waiver requests at a later date.

L. Renaming § 20.19

To better reflect the scope of this rule, we change the heading of § 20.19 of our hearing aid compatibility rules from "Hearing aid-compatible mobile handsets" to "Hearing loss compatible wireless handsets," or "HLC" for short. In the *100% HAC NPRM*, we sought comment on whether we should revise the heading of § 20.19 of our rules to better reflect the scope of the section's requirements. We noted that while the rules are intended to help ensure access to communications services for consumers who use hearing aids, they are also intended to help consumers who use other types of hearing devices, such as cochlear implants and telecoils, as well as consumers with hearing loss who do not use hearing aids. We sought comment on whether we should rename the section "Accessibility for Consumers with Hearing Loss" or "Hearing Loss Interoperability Requirements." We also asked if there were alternative headings that we should consider.

Accessibility Advocates were the only party to file comments on this issue. They agree that the heading of § 20.19 should be changed to better reflect the scope of this section, and they recommend that the heading be changed to "Wireless Phone Accessibility for Consumers with Hearing Loss." We, however, prefer a more concise heading for the rule section that can be abbreviated to three letters.

Accordingly, we change the heading of § 20.19 to "Hearing loss compatible wireless handsets," or "HLC" for short. We find that this revised heading better conveys the scope of the 20.19 rule section than the current heading. The section covers not just hearing aids, but also cochlear implants and telecoils. In addition, the section's volume control requirements help those with hearing loss who use hearing aids, but also those with hearing loss who do not use hearing aids. The section's new heading conveys the broader scope of the rules contained in the section.

M. Promoting Digital Equity and Inclusion

We find that our decision to adopt a 100% hearing aid compatibility requirement furthers our goal to

advance digital equity and inclusion for all. In the *100% HAC NPRM*, we specifically sought comment on any equity-related considerations and benefits that might be associated with the proposals and issues discussed therein. In response, Accessibility Advocates state that requiring 100% of handset models to be hearing aid-compatible advances digital equity and inclusion for all. We agree with Accessibility Advocates. Our adoption in this final rule of a 100% hearing aid compatibility requirement means that for the first time those with hearing loss will be able to consider any handset model on the market for their use just like consumers without hearing loss. The Commission takes seriously its commitment to digital equity and inclusion for all, and we will continue to monitor and update the hearing aid compatibility rules to ensure those with hearing loss will continue to have the same access to handset models as those without hearing loss.

V. Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Achieving 100% Wireless Handset Model Hearing Aid Compatibility*, notice of proposed rulemaking (*100% HAC NPRM*), released in December 2023. The Federal Communications Commission (Commission) sought written public comment on the proposals in the *100% HAC NPRM*, including the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

The Commission's hearing aid compatibility rules ensure that the millions of Americans with hearing loss have access to the same types of technologically advanced wireless handset models as consumers without hearing loss. Small and other handset manufacturers and service providers are required to make available handset models that meet specified technical criteria for hearing aid compatibility. The Commission issued the *100% HAC NPRM* to develop a record relating to a proposal submitted by the Hearing Aid Compatibility (HAC) Task Force on how the Commission can achieve its long term goal of requiring 100% of handset models offered for sale or use in the United States by handset manufacturers and service providers to be certified as hearing aid compatible.

The *Report and Order* adopts a 100% hearing aid compatibility requirement that applies to all future wireless handset models offered for sale or use in the United States. The Commission finds that adopting a 100% hearing aid compatibility requirement is an achievable objective under the factors set forth in section 710(e) of the Communications Act. As part of this determination, the Commission adopts a more flexible "forward-looking" definition of hearing aid compatibility. More specifically, the Commission adopts the HAC Task Force's expanded definition of hearing aid compatibility, which defines a hearing aid-compatible handset model as: (1) having an internal means for compatibility; (2) meets established technical standards for hearing aid coupling or compatibility; and (3) is usable. The Commission also adopts the HAC Task Force's recommendations on how to define these terms. This updated definition of hearing aid compatibility allows the Commission to adopt a Bluetooth coupling requirement. Under this new requirement, the handset model deployment benchmarks require at least 15% of the total number of handset models that handset manufacturers and service providers will offer for sale or use in the United States to connect to hearing aids through Bluetooth coupling technology as an alternative to, or in addition to telecoil coupling. The 15% Bluetooth coupling requirement means that 85% of the total number of handset models that handset manufacturers and service providers offer for sale or use in the United States must meet applicable telecoil certification requirements. Further, all handset models must meet acoustic coupling requirements and all new handset models that handset manufacturers and service providers add to their handset model portfolios after the applicable transition periods ends must meet volume control certification requirements.

Section 710(e) directs the Commission to "use appropriate timetables or benchmarks to the extent necessary: (1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users." Accordingly, the Commission adopts a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers to transition to the 100% hearing aid compatibility requirement for all handset models offered for sale or use in the United States. These transition periods allow for sufficient time to

expand access to hearing aid-compatible handset models, while giving handset manufacturers and service providers sufficient notice and lead time to build hearing aid compatibilities into all future handset models rather than into just a certain percentage of future handset models. After the applicable 100% hearing aid compatibility transition period ends, all handset models offered for sale or use in the United States must be hearing aid-compatible. Any non-hearing aid compatible handset models cannot obtain a certification under 47 CFR part 2, subpart J, and handset manufacturers and service providers must remove all non-hearing aid-compatible handset models from their portfolios without exceptions. In addition to these transition periods, the Commission adopts a 48-month transition period after which handset manufacturers may only meet our new Bluetooth coupling requirement using non-proprietary Bluetooth coupling standards. During the 48-month transition period, handset manufacturers may meet the Bluetooth coupling requirement using proprietary or non-proprietary Bluetooth coupling standards.

The *Report and Order* eliminated the *de minimis* exception in § 20.19(e) of the Commission's hearing aid compatibility rules in a manner consistent with the transition periods that the Commission adopted. This approach follows the Commission's tentative conclusion in the *100% HAC NPRM*. The Commission eliminated the *de minimis* exception because maintaining the exception would be inconsistent with its objective of adopting a 100% hearing aid compatibility requirement. The Commission also adopted certain implementation requirements related to this new 100% hearing aid compatibility requirement, including requirements for hearing aid compatibility settings in handset models and revised labeling, disclosure, website posting, record retention and reporting requirements. Finally, the Commission revised the heading of § 20.19 of its rules from "Hearing aid-compatible mobile handsets" to "Hearing loss compatible wireless handsets," or "HLC" for short. The Commission made this change to better reflect what the section covers.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in

the United States reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” United States Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022 United States Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small. United States Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

Part 15 Handset Manufacturers. Neither the Commission nor the SBA have developed a small business size standard specifically applicable to unlicensed communications handset manufacturers. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing is the closest industry with an SBA small business size standard. The Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing industry is comprised of establishments primarily engaged in

manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA small business size standard for this industry classifies firms having 1,250 or fewer employees as small. United States Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. Thus, under the SBA size standard the majority of firms in this industry can be considered small.

Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. United States Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

Wireless Resellers. Neither the Commission nor the SBA have developed a small business size standard specifically for Wireless Resellers. The closest industry with an SBA small business size standard is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications and they do not operate transmission facilities and

infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA size standard for this industry, a business is small if it has 1,500 or fewer employees. United States Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services during that year. Of that number, 1,375 firms operated with fewer than 250 employees. Thus, for this industry under the SBA small business size standard, the majority of providers can be considered small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The rule changes adopted by the Commission impose revised reporting, recordkeeping, and other compliance requirements on some small entities, however, these changes are offset by eliminating outdated reporting, record keeping, and other compliance requirements. Rather than requiring small and other handset manufacturers and service providers to continue to certify that a certain percentage of the handset models that they offer must be hearing aid-compatible, they will now have to certify that 100% of the handset models that they offer are hearing aid compatible. Certification will include compliance with acoustic coupling, telecoil, and volume control requirements, as well as the submission of an attestation demonstrating compliance with the Commission's Bluetooth coupling requirement. Handset manufacturers and service providers have already been certifying that their handset model portfolios (*i.e.*, the handsets that a handset manufacturer or service provider offers for sale or use in the United States) include a certain percent of hearing aid-compatible handset models. Therefore, this change to a 100% hearing aid compatibility requirement will not have a significant impact on the certification requirements. Further, the Commission will allow the grandfathering of existing hearing aid-compatible handset models which will ease the transition to the new 100% hearing aid compatibility requirement.

The transition periods that the Commission adopted will allow a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers, which typically include small and rural providers. These transition periods will help small entities transition to the 100% hearing aid compatibility requirement by giving these companies

time to adjust their handset model portfolios to meet the new hearing aid compatibility requirements. In addition, the grandfathering rule that the Commission adopted will allow small and other handset manufacturers and service providers to continue offering hearing aid-compatible handset models that they were offering prior to the applicable 100% hearing aid compatibility transition dates ending. Moreover, the adopted transition timeframes reflect real-world realities, and are based on the ability of handset manufacturers to use: (1) the existing 2019 ANSI Standard for acoustic and telecoil certification requirements; (2) the volume control waiver standard; and (3) the flexibility to use their desired Bluetooth coupling technology including the continued use of proprietary Bluetooth standards, during a 48-month transition period to a non-proprietary requirement which the Commission also adopt in the *Report and Order*. The real world reality is that the majority of handset models currently available for sale or use in the United States include some type of Bluetooth coupling technology, and already meet the Commission's adopted hearing aid compatibility certification requirements.

The Commission revised its handset model labeling requirements by removing outdated requirements and adopting updated requirements that reflect the 100% hearing aid compatibility requirements and certification obligations, and that better serve the interests of consumers. These labeling requirements will allow consumers to have the information that they need to make informed purchasing decisions. The updated labeling and disclosure requirements revise the external printed package label and the internal information that must be included inside a handset model packaging in the form of printed inserts or printed handset manuals. Further, the Commission will allow the use of digital labeling technology, including Quick-Response (QR) codes, as an alternative to including printed package inserts and printed handset manuals, as long as handset manufacturers and service providers choosing this option maintain publicly accessible websites. Handset manufacturers and service providers that use digital labeling technology also must update the required information within 30 days of any relevant changes, and must fully comply with all of the Commission website posting requirements adopted in the *Report and Order*.

The Commission's adoption of a digital labeling technology option for

the information that must be included within a handset model's packaging was at the request of handset manufacturers and service providers. This decision to allow some digital labeling will reduce regulatory burden for small and other entities. The Commission agreed with commenters who stated that digital labeling is a more consumer friendly way to deliver the information that is required to be included in a printed insert or printed handset manual. Further, the Commission found that digital labeling is less burdensome on handset manufacturers since they do not have to align testing, certification, and printing schedules, and it saves paper, making it a more environmentally friendly way of providing information. The Commission determined to not require handset manufacturers and service providers who choose to use this digital labeling option to also continue to include a printed insert or printed handset manual. The Commission found such an approach was duplicative and would undercut its findings concerning the benefits of digital labeling.

The revised website posting requirements the Commission adopted update and streamline existing requirements and eliminate older and outdated requirements. After the relevant 100% hearing aid compatibility transition period expires, small and other handset manufacturers and service providers are required to provide certain information on their publicly accessible websites. Specifically, handset manufacturers and service providers must post: (1) a list of all currently offered handset models, including each model's marketing name/number(s) and the FCC ID number, along with the ANSI standard used to certify the handset model as hearing aid-compatible; (2) for each handset model, an affirmative statement of whether or not the handset model meets telecoil certification requirements; (3) for each handset model, an affirmative statement of whether or not the handset model includes Bluetooth coupling technology and, if so, which Bluetooth coupling technology the handset model includes; (4) for each handset model certified under the 2019 ANSI standard, an affirmative statement of the handset model's conversational gain with and without hearing aids with the actual conversational gain that is displayed being the lowest rating assigned to the handset model for any covered air interface or frequency band; (5) if a handset model has been certified as hearing aid-compatible under special testing circumstances or contains operations or frequency bands that are

not certified as hearing aid-compatible, an explanation of how this affects the handset model's operations; and (6) a link to the Commission's wireless hearing aid compatibility web page.

The Commission also eliminated certain record retention requirements related to handset models no longer offered for sale or use in the United States. Since all handset models will be 100% hearing aid-compatible after the relevant transition period ends, the Commission further eliminated the posting and record retention requirements related to non-hearing aid-compatible handset models. These changes reduce regulatory burden and cost, and aid small entities by ensuring that only pertinent handset model information is required to be posted on publicly accessible websites. To further streamline reporting and certification requirements for handset manufacturers, and consistent with the Commission's actions in 2018 to reduce regulatory burdens for service providers, after the transition period has ended the Commission requires handset manufacturers to file FCC Form 855 for compliance purposes, and eliminates the requirement that they file FCC Form 655. In conjunction with the change to the handset manufacturer reporting period to cover the period of January 1 to December 31 of the previously calendar year, the Commission aligned the FCC Form 855 filing requirements for small and other handset manufacturers and service providers to reflect the 100% hearing aid compatibility requirement and related requirements adopted in the *Report and Order*. Pursuant to FCC Form 855 filing requirements handset manufacturers, like service providers, are required to have a knowledgeable executive sign the form, and to certify under penalty of perjury compliance with the Commission's hearing aid compatibility requirements for the relevant reporting period.

In addition to the information the Commission required handset manufacturers and service providers to post to their publicly accessible websites, the Commission adopted requirements for handset manufacturers and service providers to post point-of-contact information for consumers. Specifically, handset manufacturers and service providers must post on their publicly accessible websites: (1) the name of a department or a division that is staffed with employees knowledgeable about the hearing aid compatibility of the handset models that they offer; and (2) an email address, mailing address, text number, and a toll-free number that consumers can use to

contact these employees. Handset manufacturers and service providers are also required to respond to consumer inquiries relating to handset hearing aid compatibility in a timely fashion, and in a manner consistent with the Competitive Telecommunications Industry Association's (CTIA) Consumer Code for Wireless Service.

Finally, the record does not include sufficient cost information to allow the Commission to quantify the costs of compliance for small entities, including whether it will be necessary for small entities to hire professionals to comply with the adopted rules. However, while the Commission cannot quantify the cost of compliance with the rule changes it adopted, the Commission believes the changes will not have a significant effect on costs and burdens for small entities because (1) many of the revisions to the hearing aid compatibility rules adopted in the *Report and Order* are based in part on a consensus report resulting from the collaborative efforts of members of the HAC Task Force on whether, and how the Commission could achieve its long held goal of a 100% hearing aid compatibility benchmark for all handset models offered for sale or use in the United States; (2) a significant number of the handset models available for sale or use in the United States already meet hearing aid compatibility certification requirements and include some form of Bluetooth coupling technology; (3) handset manufacturers and service providers were provided the flexibility to continue to use, in part, proprietary Bluetooth technology under the Bluetooth coupling requirement and 48-months to comply with a non-proprietary requirement; (4) the reasonable transition period for compliance with our 100% hearing aid compatibility requirement providing 24-months for handset manufacturers, 30-months for nationwide providers and 42-months for non-nationwide providers (typically small and rural providers); and (5) in updating the website posting, reporting and recordkeeping requirements the Commission also removed outdated requirements.

The Commission carefully considered the burden and cost associated with its revised reporting and website reporting requirements and is only requiring information that is needed to ensure compliance with the Commission's new 100% hearing aid compatibility requirement and to ensure that consumers, especially those with hearing loss, have the information that they need to make informed purchasing decisions. In situations where the

Commission imposed new requirements, such as point-of-contact information, the Commission removed other requirements that were no longer relevant. For instance, the Commission eliminated the posting and record retention requirements related to non-hearing aid-compatible handset models, as well as information about hearing aid-compatible handset models that are no longer offered. On balance, any burdens or costs incurred by small entities as well as other handset manufacturers and service providers will be offset by the elimination of other existing burdens and costs.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to provide "a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."

The Commission considered specific steps it could take and alternatives to the rules it adopted that would minimize potential economic impact on small entities that might be affected by the rule changes. Many of the rule changes adopted in the *Report and Order* are consistent with the recommendations of the HAC Task Force in full, or in part with some modification based on evidence in the record. In determining the transition period for the 100% hearing aid compatibility requirement for example, the Commission considered the HAC Task Force's recommendation of a 48-month (handset manufacturers) and 60-month (service providers) transition period but instead adopted a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers to transition to the new 100% hearing aid compatibility requirement. These transition periods are in keeping with previous transition periods the Commission has adopted when implementing new technical standards. Previously the Commission found that the appropriate balance between product development cycles for handset manufacturers and the needs of consumers with hearing loss to receive the benefits of a new technical standard

are met with a 24-month transition period. While the adopted transition periods are shorter than those recommended by the HAC Task Force, these transition periods are reasonable and will minimize the economic impact for small manufacturers and small service providers since they will not have to immediately comply with the revised standards in the short term. These entities will have time to bring their handset model portfolios into compliance with the Commission's new 100% hearing aid compatibility requirement. Further, these entities will be able to continue to offer handset models certified under older hearing aid compatibility standards as long as they were offering these handset models prior to the expiration of the relevant transition period. In particular, the 42-month transition period will benefit non-nationwide and rural service providers, which are usually small entities.

During the 48-month transition period before the non-proprietary Bluetooth coupling requirement takes effect small and other handset manufacturers and service providers can continue use proprietary Bluetooth coupling technology. Further, even after the transition period ends handset manufacturers and service providers can continue to use proprietary Bluetooth coupling technology as long as they ensure that 15% of the handset models in their handset model portfolios include non-proprietary Bluetooth coupling technology that complies with requirements adopted in the *Report and Order*. All of the adopted transition periods aid consumers with hearing loss by allowing them access to new hearing aid-compatible handset models as soon as possible without negatively impacting product development cycles for handset manufacturers and service providers.

To limit any potential burdens regarding the impact of the 100% hearing aid compatibility transition, the Commission is allowing handset manufacturers and service providers to continue to offer handset models that are already certified as hearing aid-compatible as part of their handset model portfolios. Small and other handset manufacturers and service providers will be able to meet the 100% handset model deployment benchmark using grandfathered handset models that have been certified as hearing aid-compatible, as long as the handset models were being offered for sale or use in the United States prior to the ending of the applicable transition period. This decision minimizes the burdens associated with implementing

the new standard for small entities because they will not have to recertify previously certified handset models. In developing this rule, the Commission considered discontinuing grandfathering, but ultimately kept the rule in order to minimize costs and burdens on small and other handset manufacturers and service providers.

As proposed in the 100% HAC NPRM, the Commission considered but declined to institute a recommendation by the HAC Task Force for a "90 Day Shot Clock" to resolve hearing aid compatibility waiver requests. While on its face this recommendation may appear to offer a path for the resolution of potential future waiver requests or deployment of new hearing aid compatibility technologies in a timely manner for small and other entities, the Commission does not believe such action is necessary to prevent delay and could have an adverse effect for small and other entities and the public. The Commission observed that extremely technical questions arise in hearing aid compatibility proceedings, and adopting a 90-day shot clock could constrain public participation, the ability of the Commission to develop the necessary record evidence to resolve a matter, and the ability of the Commission staff to facilitate consensus solutions that serve the interest of consumers with hearing loss and the industry. The Commission also observed that the transition periods that it adopts when adopting new hearing aid compatibility requirements mitigates against the need for waivers. The Commission provides time for handset manufacturers and service providers to adjust to the new requirements.

The Commission also decided to reduce regulatory burden and cost by streamlining the reporting requirements for small and other handset manufacturers. By eliminating their filing of FCC Form 655 for reporting purposes, the Commission synchronized the filing requirements of small and other handset manufacturers with the filing requirements of service providers. Based on the Commission's estimates that it takes 30 minutes to complete FCC Form 855 and two and half hours to complete FCC Form 655, this rule change will minimize the economic impact for small handset manufacturer. Small handset manufacturers will no longer have to provide the detailed handset model information that they previously had to provide to demonstrate compliance with the hearing aid compatibility rules. Instead, after the applicable 100% hearing aid compatibility transition period ends small handset manufacturers will only

have to certify their compliance with the relevant rules. The Commission adopted this change in order to balance the potential economic impact and burdens that small entity manufacturers and service providers might face in light of the 100% hearing aid compatibility requirement with the need to ensure that consumers with hearing loss can purchase the same handset models that consumer without hearing loss can purchase.

Further reducing regulatory burdens for small entities, the revised labeling and disclosure requirements the Commission adopted in the *Report and Order* allow handset manufacturers and service providers to forgo the regulatory requirements to provide printed inserts or printed handset manuals by allowing them the option to use digital labeling to deliver this information to consumers. Digital labeling is less burdensome for handset manufacturers since they do not have to align testing, certification, and printing schedules, and it saves paper, which is a more environmentally friendly way of providing information. The Commission also reduced the administrative burdens and the economic impact for small entities by eliminating several website posting and record retention requirements associated with handsets models.

G. Report to Congress

The Commission will send a copy of the *Report and Order*, including the FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Ordering Clauses

Accordingly, *it is ordered* that, pursuant to sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 610, the Report and Order *is hereby adopted*.

It is further ordered that the revisions to part 20 of the Commission's rules, 47 CFR part 20, as set forth in Appendix B of the Report and Order *are adopted*, effective thirty days from the date of publication in the **Federal Register**, except that the amendments to § 20.19(b)(3)(iii), (f)(3), (h), and (i)(4) and (5) will become effective following the completion of review by the Office of Management and Budget. Section 20.19(b)(3)(iii), (f)(3), (h), and (i)(4) and (5) may contain new or modified

information collection requirements that require review by the Office of Management and Budget under the PRA. The Commission will publish a document in the **Federal Register** announcing the effective date of the revisions to § 20.19(b)(3)(iii), (f)(3), (h), and (i)(4) and (5), following the completion of review by the Office of Management and Budget.

It is further ordered that the revisions to § 20.19(f)(1) and (2) will become effective either after the Office of Management and Budget completes its review of any information collection requirements contained in the paragraphs or 25 months after the date that a summary of the Report and Order is published in the **Federal Register**, whichever is later. The Commission will publish a document in the **Federal Register** announcing the effective date of the revisions to § 20.19(f)(1) and (2).

It is further ordered that the Commission's Office of the Secretary *shall send* a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that the Office of the Managing Director, Performance Program Management, *shall send* a copy of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 20

Administrative practices and procedures, Communications equipment, Individuals with disabilities.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE SERVICES

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

Authority: 47 U.S.C. 151, 152(a), 154(i), 155, 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, and 615c, unless otherwise noted.

■ 2. Amend § 20.19 by:

- a. Revising the section heading and paragraphs (a), (b), and (c);
- b. Adding paragraph (e)(4); and
- c. Revising paragraphs (g) and (i)(4).

The revisions and addition read as follows:

§ 20.19 Hearing loss compatible wireless handsets.

(a) *Definitions.* For purposes of this section:

2007 ANSI standard refers to the technical standard for hearing aid compatibility applicable to frequencies between 800 MHz and 3 GHz as set forth in ANSI C63.19–2007.

2011 ANSI standard refers to the technical standard for hearing aid compatibility applicable to frequencies between 698 MHz and 6 GHz as set forth in ANSI C63.19–2011.

2019 ANSI standard refers to the technical standard for hearing aid compatibility applicable to frequencies between 614 MHz and 6 GHz as set forth in ANSI C63.19–2019.

Acoustic coupling refers to a type of hearing aid compatibility where handset models couple with hearing aids through the use of the hearing aid's microphone that amplifies sound and the handsets meet standards for controlling radiofrequency (RF) interference between the handsets and hearing aids.

ANSI standard refers to the 2007, 2011, and 2019 ANSI standards as a group.

Any version of the ANSI standard previous to the 2019 ANSI standard refers to the 2007 and 2011 ANSI standards.

Bluetooth coupling refers to a type of hearing aid compatibility where handset models couple with hearing aids using short range wireless technology that relies on internal chipsets and antennas within the handset model.

Digital labeling technology refers to Quick-Response (QR) codes and related website addresses that link to additional online information about a handset model's hearing aid compatibility.

Digital mobile service refers to a terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including both interconnected and non-interconnected voice over internet protocol (VoIP) services, to the extent that such service is provided over frequencies specified in the 2007 ANSI standard, 2011 ANSI standard, or the 2019 ANSI standard.

Handset refers to a device used in delivery of digital mobile service in the United States that contains a built-in speaker and is typically held to the ear in any of its ordinary uses.

Handset manufacturer refers to a manufacturer of handset models that are used in delivery of digital mobile

service, as defined in this section, in the United States.

Handset model portfolio refers to all of the handset models that a handset manufacturer or service provider offers for sale or use in the United States.

Hearing aid refers to hearing aids and cochlear implants.

Hearing aid-compatible refers to a handset model that:

- (i) Has an internal means for compatibility, as defined in this section;
- (ii) Meets established technical standards for hearing aid coupling or compatibility, as defined in this section; and
- (iii) Is usable, as defined in this section.

Model refers to a wireless handset that a handset manufacturer has designated as a distinct handset model, consistent with its own marketing practices. However, if a handset manufacturer assigns different model number designations solely to distinguish handset models sold to different service providers, or to signify other distinctions that do not relate to either form, features, or capabilities, such model number designations shall not count as distinct handset models for purposes of this section.

Nationwide service provider refers to a provider of commercial mobile radio service, as defined in this section, that offers such service nationwide.

Non-nationwide service provider refers to a provider of commercial mobile radio service, as defined in this section, that does not offer such service on a nationwide basis.

Publicly accessible website refers to a consumer facing website that handset manufacturers and service providers maintain and that consumers can locate through a website search.

Service provider refers to a provider of digital mobile service, as defined in this section, in the United States.

Telecoil coupling refers to a type of hearing aid compatibility where handset models couple with hearing aids through the use of telecoils. This form of compatibility can be referred to as inductive coupling.

Volume control requirements refers to the technical standard established by ANSI/TIA–5050–2018.

(b) *Hearing aid compatibility; technical standards—*(1) *Handset model compatibility before December 14, 2026.* A handset model submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet the certification requirements of the 2019 ANSI standard, including applicable volume control requirements.

(2) *Handset model compatibility on or after December 14, 2026.* A handset model submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet:

(i) The 2019 ANSI standard's acoustic coupling requirements;

(ii) The 2019 ANSI standard's volume control requirements; and

(iii) Either the 2019 ANSI standard's telecoil coupling requirements or have Bluetooth coupling technology as a replacement for or in addition to meeting the standard's telecoil coupling requirements.

(iv) All such new handset models must come out-of-the-box with their hearing aid compatibility related acoustic and volume control functions turned on by default. Such handset models may also have secondary settings to turn on the handset model's telecoil or Bluetooth coupling functions, depending on the secondary capability included in a particular handset model. All such handset models must have settings for acoustic, telecoil, or Bluetooth coupling (depending on the coupling functionality included) and volume control functionality that are clearly labeled and allow consumers to easily find these settings and to turn these functions on or off as they desire.

(3) *Bluetooth coupling requirements.*

(i) Between December 14, 2026, and December 12, 2028, the Bluetooth coupling requirement may be met using either proprietary or non-proprietary Bluetooth coupling technology.

(ii) Beginning on December 12, 2028, the Bluetooth coupling requirement may only be met using Bluetooth coupling technology that:

(A) Utilizes a global, low power wireless technology standard for high quality audio voice streaming;

(B) Is a standalone non-proprietary implementation;

(C) Is a qualified implementation that has undergone testing to verify that the product conforms to the specifications it claims to support;

(D) Offers full interoperability between hearing aids and handset models to enable inter-network, inter-provider, inter-platform, and inter-handset manufacturer functionality; and

(E) Uses a design that meets broad, generic hearing aid requirements that addresses needed features when coupling to handset models for all forms of voice calls and associated handset model use.

(4) *Handset models operating over multiple frequency bands or air interfaces.*

(i) Between December 12, 2024, and December 14, 2026, a handset model is hearing aid-compatible if it

meets the requirements of paragraph (b)(1) of this section for all frequency bands that are specified in the 2019 ANSI standard and all air interfaces over which it operates on those frequency bands, and the handset model has been certified as compliant with the test requirements for the 2019 ANSI standard pursuant to § 2.1033(d) of this chapter.

(ii) Beginning on December 14, 2026, a handset model is hearing aid-compatible if it meets the requirements of paragraph (b)(2) of this section for all frequency bands that are specified in the 2019 ANSI standard and all air interfaces over which it operates on those frequency bands, and:

(A) The handset model has been certified as compliant with the test requirements for the 2019 ANSI standard (including the telecoil requirements) pursuant to § 2.1033(d) of this chapter; or

(B) The handset model has been certified as compliant with the test requirements for the 2019 ANSI standard (except for the telecoil requirements) pursuant to § 2.1033(d) of this chapter and meets the Bluetooth coupling requirements of this paragraph (b) and paragraph (c) of this section.

(5) *Non-hearing aid-compatible handset models.* Beginning on December 14, 2026, any non-hearing aid-compatible handset models cannot obtain a certification under part 2, subpart J, of this chapter.

(6) *Software updates.* (i) Handset models certified as hearing aid-compatible may not be modified through a software push that results in the handset model no longer meeting hearing aid compatibility certification standards. In addition, a handset model's conversational gain may not be lowered through a software push, unless the impact on the conversational gain of a handset model is *de minimis*. The Commission delegates to the Wireless Telecommunications Bureau, in coordination with the Office of Engineering and Technology, authority to define the scope of the *de minimis* exception, as needed.

(ii) Consumers must be notified prior to installing a software push if the software push will install new operations or bands that are not covered by the applicable hearing aid compatibility certification standards and, therefore, these new operations or bands will not meet hearing aid compatibility certification requirements.

(7) *Factual questions.* All factual questions of whether a handset meets the technical standard(s) of this paragraph (b) shall be referred for resolution to the Chief, Office of

Engineering and Technology, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

(8) *Grandfathered handset model.* A handset model certified under any version of Commission authorized technical standards prior to December 13, 2024, may continue to be offered for sale or use, as long as the Commission permits the handset model to continue to be offered for sale or use.

(c) *Phase-in of hearing aid-compatibility requirements.* The following applies to each handset manufacturer and service provider that offers handset models for sale or use in the United States that are used to deliver digital mobile services as specified in paragraph (a) of this section.

(1) *Handset manufacturers—Number of hearing aid-compatible handset models offered for sale or use in the United States prior to December 14, 2026.* At least eight-five (85) percent of those handset models (rounded down to the nearest whole number) must be hearing aid-compatible as defined under paragraph (b)(1) of this section.

(2) *Handset manufacturers—Number of hearing aid-compatible handset models offered for sale or use in the United States after December 14, 2026.* All handset models shall meet the following hearing aid compatibility requirements:

(i) One hundred (100) percent of these handset models must meet the 2019 ANSI standard's acoustic coupling requirements or have been certified as meeting the M3 acoustic rating under a previous ANSI standard;

(ii) At least eighty-five (85) percent of those handset models (rounded down to the nearest whole number) must meet the 2019 ANSI standard's telecoil coupling requirements or have been certified as meeting the T3 telecoil rating under a previous ANSI standard;

(iii) At least fifteen (15) percent of those handset models (rounded up to the nearest whole number) must have Bluetooth coupling technology consistent with paragraphs (a) and (b)(3) of this section as a replacement for or in addition to meeting the 2019 ANSI standard's telecoil coupling requirements or the T3 telecoil rating under a previous ANSI standards;

(iv) One hundred (100) percent of these handset models must meet at least two forms of coupling. Specifically, all handsets must:

(A) Meet the acoustic coupling requirement, as specified in paragraph (c)(2)(i) of this section, and meet the telecoil requirement, as specified in paragraph (c)(2)(ii) of this section; or

(B) Meet the acoustic coupling requirement, as specified in paragraph (c)(2)(i) of this section, and have Bluetooth coupling technology, as specified in paragraph (c)(2)(iii) of this section; and

(v) All new handset models that a handset manufacturer adds to its handset model portfolio must meet the 2019 ANSI Standard's volume control requirements.

(3) *Nationwide service providers—Number of hearing aid-compatible handset models offered prior to June 14, 2027.* At least eight-five (85) percent of those handset models (rounded down to the nearest whole number) must be hearing aid-compatible as defined under paragraph (b)(1) of this section.

(4) *Nationwide service providers—Number of hearing aid-compatible handset models offered after June 14, 2027.* All handset models that nationwide service providers offer and add to their handset model portfolios must meet the same requirements that handset manufacturer handset models must meet as set forth in paragraph (c)(2) of this section.

(5) *Non-nationwide service providers—Number of hearing aid-compatible handset models offered prior to June 12, 2028.* At least eight-five (85) percent of those handset models (rounded down to the nearest whole number) must be hearing aid-compatible as defined under paragraph (b)(1) of this section.

(6) *Non-nationwide service providers—Number of hearing aid-compatible handset models offered after June 12, 2028.* All handset models that non-nationwide service providers offer and add to their handset model portfolios must meet the same requirements that handset manufacturer handset models must meet as set forth in paragraph (c)(2) of this section.

(7) *Availability and in-store testing of hearing aid-compatible handset models.* All handset manufacturers and service providers must make their best efforts to make available all hearing aid-compatible handset models that they offer for sale or use to consumers to test, in each retail store owned or operated by the handset manufacturer or service provider. If a handset model is not available in-store for testing, handset manufacturers and service providers must make their best efforts to make the handset model available to the consumer for testing within 48 hours by shipping the handset model either to the store or to the consumer's home. Further, handset manufacturers and service providers must make their best efforts to ensure that all of the hearing aid-compatible handset models that

they offer for sale or use will be in the hands of consumers within 48 hours of the consumer ordering the hearing aid-compatible handset model.

* * * * *

(e) * * *
(4) Beginning December 14, 2026, handset manufacturers may no longer claim *de minimis* status under the terms of this section. Beginning June 14, 2027, nationwide service providers may no longer claim *de minimis* status under the terms of this section. Beginning June 12, 2028, non-nationwide service providers may no longer claim *de minimis* status under the terms of this section.

* * * * *

(g) *Handset model number designation requirements.* Where a handset manufacturer or service provider makes a physical change to a handset model, the handset model must be given a model number designation distinct from that of the handset model prior to its alteration. A physical change to a handset model is defined as changes to the handset model's hardware or software that causes a variation in the form, features, or capabilities of the handset model as compared to the handset model prior to these alterations.

(1) Handset models recertified as hearing aid-compatible under updated certification standards are not required to be assigned a new model number designation unless the handset model has been physically changed, as defined in this paragraph (g), to meet the requirements of the updated certification standard. Handset models being recertified as hearing aid-compatible under updated certification standards must meet all aspects of the updated certification standard. Handset models being recertified as hearing aid-compatible may not be recertified as hearing aid-compatible using parts of two different ANSI standards or distinct certification standards.

(2) Handset manufacturers may assign new handset model number designations to handset models recertified as hearing aid-compatible under updated certification standards that have not undergone any physical changes, as defined in this paragraph (g), if the handset manufacturer chooses to for its own reasons. Under these circumstances, handset manufacturers and service providers shall not count the handset model more than once for purposes of meeting handset model deployment benchmark requirements regardless of the number of handset model number designations that the handset model has been assigned.

(3) Handset models recertified as hearing aid-compatible under updated certification standards must have the labeling, disclosure, and website posting information related to the handset model updated within 30 days of the updated certification. These updates must indicate that the handset model has been recertified under updated certification standards and explain how this updated certification affects the handset model's operations. These updates must be made regardless of whether the handset model was physically altered to meet the requirements of the updated certification standard.

* * * * *

(i) * * *
(4) *Form and content requirements.* The Wireless Telecommunications Bureau is delegated authority to approve or prescribe forms, formats, and methods for submission of the reports and certifications in addition to or instead of those required by this section. Further, the Bureau is delegated authority to revise the information that these reports and certifications collect as long as these revisions are consistent with the rules in this section and do not impose additional obligations beyond providing the information that these reports and certifications collect. Any format or content changes the Bureau adopts will be made available on the Bureau's website.

* * * * *

■ 3. Delayed indefinitely, further amend § 20.19 by:

- a. Adding paragraph (b)(3)(iii);
- b. Revising the heading of paragraph (f);
- c. Adding paragraph (f)(3);
- d. Revising paragraph (h);
- e. Redesignating paragraph (i)(4) as paragraph (i)(6); and
- f. Adding new paragraph (i)(4) and paragraph (i)(5).

The additions and revisions read as follows:

§ 20.19 Hearing loss compatible wireless handsets.

* * * * *

(b) * * *

(3) * * *

(iii) As part of the statement required pursuant to § 2.1033 of this chapter, handset manufacturers shall include a sworn declaration consistent with § 1.16 of this chapter verifying:

(A) The specific Bluetooth coupling standard included in each handset model to be marketed under the requested equipment authorization;

(B) That each handset model has been tested to ensure compliance with the

relevant designated Bluetooth coupling standard; and

(C) Beginning on December 12, 2028, that the included Bluetooth coupling standard meets the definition of hearing aid-compatible in paragraph (a) of this section and the related Bluetooth functionality requirements of paragraph (b)(3)(ii) of this section.

* * * * *

(f) *Labeling and disclosure requirements for hearing aid-compatible handset models*— * * *

(3) *Use of digital labeling technology.*

(i) External printed package labels must be printed and affixed to the outside of the handset model's packaging and contain the information required by paragraph (f)(1) of this section. This information may not be delivered to consumers through the use of digital labeling technology.

(ii) The information required by paragraph (f)(2) of this section may be delivered to consumers using digital labeling technology, as an alternative to including an internal printed package insert or printed handset manual as long as the handset manufacturer or service provider choosing this option maintains a publicly accessible website where consumers can easily locate the information required by paragraph (f)(2). Handset manufacturers and service providers choosing this option must provide consumers with both a Quick-Response (QR) code and the related website address where the information required by paragraph (f)(2) can be found. The required information must be presented in a straight-forward fashion using plain language that is easy for consumers to understand. Handset manufacturers and service providers choosing this option must update this information within 30 days of any relevant changes, and they must ensure that they are in full compliance with the website posting requirements of paragraph (h) of this section.

* * * * *

(h) *website posting requirements.* (1) Each handset manufacturer and service provider that maintains a publicly accessible website must make available on its website:

(i) A list of all currently offered handset models, including each model's marketing name/number(s) and the FCC ID number, along with the ANSI standard used to certify the handset model as hearing aid-compatible;

(ii) For each handset model, an affirmative statement of whether or not the handset model meets telecoil certification requirements;

(iii) For each handset model, an affirmative statement of whether or not

the handset model includes Bluetooth coupling technology and, if so, which Bluetooth coupling technology the handset model includes;

(iv) For each handset model certified under the 2019 ANSI standard, an affirmative statement of the handset model's conversational gain with and without hearing aids with the actual conversational gain that is displayed being the lowest rating assigned to the handset model for any covered air interface or frequency band;

(v) If a handset model has been certified as hearing aid-compatible under special testing circumstances or contains operations or frequency bands that are not certified as hearing aid-compatible, an explanation of how this affects the handset model's operations; and

(vi) A link to the Commission's wireless hearing aid compatibility web page.

(2) Each handset manufacturer and service provider that maintains a publicly accessible website must post to their websites the name of a department or a division within the company that is staffed with knowledgeable employees who can answer consumer questions about the hearing aid compatibility of the handset models that the company offers and related coupling questions. Along with posting the information required by paragraph (h)(1) of this section, handset manufacturers and service providers must post to their publicly accessible websites an email address, mailing address, text number, and a toll-free number that consumers can use to contact the knowledgeable company employees. These employees shall respond to consumer inquiries in a fashion consistent with good business practices.

(3) The information on handset manufacturer and service provider publicly accessible websites must be presented in a straightforward fashion using plain language that is easy for consumers to understand. In addition, this information must be updated within 30 days of any relevant changes, and web pages must include a date stamp allowing consumers to understand how recent the information is that they are viewing.

(i) * * *

(4) *FCC Form 855 certification filing requirements.* After December 14, 2026, handset manufacturers shall file FCC Form 855 rather than FCC Form 655 to certify their compliance with the requirements of this section. After December 14, 2026, service providers shall continue to file FCC Form 855 to certify their compliance with the requirements of this section. Handset

manufacturers and service providers shall file FCC Form 855 by January 31 of each year and the certification shall cover the previous calendar year from January 1 through December 31. Each certification shall be accurate and provide information that can be verified by the filer's publicly accessible website or, if the filer does not maintain a publicly accessible website, the filer must include an attachment with its certification which contains the information required by paragraph (h)(1) of this section.

(5) *FCC Form 855 certification content.* The FCC Form 855 that handset manufacturers file, nationwide service providers file after June 14, 2027, and non-nationwide service providers file after June 12, 2028, must include the following information:

(i) An affirmative statement as to whether the filer is a handset manufacturer, a nationwide service provider, or a non-nationwide service provider;

(ii) In the case of a handset manufacturer, an affirmative statement as to whether the filer ceased offering handset models during the reporting period or, in the case of a service provider, the filer ceased offering wireless service during the reporting period;

(iii) An affirmative statement that the filer did not offer for sale or use in the United States non-hearing aid-compatible handset models for the reporting period as required by paragraph (c)(2), (4), or (6) of this section, as applicable to the filer;

(iv) The total number of hearing aid-compatible handset models the filer offered for sale or use in the United States for the reporting period;

(v) The number of these handset models that met applicable telecoil requirements;

(vi) The number of these handset models that met the applicable Bluetooth coupling requirement and a statement as to whether the Bluetooth coupling technology was a proprietary or non-proprietary implementation, the name of the Bluetooth coupling technology, and a statement as to whether the Bluetooth technology met the requirements of paragraph (b)(3)(ii) of this section;

(vii) An affirmative statement that all new handset models added during the reporting period met volume control certification requirements as required by paragraph (c)(2), (4), or (6) of this section, as applicable to the filer;

(viii) An affirmative statement that the filer was in full compliance with the labeling and disclosure requirements in paragraph (f) of this section;

(ix) A statement as to whether the filer used digital labeling technology to deliver to consumers the information required by paragraph (f)(2) of this section, as an alternative to including a printed insert or printed handset manual;

(x) If the filer maintains a publicly accessible website, the filer must include a link to the website showing compliance with paragraph (h) of this section or, if the filer does not maintain a publicly accessible website, an affirmative statement that the filer does not maintain a publicly accessible website and has included an attachment with its filing showing the information required by paragraph (h)(1) of this section;

(xi) The name of the signing executive and contact information;

(xii) The company(ies) covered by the certification;

(xiii) The FRN; and

(xiv) The following language:

I am a knowledgeable executive of [company x] regarding compliance with the Federal Communications Commission's wireless hearing aid compatibility requirements as a company covered by those requirements.

I certify that the company was [(in full compliance/not in full compliance)] [choose one] at all times during the applicable reporting period with the Commission's wireless hearing aid compatibility deployment benchmarks and all other relevant wireless hearing aid compatibility requirements.

The company represents and warrants, and I certify by this declaration under penalty of perjury pursuant to 47 CFR 1.16 that the above certification is consistent with 47 CFR 1.17, which requires truthful and accurate statements to the Commission. The company also acknowledges that false statements and misrepresentations to the Commission are punishable under Title 18 of the U.S. Code and may subject it to enforcement action pursuant to Sections 501 and 503 of the Act.

(xv) If the company selected that it was not in full compliance with this section, an explanation of which wireless hearing aid compatibility requirements it was not in compliance

with, when the non-compliance began and (if applicable) ended with respect to each requirement.

* * * * *

■ 4. Delayed indefinitely, further amend § 20.19 by revising paragraphs (f)(1) and (2) to read as follows:

§ 20.19 Hearing loss compatible wireless handsets.

* * * * *

(f) * * *

(1) *External printed package label.*

For all handset models certified as hearing aid-compatible, handset manufacturers and service providers shall ensure that the handset model has an external printed package label that clearly and legibly provides in plain language the following information:

(i) That the handset model is certified as hearing aid-compatible;

(ii) Whether or not the handset model meets telecoil or Bluetooth coupling requirements or both requirements and, in the case of Bluetooth coupling requirements, which Bluetooth coupling standard the handset model includes; and

(ii) The handset model's actual conversational gain with and without hearing aids, if certified under the 2019 ANSI standard, with the actual conversational gain that is displayed being the lowest rating assigned to the handset model for any covered air interface or frequency band.

(2) *Internal printed package insert or printed handset manual.* For all handset models certified to be hearing aid-compatible, handset manufacturers and service providers shall ensure that included within the handset model's packaging is either a printed package insert or a printed handset manual that provides the following information in a clear and legible format using plain language:

(i) An explanation of what it means that the handset model is certified as hearing aid-compatible and which ANSI standard was used for certification purposes;

(ii) An explanation of what acoustic, telecoil, and Bluetooth coupling are and which of these coupling capabilities the handset model includes and, in the case of Bluetooth coupling, which Bluetooth coupling standard the handset model includes;

(iii) If the handset model was certified under the 2019 ANSI standard, an explanation of the handset model's volume control capabilities, an affirmative statement of the handset model's conversational gain with and without hearing aids, and an explanation of how to turn the handset model's volume control capabilities on and off;

(iv) An explanation of how to turn each of the handset model's coupling functions on and off and an explanation that by default the handset model comes with its acoustic and volume control functions turned on; and

(v) If the handset model has been certified as hearing aid-compatible under special testing circumstances or contains operations or frequency bands that are not certified as hearing aid-compatible, an explanation of how this affects the handset model's operations. Under these circumstances, the included printed package insert or printed handset manual must include the following disclosure statement:

This phone has been tested and certified for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or the handset manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer.

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Part IV

Department of Housing and Urban Development

24 CFR Part 581

General Services Administration

41 CFR Part 102–75

Department of Health and Human Services

45 CFR Part 12a

Use of Federal Real Property To Assist the Homeless; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 581**

[Docket No. FR 6119–F–02]

RIN 2506–AC49

GENERAL SERVICES ADMINISTRATION**41 CFR Part 102–75**

RIN 3090–AK46

DEPARTMENT OF HEALTH AND HUMAN SERVICES**45 CFR Part 12a**

RIN 0991–AC14

Use of Federal Real Property To Assist the Homeless

AGENCY: Department of Housing and Urban Development, General Services Administration, and Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Housing and Urban Development (HUD), the General Services Administration (GSA), and the Department of Health and Human Services (HHS) (the Agencies) administer the Title V program, which makes suitable Federal real properties categorized as underutilized, unutilized, excess, or surplus available to States, local government agencies, and 501(c)(3) tax-exempt non-profit organizations for use to assist the homeless. This final rule incorporates required statutory changes and current practices; updates references and terminology that are now outdated; and revises procedures for more efficient program administration in the Agencies' regulations.

DATES: *Effective date:* December 13, 2024.

FOR FURTHER INFORMATION CONTACT: For information regarding each agency's implementation of these regulations, the contact information for that agency follows. The Agencies welcome and are prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Department of Housing and Urban Development: Brian Fitzmaurice, Senior Program Advisor, Office of Special Needs Assistance Programs, Community Planning and Development, Department

of Housing and Urban Development, 451 7th Street SW, Room 7262, Washington, DC 20140; title5@hud.gov; telephone number 202–905–3869 (this is not a toll-free number).

General Services Administration: Chris Coneeney, Director, Real Property Policy Division, Office of Government-wide Policy, at 202–208–2956 or chris.coneeney@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSA at RegSec@gsa.gov.

Department of Health and Human Services: Theresa M. Ritta, Program Manager, Real Property Management Services; Telephone: (301) 443–2265; Email: rpb@psc.hhs.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

In 1991, the Agencies jointly published a regulation (56 FR 23789 (May 24, 1991)), codified at 24 CFR part 581, 41 CFR part 102–75, and 45 CFR part 12a, implementing the provisions of Title V of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act or Title V) (42 U.S.C. 11411). The 1991 regulation established procedures for collecting information from landholding agencies about excess, surplus, unutilized, and underutilized properties under their control and the criteria for determining the properties' suitability for use as homeless assistance. It also provided procedures and timelines for the application process and agency review of submitted applications to use such properties for homeless assistance. The regulation has not been updated since its publication in 1991. Since that time, however, the McKinney-Vento Act has been amended several times by new legislation, including the Homeless Emergency Assistance and Rapid Transition to Housing Act (sec. 1003, Pub. L. 111–22, 123 Stat. 1632, 1664–65), the Federal Property Management Reform Act of 2016 (Pub. L. 114–318, 130 Stat. 1608), and most significantly, section 22 of the Federal Assets Sales and Transfer Act of 2016 (FASTA) (Pub. L. 114–287, 130 Stat. 1463, 1478 (codified at 42 U.S.C. 11411)).

Under section 501 of Title V, HUD handles the suitability determination and HHS processes applications from eligible organizations and monitors transferred property for compliance with programmatic requirements. GSA supports both agencies at various stages throughout the entire process including: by screening real properties reported by a particular agency as excess to determine if they are required for use by any other Federal agency; submitting

properties reported to GSA for disposal to HUD for a determination of suitability for use to assist the homeless; and notifying HUD of whether there is a continuing need for the property within the Federal Government after a suitability determination has been made. If there is no continuing Federal need for the property, the property is determined surplus to the needs of the Federal Government, and if HUD determines the property to be suitable, then the property is available for application to HHS for homeless assistance use.

Pursuant to 42 U.S.C. 11411(f)(3)(A), if HHS receives and approves an application for surplus property and recommends to GSA that the property be conveyed to the applicant for homeless assistance use, GSA assigns the property to HHS. HHS then deeds or leases the property to the applicant for the purpose(s) stated in the approved application, unless a competing request for the property under 40 U.S.C. 550 is determined by GSA or HHS to be so meritorious and compelling as to outweigh the needs of the homeless. Further details about the suitability determination process and transfer of the property can be found in the proposed rule, "Use of Federal Real Property to Assist the Homeless: Revisions to Regulations," at 88 FR 16834.

As previously noted, FASTA made several changes to the McKinney-Vento Act. Section 22 of FASTA amended the McKinney-Vento Act to allow for HUD's suitability determinations to be posted electronically; to eliminate subsequent posting of previously reported properties determined unsuitable with no changes; to change the timeframes related to how long suitable and available properties are held for homeless assistance use; to change the number of days by which eligible organizations must submit an expression of interest to HHS from 60 days to 30 days from the date of HUD's publication; to create a two-phased application process; to shorten the initial application processing period from 90 days to 75 days; and, if approved, provide the applicant 45 days to submit a final application. If HHS does not approve a final application after approving an initial application, disposal of the property may proceed in accordance with applicable law.

In addition to the McKinney-Vento Act and agency regulations, administration of the Title V Program is guided by Federal court decisions, including the March 13, 2017, revised Order in *National Law Center on Homelessness & Poverty v. United*

States Department of Veterans Affairs, 819 F. Supp. 69 (D.D.C. 1993). Subsequent nationwide litigation, including *Colorado Coalition for the Homeless v. GSA*, No. 18-cv-1008, 2019 WL 2723857 (D.CO. Colo. July, 1, 2019); *United States v. Overcoming Love Ministries, Inc.*, No. 16-cv-1853, 2018 WL 4054867 (E.D.N.Y. Aug. 24, 2018); and *New Life Evangelistic Center, Inc. v. Sebelius*, 753 F. Supp. 2d 103 (D.D.C. 2010) have interpreted and applied key provisions of Title V and its regulations. Taking into consideration the Agencies' experience operating the Title V program over the past 30 years, this joint regulation aims to harmonize the joint regulation with Title V, as amended by FASTA and other legislation; incorporate existing policy and practice requirements for the benefit of future applicants; and, for ease of reference, expand portions of the joint regulation that cross-reference other sections of other regulations by incorporating the referenced portions.

II. The Proposed Rule

A. Collaborative Changes Across HUD, GSA, and HHS's Individual Regulations

On March 20, 2023, the Agencies published for public comment a proposed rule titled "Use of Federal Real Property to Assist the Homeless: Revisions to Regulations."¹ The Agencies proposed several changes to establish procedures conforming to FASTA and incorporating other legislative changes. They also sought to codify established policies and processes used to govern the program. For greater readability, in instances where requirements found in other sections of the regulation were referenced by citation, the Agencies proposed to instead incorporate those provisions in each agency's individual regulations. The Agencies also proposed revised suitability criteria for clarity and to address the Government Accountability Office's recommendation in its 2014 report titled "Federal Real Property: More Useful Information to Providers Could Improve the Homeless Assistance Programs."² Throughout the proposed rule, the Agencies reorganized and renumbered various existing sections of their respective regulations.

1. Definitions

The proposed rule sought to remove definitions that were no longer relevant, revise other definitions to conform to existing legislation, incorporate new definitions, some of which were used

but not defined in the Title V regulation; and provide clarity and consistency for potential Title V applicants regarding the Agencies' roles and requirements. The Agencies proposed that the definitions of *Applicant*, *Eligible organization*, *Excess property*, *Homeless*, *Landholding agency*, *Lease*, *Permit*, *Property*, *Screen*, and *Surplus property* be amended to provide consistent language across the Agencies' regulations, provide more clarity, and conform with statutory changes. The proposed rule sought to add definitions for *HUD website*, *Transferee*, *Transfer document*, *Substantial noncompliance*, *Related personal property*, and *State* for clarity and conformance with statutory requirements. The rule proposed to remove the definitions of *Regional Homeless Coordinator* and *State Homeless Coordinator* as they are no longer applicable. The rule also proposed to remove the definition of *ICH* and instead reference the term "United States Interagency Council on Homelessness."

2. Applicability

The Agencies proposed to expand the list of properties that are not subject to the joint regulation by adding (1) properties that are not subject to Federal Real Property Council reporting requirements; (2) buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 after October 25, 1994; (3) machinery and equipment that is not related personal property; (4) machinery and equipment that is related personal property but that GSA or the landholding agency chose to dispose of separate from the real property; and (5) excess or surplus buildings or fixtures that sit on land under the control of a landholding agency where the underlying land is not also excess or surplus. The Agencies also proposed clarifying changes to this section, including adding a citation where it previously did not exist; specifying that the existing language referencing properties "subject to a court order" referred only to court orders that, for any reason, precluded transfer for use to assist the homeless under Title V; and clarifying that the existing exclusion of mineral and air space rights from Title V processing referred to mineral and air space rights that are independent of surface rights.

3. Collecting Information From Federal Agencies

The Agencies proposed several changes to the information collection process under Title V. The proposed

rule sought to codify HUD's existing practice of accepting property information from landholding agencies on an ongoing basis. The Agencies proposed that HUD's canvass of landholding agencies include information about previously reported properties only if the property's status or classification changed or if improvements were made to the property since the property was last reported to HUD. The Agencies proposed that HUD review properties with a change in status for suitability and repost the property information on the HUD website. The proposed rule sought to clarify that landholding agencies should respond to HUD's information collecting canvass in accordance with 40 U.S.C. 524 and that a completed property checklist is the vehicle for submitting property information to HUD.

4. Suitability Determination

The Agencies proposed several changes to the suitability determination process. The regulations did not provide a deadline for the landholding agency to respond to HUD's request for additional information in instances where HUD received an appeal request for review of a property that was determined unsuitable for homeless assistance use, and the regulations were also silent regarding the determination process after HUD received or did not receive the landholding agency's response. The Agencies proposed that unless HUD and the landholding agency agree to an extended period, the deadline for the landholding agency to respond to HUD's request for additional information would be 20 days from the date that the landholding agency is notified of the request to review the unsuitability determination. If the landholding agency fails to meet the deadline or request an extension, the Agencies proposed that HUD proceed with the appeal review using the property information provided in the survey it already has and information submitted in the appeal request provided by the representative of the homeless. The Agencies proposed that HUD act on requests for review where the landholding agency or GSA has failed to meet the deadline within 30 days of such deadline.

The Agencies also proposed to incorporate required statutory changes under FASTA to allow HUD to post suitability determinations on a HUD website or a successor technology that is equally accessible and available to the public. The proposed rule sought to update processes by removing the identified toll-free number and revising

¹ 88 FR 16834.

² <https://www.gao.gov/assets/gao-14-739.pdf>.

it to state that HUD will establish and maintain “a toll-free number” for the public to obtain specific information about Title V property reviewed for suitability. The Agencies proposed that persons with inquiries regarding property suitability and other Title V related questions be instructed to submit questions through the HUD Title V website, or such other method as HUD may require, and that persons with disabilities may also request an alternative method for submitting inquiries when it may be necessary as a reasonable accommodation under Federal fair housing laws.

5. Real Property Reported Excess to GSA

Under the regulations, landholding agencies were required to submit a report to GSA of properties determined as excess along with a copy of any HUD suitability determination. These sections in HUD’s and GSA’s regulations were proposed to remain substantially the same but proposed to be updated for clarity.

6. Suitability Criteria

The proposed rule sought to revise the criteria that HUD uses to determine suitability to make the criteria clearer and more user-friendly for both the Agencies and applicants by dividing the suitability criteria into two categories: (1) properties deemed suitable unless the properties have any of certain listed characteristics, and (2) properties having characteristics that would make the property presumptively unsuitable, unless the landholding agencies provide further information for HUD to determine the property suitable.

In the first category, the Agencies sought to revise the criteria relating to property located near a container or facility storing, handling, or processing flammable or explosive materials to provide for suitability if HUD can determine, based on information provided, that the property complies with the acceptable separation distance standards or that appropriate mitigating measures, as defined in 24 CFR 51.205, are already in place. The Agencies proposed to remove the reference to 2000 feet and the references to gasoline stations, tank trucks, above ground containers “with a capacity of 100 gallons or less,” and larger containers providing heating or power in favor of utilizing the more useful acceptable separation distance standards and excluding containers and facilities that are not hazards, as defined in 24 CFR 51.201. Additionally, the Agencies sought to add coastal barriers as a suitability criterion. The Agencies also proposed to rename the documented

deficiencies criterion as “Site Safety Conditions” and focus that criterion solely on a property’s physical characteristics.

The Agencies proposed to move the criteria regarding floodways, national security concerns, runway clear zones, and inaccessible property into the second category of criteria, as property presumed unsuitable unless information to enable HUD to determine it suitable is provided. The proposed rule also sought to remove the reference in the regulations to floodways that have been “contained or corrected” since the meaning of “corrected” was unclear and a floodplain that is “contained” might still adversely affect the use of portions of the site that are located within the “contained” floodway to assist the homeless.

The Agencies also included specific questions for public comment in the proposed rule regarding suitability criteria. The Agencies noted that they considered several changes to this section and did not expect the proposed changes to affect the number of properties deemed suitable.

7. General Policies of HHS

The Agencies proposed to add a section, General Policies of HHS, to mirror 45 CFR 12.3 instead of adopting that regulation by reference. The section highlights the minimum criteria for transfers of surplus property.

8. Expressions of Interest Process

Pursuant to FASTA, the time for eligible organizations to submit an expression of interest to HHS changed from 60 days to 30 days from the date of HUD’s publication of suitability. The Agencies proposed to capture this change in the regulations along with HHS’s proposal to accept such expressions of interest by email and an update to HHS’s physical address. Additionally, the Agencies proposed to amend this section to clarify that HUD’s determination of suitability does not mean a property is necessarily useable for the purpose stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

9. Application Process and Requirements

The Agencies proposed several changes to the application process based on current practice and statutory mandates. FASTA changed the time that an eligible organization must submit an initial application from 90 days to 75 days after HHS’s receipt of an expression of interest, unless extended by HHS. Additionally, if HHS approves

the initial application, then a final application, setting forth a reasonable financial plan, must be submitted within 45 days of HHS’s approval of the initial application. The proposed rule sought to incorporate this two-stage application process outlined in FASTA that HHS currently follows.

FASTA also reduced the time for HHS to review an initial application from 25 days to 10 days of its receipt. The proposed rule sought to reflect this change. It also proposed revising the ranking system and criteria HHS uses to assess applications by proposing that an initial application be evaluated based on the three statutory criteria: services offered; need; and experience and that all criteria be of equal weight, with failure to meet any one criterion resulting in the application being disapproved.

The Agencies also proposed revisions to make the application requirements more clear, concise, and consistent with the instructions accompanying the application packet, including describing the specific document an applicant must submit with its application to demonstrate its ability to hold title to property for the requested purpose(s). The Agencies proposed that applicants certify, rather than merely indicate, that their use of the property and any modification(s) made to the property conform to all applicable building codes and local use restrictions, or similar limitations to ensure an applicant’s proposed program is capable of being developed and operated following transfer without hindrances. The Agencies also proposed incorporating within the regulation the existing practice of denying any request for lesser portions of the listed real property. Additionally, the proposed rule sought to advise applicants that the description of the proposed program must also include how the applicant intends to implement the program to assist HHS in rendering a determination on the adequacy and timeliness of a proposed program and likelihood of operational success.

The Agencies also proposed additional updates to provide greater clarity regarding the application process. These proposed updates included (1) requiring that an applicant demonstrate both that there is an immediate need to acquire the property for the proposed program and the applicant’s ability to utilize all of the Federal real property for which it is applying; (2) clarifying that an applicant is required to provide details concerning modifications to the property that need to be completed before the program can become operational; and (3) requiring

that an applicant “demonstrate” its financial ability to finance and operate the proposed program rather than merely “indicate” its financial ability to do so. Additionally, the Agencies sought to memorialize current practice that permits HHS to grant, to an otherwise approved applicant, a short-term lease when a zoning change is required or an applicant’s financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing, enabling the approved applicant to gain site control of the property that may be required for funding and allowing additional time to provide HHS the requisite information to ensure the Federal Government’s interest in the property is adequately protected. The proposed rule also sought to clarify property insurance requirements and the purpose thereof, thereby allowing for the omission of the reference to other provisions of the Agencies’ regulations. Additionally, it proposed requiring that an applicant provide evidence that it has notified the local government of its application rather than simply indicating in its application that it has done so.

The Agencies also proposed revisions to clarify the requirements regarding the transfer of surplus property and to comply with FASTA. The Agencies proposed to incorporate HHS’s current policy that transfers by deed will only be made after the appropriate certification that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations, omitting the need to reference other provisions of the Agencies’ regulations.

10. Surplus Property Transfer Documents

The proposed rule sought to add an entirely new section regarding transfer documents to conform to legislative changes, and for clarity it proposed including relevant provisions of 41 CFR part 102–75 and 45 CFR part 12 pertaining to general terms and conditions of transfers. This proposed change was to improve the readability of the regulation and remove the need for additional cross-references. Additionally, the proposed rule sought to omit the requirement for reversion or abrogation of transferred property, at the discretion of HHS, should the property not be placed into use within 8 years to allow for more flexibility to resolve such issues on a case-by-case basis.

11. Compliance With the National Environmental Policy Act of 1969 (NEPA) and Other Related Acts (Environmental Impact)

The regulation already provided general application requirements as they pertained to environmental information. The proposed rule sought to expand these sections to clarify and to mirror mandates and policies currently required by NEPA and other related Acts.

12. No Applications Approved

The Agencies proposed codifying changes made by FASTA within the regulations. Under FASTA, Federal real properties can only be held for 30 days to permit homeless providers an opportunity to submit a notice of interest instead of the previous 60-day holding period. Additionally, FASTA requires GSA or the landholding agency to proceed with disposal of surplus property 75 days following receipt of an initial expression of interest if no initial application or requests for extensions have been received by HHS, or within 45 days after an approved initial application if no final application has been received. This means that no disposal action can be taken by GSA or the landholding agency, as appropriate, until all Title V actions are completed. The Agencies captured these changes in the proposed rule.

13. Utilization and Enforcement

The Agencies proposed adding a new section to clearly articulate a transferee’s utilization requirements and potential enforcement actions that may be taken, at the discretion of HHS, should noncompliance occur. HHS’s policies did not change but were included in the proposed regulation to clarify program requirements to applicants and transferees. This section also included the Federal Government’s requirements of transferees in the event of a reversion action.

14. Other Uses

The proposed rule sought to clarify the requirements of transferees should a transferee request approval to utilize the property, or a portion thereof, for uses other than those stated in the approved original application.

15. Abrogation

The abrogation process was discussed in various sections of the regulation, and the Agencies proposed to more clearly articulate the instances in which HHS may abrogate the conditions and restrictions in the transfer document. The proposed rule sought to address the

abrogation process in its own section for clarity and simplicity.

16. Compliance Inspections and Reports

For clarifying purposes, the Agencies proposed to add this section to include provisions of 45 CFR 12.14 pertaining to compliance inspections and reports. HHS’s policies did not change but were included in the proposed regulation to be clearer for the public and remove the need for additional cross-references.

17. No Right of Administrative Review for Agency Decisions

Title V, as amended by FASTA, does not provide for internal administrative review of HHS application decisions. Accordingly, the Agencies proposed to codify HHS’s existing policy that no agency reconsideration or appeal shall be granted. HHS’s application decision constitutes final agency action in accordance with the Administrative Procedure Act (5 U.S.C. 704).

18. Public Notice and Holding Period Under FASTA & Technical Changes

The proposed rule sought to make changes throughout HUD’s and GSA’s regulations and implement FASTA amendments to the McKinney-Vento Act, including that suitability determinations for properties are published electronically on the HUD website and that HUD will post a list of all properties reviewed, including a description of the property, its address, and classification, on the HUD website, rather than in the **Federal Register**. The language “on the HUD website” was proposed to replace “**Federal Register**” as necessary, throughout HUD’s and GSA’s regulations. In addition, the Agencies proposed to remove identification of a specific toll-free number to accommodate any necessary changes to the toll-free number in the future and more closely align with 42 U.S.C. 11411(c)(2)(C). The proposed rule also sought to clarify that the list of all properties published on the HUD website is sent to the United States Interagency Council on Homelessness within the same timeframe as HUD’s publishing of the list of all reviewed properties to the HUD website. Requirements for the agency annual suitable property report were proposed to be included in the regulations along with clarification that the list of all properties published in the **Federal Register** no later than February 15 of each year would be a list of all properties from the agency annual suitable property reports, reported to HUD. To reflect the transition to publishing electronically, the proposed rule also sought to remove the

requirement for physical copies of the list of all properties published in the **Federal Register** be available for review in HUD buildings. Additional technical changes were also proposed throughout the regulations for clarity.

B. Changes to HUD's Regulations

The proposed changes to regulations found at 24 CFR part 581 related to each agency's responsibilities under the McKinney-Vento Act to provide the public with a comprehensive understanding of the Title V process. HUD proposed that part 581 continue to contain HUD's responsibilities under Title V while also publishing all changes discussed above, including new sections explained above in sections II.A.10, II.A.11, and II.A.13 through II.A.16.

C. Changes to GSA's Regulations

The regulations found at 41 CFR part 102–75, subpart H, relate to GSA's role in the use of Federal real property to assist the homeless along with the other Agencies' responsibilities. Since this regulation was published jointly with HUD and HHS, GSA proposed to update subpart H to include all changes discussed above, including new sections explained above in sections II.A.10, II.A.11, and II.A.13 through II.A.16. GSA also proposed to update subpart H to include a section on waivers previously contained in HUD's regulations at 24 CFR 581.13 but never published in GSA's regulations. Lastly, GSA proposed renumbering sections in subpart H throughout the regulation as noted above.

D. Changes to HHS's Regulations

The regulations found at 45 CFR part 12a solely relate to HHS's portion of the proposed rule. HHS proposed to update part 12a to include all changes discussed above, except sections that are not applicable to HHS, which include sections II.A.3 through II.A.6. HHS proposed that the changes to part 12a also include new sections explained in sections II.A.10, II.A.11, and II.A.13 through II.A.16.

III. This Final Rule

In response to public comments and in further consideration of issues addressed at the proposed rule stage, the Agencies are publishing a final rule with limited changes, resulting in a final rule that is similar to the proposed rule. The changes the final rule makes are discussed in turn.

A. Changes Within the Applicability Section

In paragraph (b)(12) of the "Applicability" section found at 24 CFR 581.2, 41 CFR 102–75.1161, and 45 CFR 12a.2, the Agencies are removing the proposed phrase "owned by" and replacing it with "under the control of" for accuracy, as no landholding agency "owns" real property because all real property is owned by the United States.

B. Changes Within the Definitions Section and Other Related References

In the "Definitions" section, the final rule also provides clarity regarding its use of the word *Encumbrance*, defining it to mean any non-approved use by a transferee or a third party that limits the full utilization of the transferred property, regardless of time period. The Agencies concluded that failure to include this definition could have the unintended effect of both confusing transferees as to what actions require HHS's official written approval, as well as hindering HHS's statutorily authorized enforcement efforts. In alignment with this addition to the regulation's definitions, the Agencies also remove terms like "sell" or "lease" in the "Transfer documents" section found at 24 CFR 581.14, 41 CFR 102–75.1172, and 45 CFR 12a.7 when found alongside the term "encumbrance," as those terms are now obsolete.

The definition of *Eligible organization* is also updated in this final rule to centralize the discussions about the requirements of eligible organizations found in other portions of the rule. In line with this, the Agencies also omit proposed paragraph (c) of 24 CFR 581.9, 41 CFR 102–75.1168, and 45 CFR 12a.3 related to the requirements of eligible organizations and proposed language in paragraph (a)(2) of 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5 related to the application process and requirements, as the revision of the definition rendered the restatements redundant and created the possibility of causing confusion.

Lastly, the final rule text omits the proposed definition of *Substantial Noncompliance* which was initially included in the proposed rule to give applicants and their lenders assurance that property generally does not get reverted based on technical violations of deed language or regulatory requirements. After further consideration, the Agencies have determined that inclusion of the term *Substantial noncompliance* unduly limits HHS's ability to initiate compliance action when warranted. As such, this final rule omits the proposed

definition of *Substantial noncompliance* from the proposed rule.

C. Changes Within the Application Process and Requirements Section and Other Related Sections

Within paragraph (a)(1) of the "Application process and requirements" section found at 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5, this final rule adds clarifying language to memorialize existing policy intended to prevent disparate treatment of applicants by deed as opposed to applicants who initially apply for a lease but later wish to convert the lease to a deed. The Agencies determined that failure to include this provision would allow applicants to be treated differently and create ambiguity, which the Agencies aim to prevent. Additionally, in response to public comments regarding the need for site control to obtain financing, the final rule adds language to indicate that should an applicant wish to convert a lease to a deed, HHS will issue a letter of commitment to a lessee indicating that provided its application meets all application criteria, including securing all necessary financing that complies with Federal Government requirements, HHS will issue a deed.

The Agencies received public comments that addressed financing and expressed concern as to how the Title V program would be funded. As a result, this final rule adopts clearer language regarding financing by changing proposed references to funding requirements contained in paragraph (a)(7)(iv) of the "Application process and requirements" section found at 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5 from an applicant showing an "ability to obtain" funds to showing that it "will obtain" such funds. This revision clarifies applicant requirements and clarifies that transferees are required to fund property and program operations. The Agencies' experience administering the Title V process has provided decades of examples showing that most programs have failed for financial reasons; therefore, it is critical that a solid financial plan is in place, and this clarification supports that end goal.

This final rule also adds language to the property insurance requirements in paragraph (a)(9) at 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5 and omits unnecessary detail found in paragraph (f)(6) of the "Transfer documents" section proposed at 24 CFR 581.14, 41 CFR 102–75.1172, and 45 CFR 12a.7. The added language in paragraph (a)(9) addresses existing issues regarding insurance proceeds and

makes clear that, in the event of a covered loss, the transferee must hold all proceeds in trust and obtain HHS's written concurrence before disbursing funds. The Agencies reason that this change would ensure that the property is returned to its previous or better condition, that homeless services are resumed, and the Federal Government's residual interest in the property is protected. The Agencies find this clarification necessary as failure to include it may unnecessarily hamper the Federal Government's efforts to both ensure that the property is repaired and recover the funds if the property is not repaired. Given this added clarification, the Agencies found the detail in paragraph (f)(6) of the "Transfer documents" section within the proposed rule to be extraneous and potentially confusing, and thus this final rule omits the proposed language.

This final rule also provides additional detail about HHS's discretion in paragraph (d)(1) of the "Application process and requirements" section found at 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5, by including the phrase "if time permits" to accompany the existing language regarding HHS's discretion to return an application or ask an applicant to provide additional information. This additional detail gives the applicant a greater understanding of the conditions under which HHS will exercise this discretion.

D. Changes Within the Action on Approved Applications Section

This final rule omits language in paragraph (a)(2)(i) of the "Action on approved applications" section proposed at 24 CFR 581.12, 41 CFR 102–75.1171, and 45 CFR 12a.6 regarding leases for approved unutilized and underutilized properties, as it conflicted with the definition of *Lease* and maintained the landholding agency's ability to determine the length of time that the property will be available. Additionally, in the case of permits, the prior language was inconsistent with the statutory definition thus the Agencies determined these changes to be necessary.

E. Changes Within the Transfer Documents Section

For accuracy, the Agencies provide changes in paragraph (f)(12) of the "Transfer documents" section found at 24 CFR 581.14, 41 CFR 102–75.1172, and 45 CFR 12a.7 regarding the time period of 30 years for which the terms and conditions apply for a property. The revision clarifies that public benefit is measured in months rather than years (a

360-month period rather than a 30-year period) and improves consistency because abrogation procedures also use months. This ensures that a transferred property is utilized for a full 360-month period, not simply during the course of a 30-year period, particularly in instances of noncompliance. As such, the change reflects the fact that the period of restriction may be amended to account for lack of use or change in program. Using years in most cases would be cumbersome and inaccurate.

In paragraphs (i) and (f)(2) at 24 CFR 581.14, 41 CFR 102–75.1172, and 45 CFR 12a.7, this rule clarifies HHS's existing policy of requiring "written" consent by clearly stating that written consent must be obtained for abrogation approvals and will be required for any encumbrances of the property for any purposes other than those set forth in an approved plan. The Agencies determined that the clarification and consistency for applications was necessary to avoid confusion in the administration of the program. Additionally, the Agencies received public comments suggesting that the proposed rule does not provide applicants sufficient time to renovate surplus property for use in homelessness assistance programs, particularly affordable permanent housing development projects. As a result, the Agencies revised paragraph (f)(1)(ii), to provide a transferee an additional 12 months (or up to a total of 48 months from the date of transfer) to place the property into use.

Additionally, as explained above in section III.C., which discusses changes within the Application Process and Requirements section, this final rule also revises paragraph (f)(6) of the "Transfer documents" section within the proposed rule in relation to property insurance requirements.

F. Changes to Other Sections of the Rule

In the "Other uses" section found at 24 CFR 581.19, 41 CFR 102–75.1177, and 45 CFR 12a.11, the Agencies add a requirement that the transferee lengthen the time of restrictions in applicable situations to mirror existing HHS policy and clarify that a grantee may not benefit from its non-use of the property or noncompliance with the approved program of use. The Agencies also provided greater clarity for transferees regarding the consequences of failure to abide by the requirements outlined for other uses of the property.

Additionally, throughout the regulation, the Agencies provide minor adjustments to word choice, such as changing "United States" to "Federal Government" in the "Application

process and requirements" section proposed at 24 CFR 581.11, 41 CFR 102–75.1170, and 45 CFR 12a.5 or "useable" to "fit for use" in the "Expression of interest process" section proposed at 24 CFR 581.10, 41 CFR 102–75.1169, and 45 CFR 12a.4. These changes are made to provide greater clarity for the public.

Additionally, the Agencies incorporated provisions of severability proposed at 45 CFR 12a.15, 24 CFR 581.23, and 41 CFR 102–75.1182 to clarify that the rule's provisions are intended to be severable from one another. Because the various components of this rule have functions that can operate independently from other portions of the rule, should a court find any of these revisions invalid, the Agencies believe that severability is both proper and practical. Furthermore, the Agencies' roles in the Title V process are distinct and separate, requiring independent judgement and action by each agency. The Agencies agree that successful legal challenges to provisions of the rule that affect one agency should not impair other provisions of the rule that are related to another agency. For these reasons, this rule adds a severability clause to each agency's portion of the rule.

IV. Public Comments

The public comment period for the proposed rule closed on May 19, 2023. The Agencies received a total of 23 comments regarding the proposed rule. HUD received 11 comments and HHS received 12 comments related to the rule. These comments were received from individuals, non-profit housing organizations, and nonprofit legal service providers. The Agencies have provided collective responses to the comments received.

A. Support for the Proposed Rule

Commenters expressed general support for the proposed rule. Commenters stated that they believed the proposed rule would provide needed services and homes to persons experiencing homelessness, including women, children, and older people, which would improve access to shelter and healthcare and noted a need for housing and services for persons experiencing homelessness. One commenter noted a disruption created by laws against encampments and stated that there is a need for persons experiencing homelessness to have access to proper shelter. Another commenter noted an increase in the population of homeless individuals. One commenter stated that the proposed rule would provide suitable properties

for persons experiencing homelessness while not hindering the Federal Government.

Commenters also expressed support for updating the terminology in the Title V program. Commenters stated that updating the terminology used by the Agencies will clarify the meaning of words such as “applicants,” “homelessness,” and other terms. Commenters also noted that the proposed rule would clarify which properties are affected by the Title V program. One commenter stated that updating the terminology will also aid policymakers and citizens in understanding the target population affected by the proposed rule.

Commenters also noted the impact of the rule on specific groups. One commenter stated that the proposed rule would revise current terminology to include survivors of intimate partner violence in the definition of “homeless.” This commenter stated that a lack of housing resources and financial assistance remains a significant reason why survivors of intimate partner violence are less likely to leave abusers. Several commenters stated that veterans also constitute a significant portion of the homeless population. One commenter stated that the rule will benefit veterans experiencing homelessness.

Commenters also supported provisions in the proposed rule that would change the program requirements from having an applicant “indicate” ability to finance and operate a proposed program to having them demonstrate their ability to do so. Commenters were supportive of the change, stating that it would allow applicants to more easily apply to the Title V program to receive available Federal properties.

Commenters noted that the proposed rule would have positive implications for healthcare on the Federal level. One commenter stated that the proposed rule would help the Federal Government provide better assistance to those in need of housing and would improve Federal supervision over facilities to prevent or punish violations of Federal regulations. Another commenter stated that Federal properties having facilities to connect with mental health treatment, regular primary care, and substance use disorder treatment can help to reduce the number of illnesses and increase the possibility of people seeking medical care. One commenter also stated that the proposed rule provided greater clarity regarding the location of hazardous items close to safe items.

The Agencies’ Response: The Agencies appreciate the support for the proposed rule. The Agencies agree there is a need for housing and services for persons experiencing homelessness in their communities. The Title V program recognizes the needs of homeless individuals by facilitating the transfer of suitable and available excess, surplus, unutilized, and underutilized Federal properties for homeless assistance. The Agencies also agree that updating terminology used by the Agencies will help clarify the processes in the Title V program and assist the Agencies in implementing the Title V program.

The Agencies also support revising the definition of “homeless” in the rule to the statutory definition of “homeless” at 42 U.S.C. 11302, as Public Law 117–103 recently amended the part of the definition of “homeless individual” in subsection (b) of 42 U.S.C. 11302 to further address those who are experiencing trauma or lack of safety related to, or fleeing or attempting to flee, domestic violence, dating violence, sexual assault, stalking, and other dangerous, traumatic, or life-threatening conditions relating to the violence against the individual or a family member in the individual’s or family’s current housing situation, including where the health and safety of children are jeopardized; has no other safe residence; and lacks the resources to obtain other safe permanent housing.

The Agencies acknowledge and share the commenters’ concerns regarding veterans experiencing homelessness. The Agencies intend the revisions to the Title V program in the rule to facilitate the transfer of suitable and available excess, surplus, unutilized, and underutilized Federal properties for homeless assistance, including veterans experiencing homelessness. Lastly, the Agencies agree that the rule makes the suitability criteria clearer for both the Agencies and applicants in the Title V program.

B. Concerns Regarding Underuse of Title V and Impact on Underserved Communities

Commenters stated that the program created under Title V of the McKinney-Vento Act has been underused. One commenter stated that, despite improvements in the rate of applications and approvals as a result of the Federal Assets Sale and Transfer Act of 2016 (FASTA), Title V’s overall approval rates have remained low. The commenter also stated that Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” requires executive

agencies to recognize and work to redress inequities in their policies and programs that serve as barrier to equal opportunity. This commenter stated that due to past racially discriminatory housing policies, Black, multiracial, American Indian/Alaskan Natives, and Native Hawaiians and Pacific Islanders disproportionately experience homelessness.

The Agencies’ Response: Regarding underutilization of the Title V program, the Agencies note that the number, condition, and location of properties are not solely under the Agencies’ purview, but instead are solely based on determinations made by all Federal Landholding Agencies as to what properties are no longer needed to fulfill their agency mission. Additionally, HHS is required to disapprove any application where an applicant fails to meet any one of the statutory and regulatory application review criteria. While HHS supports more Title V transfers, HHS also has no control over the number of and quality of applications it receives.

With regard to the commenter’s note on advancing racial equity, the Agencies acknowledge the disproportionality in the homelessness system and is continuing efforts to address inequities and barriers in obtaining housing facing Black, multiracial, Native American, Native Alaskan, Native Hawaiians and Pacific Islanders.

C. Concerns Related to Practical and Procedural Issues

Commenters provided concerns related to both practical and procedural issues. Commenters noted a lack of clarity regarding where available properties can be accessed to inquire for use for an emergency shelter. Additionally, providing a procedural suggestion, one commenter stated that the proposed rule was a necessary update that should be completed at least every five years, which would allow the Agencies to stay up to date with changes in the Agencies’ practices and procedures as well as outdated information. One commenter stated they agree with utilizing Federal surplus real property to house the homeless by giving possession of the property to State and local governments, but the commenter also stated that the proposed rule would “be giving more ‘power’ to the government and taking it away from the citizens.” Additionally, a commenter stated that as the Title V program is tax exempt, the Federal Government will have to “come up with ways on how to fund this program in order to make it successful,” which may include use of certain grants. The

commenter further stated that the Federal Government budgeting system will be affected since the Federal Government will need to propose a way to invest in this program. The commenter also said that the program will put “more pressure on the Federal government to have to develop certain organizations and vouchers that will assist this program.”

The Agencies’ Response: In reference to the comments about lack of clarity regarding where available properties can be accessed to inquire about use for an emergency shelter, HUD posts properties determined to be suitable to assist the homeless on its website (https://www.hud.gov/program_offices/comm_planning/titlev/weekly). The toll-free Title V Information Number is (800) 927-7588. HUD also transmits to the United States Interagency Council on Homelessness (USICH) a copy of the list of all suitable properties and, no later than February 15 of each year, publishes a list of all properties in the annual suitable property reports, reported to HUD in the **Federal Register**. Please note that HUD would only determine that properties are suitable to assist the homeless in accordance with the requirements and specific criteria described in the proposed rule and not that property would be appropriate for a particular use such as an emergency shelter.

In response to the suggestion that the Agencies update procedures every five years, the Agencies note that rulemakings under Title V of the McKinney-Vento Act are conducted under the Administrative Procedure Act (APA) (5 U.S.C. 551-559). Rulemaking, in compliance with the APA, is a process with many requirements that may, depending on the complexity of the proposed rule and other factors, take years to complete. In addition, it takes time for landholding agencies and representatives of the homeless to update their processes and procedures to follow any changes in a revised final rule. It is generally not necessary or feasible to complete rulemaking every five years and such an artificial timeline would be unduly burdensome on the Agencies and divert resources from the efficient operation of the Title V program.

The Agencies are not clear what the commenter means when stating that the proposed rule will take power away from the citizens and give it to the government. The commenter does not explain further what more power the government would have and the Agencies believe that the commenter could be referencing the continued government possession of the property

if transferred to a state or local government. Title V authorizes the transfer of excess, surplus, unutilized, and underutilized Federal properties that are determined to be suitable and available for use to assist the homeless to representatives of the homeless. A representative of the homeless means a State or local government agency, or private nonprofit organization which provides, or proposes to provide, services to the homeless. To the extent the Title V program takes anything away from citizens, the Agencies assume the commenter meant that, had the property been sold instead of placed into the Title V program, citizens could lobby for the sale proceeds to be allocated elsewhere.

Lastly, in regards to the commenter’s concerns about budgeting and funding, a recipient of Federal surplus real property (which is transferred at no-cost) has the responsibility of financing all aspects of the transferred property and program operations. HHS appropriations are limited to the administration of the Title V program and no other funds are available to HHS for the program. While Federal grants may be a source of financing, transferees are not entitled to Federal grants and Federal grants are not the only available source of funding. Transferees utilize various methods to fund projects including State and local grants, loans, fundraising, etc. Additionally, when a property is transferred, the Federal Government no longer has custody and accountability of the property saving the Federal Government from those expenses.

D. Concern Regarding HHS’s Interpretation of Current Regulations

One commenter characterized HHS’s interpretation of the current regulations and the proposed rule as preventing homeless service providers from using Federal tax credits, including Low Income Housing Tax Credits (LIHTCs) to fund surplus property acquisition. This commenter stated that it believed HHS’s interpretation of the regulations governing Title V is that applicants must show they have full funding for a project and that this interpretation is without statutory or regulatory basis. The commenter stated that HHS denies applicants who cannot demonstrate they have attained complete funding at the time of their application, even if the applicant has a history of successfully funding and implementing projects. The commenter said that many affordable housing developments use sources of funding that cannot be committed to in advance, including allocations from city budgets and LIHTCs. The commenter

stated that HHS’s actions to deny applicants who cannot demonstrate that they have obtained complete funding in fact create an obstacle for applicants as it requires Title V applicants to secure funding before receiving a property while many funders require the applicants to secure property before providing funding. The commenter noted that while the proposed rule shows intention to help applicants by providing for a one-year lease to enable site control required for funding, the proposed rule does not meet the site control requirements of the LIHTC programs. The commenter stated that homeless service providers cannot obtain evidence of Title V site control without documentation of LIHTCs but cannot obtain LIHTCs without documentation of Title V site control. The commenter also referenced examples of organizations that it noted had been impacted by HHS’s interpretation of the regulations to require that financing for a development project be secured at the time of application, as evidenced by HHS’s denial of their applications.

The Agencies’ Response: The Agencies appreciate the commenter’s perspective. The Agencies would note that the proposed rule was written to clarify the minimum requirements for a financial plan to be considered reasonable. In so doing, the requirements for homeless service providers to obtain financing and for the Federal Government to protect its residual interest in the property were considered when drafting the rule. As the commenter stated, the rule provides for a one-year lease to enable site control by stating “A lease of one year, extendable at HHS’s discretion, with the concurrence of GSA or the landholding agency, may be granted when the applicant’s initial application is approved and the applicant’s final application outlining the applicant’s financial plan is found to be otherwise reasonable based on the criteria in paragraph (a)(7) [of the Application Process and Requirements section of this rule], but either a change in zoning is required or the financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing.” While the commenter states Title V applicants cannot obtain LIHTCs without documentation of site control, the Agencies have approved multiple transferees that have acquired property via an initial lease and those transferees successfully obtained financing, including with LIHTCs. The Agencies

appreciate the commenter's concerns but believe there is evidence of prior successful applicants that provide evidence directly counter to the commenter's concerns and demonstrate that past projects have demonstrated that a lease is sufficient site control for purposes of obtaining financing.

Lastly, it is inappropriate to speak with particularity regarding any denial of a specific individual applicant's application through this final rule. Generally speaking, each application and applicant are different, and financing that may be acceptable for one applicant's proposed project may not work for another applicant's proposal. Additionally, HHS reviews all applications based on the same statutory and regulatory application criteria and holds applicants to the same standards. While HHS supports efforts to increase housing and supportive services to people experiencing homelessness, HHS is also required to protect the interests of the Federal Government and taxpayers in the property by ensuring that an applicant has the means to develop and operate a program.

E. Concern Regarding Allowed Time To Renovate Surplus Property

Commenters stated that neither the Title V regulations nor the proposed rule provided applicants sufficient time to renovate surplus property for use in homelessness assistance programs. A commenter stated that the requirement that an applicant begin operation of a property within 12 to 36 months is impossible to meet for many programs because affordable housing developments will usually take 4 to 7 years from acquisition to be brought into use. The commenter stated that the amount of time transferees have to put Federal property into use should be increased, which would greatly expand the number and types of affordable housing development available through Title V. Commenters recommended revisions to the language of the proposed rule under 24 CFR 581.14(f)(1)(ii), 45 CFR 12a.7(f)(1)(ii), and 41 CFR.102- 75.1172(f)(1)(ii) to strike language requiring that the property be placed into use within 12 months or 36 months from the date of transfer and add language that required operation within eight years of the date of the deed or lease or, for multi-phase projects, the date of completion of the first phase of the project.

The Agencies' Response: The Agencies appreciate the commenter's perspective. In the Agencies' experience administering the Title V program over the past 30 years, the majority of programs satisfactorily meet the timing

requirement. In only rare instances and under unusual circumstances is the requirement not met. When the time period is not met, a transferee is required to make a nonuse payment until such time as the property is placed into full use. However, the Agencies acknowledge that this timing requirement may have precluded certain projects from being pursued. This final rule now provides HHS the discretion to waive the nonuse payment if the transferee makes a sufficient showing of continued progress to place the property into use or if an unforeseeable event occurs which prevents the property from being put into use within the applicable timeframe. That ability for HHS to waive the nonuse payment should address the concern raised by commenters should unique circumstances arise and allow for HHS to consider those circumstances without disrupting program operations with a standard that has been generally met over the past 30 years. In response to commenters' concerns, the final rule also provides the transferee with a period of 48 months from the date of transfer to place the surplus property into use, allowing additional time for the transferee to conduct any appropriate updates to the property that may include additional construction of facilities or other major renovation.

F. Concern About Sanctions for Noncompliance

One commenter stated that Title V's current regulations do not provide recipients of Federal property sufficient time to cure potential issues before sanctions are enforced. This commenter stated that the proposed rule also does not provide transferees with a hearing or appeals process or clarification of HHS's protocols, including what constitutes various types of noncompliance. The commenter said that HHS has significantly unlimited discretion to have the property reverted back to the Federal Government, even in circumstances outside of the transferee's control. Commenters stated that, due to this lack of clarity from HHS, transferees who received Federal property through the Title V program face a significant risk of reversion back to the Federal Government, which deters potential project managers and partners from projects. A commenter also stated that the risk of reversion is also problematic for financing projects with tax credit investors and lenders.

A commenter recommended adding new language to the rule to create the opportunity for transferees to cure "inadvertent noncompliance" as well as for investors and lenders to participate

in the process, encouraging further investment in Title V properties. The commenter stated that reversion is an unnecessary sanction in the Title V program as other methods may be used for enforcement.

The Agencies' Response: The Agencies appreciate the commenters' perspectives. Potential applicants are made aware of noncompliance sanctions at 45 CFR 12a.10, which notes sanctions that HHS may impose should a transferee breach one or more of the transfer terms. Any risk of reversion or other sanction would then also be known for partners for financing projects when potential applicants are made aware of the terms of their award. These sanctions are necessary to preserve the integrity of the program and ensure that transferred property is being properly utilized to serve homeless communities and for no other purpose. HHS takes into consideration the circumstances of the noncompliance for each action when determining the appropriate enforcement action tailored to the type of noncompliance. For example, reversion could be a remedial measure for noncompliance, but HHS makes every attempt to work with the transferee to resolve a matter of noncompliance prior to initiating a reversion action. In situations of administrative or technical noncompliance where paperwork may have been entered or submitted in error, HHS may direct corrective action within an appropriate time period prior to indicating any potential for reversion of the property. During a cure period, HHS may request additional information, or the party may provide additional materials for HHS's consideration when determining what sanctions for noncompliance may be issued. If ultimately HHS determines that reversion is the appropriate sanction, both GSA and the Department of Justice must concur in HHS's decision to revert property before a court action can be initiated.

G. Suggestion To Repurpose Properties

One commenter stated that to create more affordable housing, more properties should be repurposed under the Title V: Federal Surplus Program for use by the homeless services system. This commenter noted that the U.S. Interagency Council on Homelessness recommended increasing the number of properties that are repurposed for use by the homeless services system in the Title V: Federal Surplus Property Program to expand affordable housing.

The Agencies' Response: The Agencies appreciate this commenter's perspective. Through process

improvements implemented by HUD in this final rule, along with more focused outreach to homeless service providers, the intent is to highlight the most usable properties and increase as much as possible the use of properties transferred through the Title V process.

H. Suggested Changes to the Proposed Rule

One commenter suggested that language be added to the rule to allow applicants to submit letters of intent and financing commitments in order to show their ability to obtain funding. This commenter stated that this change would be consistent with the Agencies' underlying statutory authority and allow the agencies to approve more applications for surplus Federal property to fulfill the underlying purpose of the Title V program: to affirmatively further fair housing.

Another commenter noted support for the proposed rule's requirement for transferees to allow HHS to conduct compliance inspections but suggested adding a mandatory bi-annual inspection requirement to the proposed rule. The commenter stated that these inspections will set a standard for all persons who are considering using the facility for needs. Additionally, commenters stated that adding a bi-annual inspection requirement would demonstrate care on the part of the Agencies for the sustainability of the building as well as that proactive and preventative maintenance among real estate companies.

Another commenter suggested the proposed rule account for persons with disabilities in addition to persons experiencing homelessness and that the rule include giving property to individuals with disabilities and individuals experiencing homelessness to create homesteads.

One commenter noted the stigmatization of homeless individuals, the potential causes and effects of homelessness, and the role of the Federal Government in addressing homelessness. The commenter stated that the government should allocate funding to building group homes for homeless individuals in different zip codes.

One commenter stated that they recommend using high-end hotels at billionaires' expense to house disadvantaged people.

The Agencies' Response: The Agencies appreciate the commenter's suggestion to allow for letters of intent and financing commitment. The Agencies have concerns about the practical application of this, as what may be acceptable in one situation may

be unacceptable in another. HHS's review of a financial plan focuses on individual proposals in light of specific project and program plans, the applicant's experience and resources, and conditions of the requested property. It is an applicant's responsibility to ensure its application presents all information requested to set forth a reasonable financial plan as defined at 45 CFR 12a.5(a)(7), evidencing the adequacy and certainty of funding to carry forth the proposed program. A reasonable financial plan cannot be fully satisfied merely by letters of intent, as letters of intent are not contractual or binding. Applicants are not prohibited from submitting letters, but as indicated above, HHS would assess them in its evaluation of the entire financial plan to understand whether any letter or submitted information is relevant to HHS's determination that the financial plan is satisfactory.

Due to the short 15-day timeframe imposed on HHS, by statute, to review an applicant's financial plan, HHS's evaluation is limited to the content within the application. If the applicant does not present evidence in its financial plan that the government's interest is protected, HHS may deny an application or approve an application for lease acquisition with an opportunity to acquire the property by deed once an applicant satisfies HHS's requirements to ensure that the Federal Government's interest in the property is adequately protected. A lease to a property has proven to be acceptable site control for purposes of obtaining financing.

Regarding the suggestion to add a mandatory bi-annual inspection into the rule's compliance requirement, the Agencies would note that the proposed rule at 45 CFR 12a.13 requires that transferees allow HHS to conduct compliance inspections and submit, at a minimum, annual utilization reports regarding the operation and maintenance of the property. As written, HHS has the discretion to conduct compliance inspections and request property reports at any time a transferee is under the period of use restrictions, which is useful, particularly in instances of noncompliance. HHS determines when and how often to conduct inspections based on various circumstances, including but not limited to, open compliance cases, issues reported by adjacent property owners, length of time since last inspection, etc. HHS takes compliance action to ensure transferred property is both properly maintained and operated to provide services to the homeless.

In reference to one commenter's suggestion that the Agencies create homesteads for individuals with disabilities and those experiencing homelessness, Title V authorizes the transfer of excess, surplus, unutilized, and underutilized Federal properties that are determined to be suitable and available for use to assist the homeless. While many persons who meet the definition of homeless may also have a disability, Title V does not permit properties under Title V to be transferred to assist persons with a disability who do not meet the definition of homeless.

Lastly, in reference to the suggestion to use hotels or build group homes for homeless individuals, the commenter's proposal is not within the scope of the program. Title V of the McKinney-Vento Act only applies to excess, surplus, unutilized, and underutilized Federally-owned properties and does not apply to privately owned properties such as hotels. Additionally, the Title V program does not provide funds to construct or rehab housing for the homeless.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 14094

Under Executive Order 12866 (Regulatory Planning and Review), as amended by Executive Order 14094, a determination must be made by the Office of Management and Budget (OMB) regarding whether a regulatory action is significant and therefore subject to review in accordance with the requirements of the Executive order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094 amends section 3(f) of Executive Order 12866, among other things.

This final rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (although not a significant regulatory action under section 3(f)(1) the order). The Agencies prepared an initial Regulatory Impact Analysis (RIA) that

addresses the costs and benefits of the rule and is part of the docket file for this rule.

Environmental Review

Actions resulting from this rule amendment may constitute “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. 4332(2)(C). A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not specifically required for purposes of the rule amendment. Actions involving specific property transactions may require further NEPA analysis, however, as an action may not be covered by the categorical exclusion published at 47 FR 2414–02 on January 11, 1982. HHS will, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of surplus property for homeless assistance purposes, ensure an environmental review and/or assessment is conducted, if applicable, and appropriately document the proposed transaction, in keeping with applicable provisions of NEPA.

The Environmental Assessment and Finding of No Significant Impact (FONSI) issued when the proposed rule was published remain applicable to this final rule. The FONSI is available for public inspection on www.regulations.gov.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and on the private sector. This final rule does not impose any Federal mandate on any State, local, or Tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This final rule imposes no additional requirements on a substantial number of small entities as defined by the RFA. The rule conforms the Agencies’ existing regulations with required statutory changes under the Federal Assets Sale and Transfer Act of 2016 and other legislative changes, and to address certain issues that have arisen

since the inception of the program. This rule also provides for HUD’s suitability determinations to be published electronically rather than in the **Federal Register**. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits, to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Paperwork Reduction Act

The information collection requirements for part 581 contained in this rule pertain to HHS’s Title V application. HHS’s information collection requirements have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 0937–0191. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, the Office of Information and Regulatory Affairs in OMB has determined that this rule does not meet the criteria set forth in 5 U.S.C. 804(2).

List of Subjects

24 CFR Part 581

Administrative practice and procedure, Homeless, Reporting and recordkeeping requirements, Surplus Government property.

41 CFR Part 102–75

Federal buildings and facilities, Government property management, Rates and fares, Surplus Government property.

45 CFR Part 12a

Grant programs—health, Grant programs—housing and community development, Government property, Homeless, Housing, Public assistance programs, Surplus Government property.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Accordingly, for the reasons stated above, HUD amends 24 CFR part 581 as follows:

PART 581—USE OF FEDERAL REAL PROPERTY TO ASSIST THE HOMELESS

■ 1. The authority citation for part 581 continues to read as follows:

Authority: 42 U.S.C. 11411 note; 42 U.S.C. 3535(d).

■ 2. Amend § 581.1 as follows:

- a. Revise the definitions of *Applicant* and *Eligible organization*;
- b. Add the definition of *Encumbrance* in alphabetical order;
- c. Revise the definitions of *Excess property* and *Homeless*;
- d. Add the definition of *HUD website* in alphabetical order;
- e. Remove the definition of *ICH*;
- f. Revise the definitions of *Landholding agency*, *Lease*, *Non-profit organization*, *Permit*, and *Property*;
- g. Add the definition of *Related personal property* in alphabetical order;
- h. Remove the definition of *Regional homeless coordinator*;
- i. Revise the definition of *Screen*;
- j. Add the definition of *State* in alphabetical order;
- k. Remove the definition of *State homeless coordinator*;
- l. Revise the definitions of *Suitable property* and *Surplus property*; and
- m. Add the definitions of *Transfer document* and *Transferee* in alphabetical order.

The revisions and additions read as follows:

§ 581.1 Definitions.

Applicant means any eligible organization that has submitted an application to the Department of Health and Human Services to obtain use of a certain suitable property to assist the homeless.

* * * * *

Eligible organization means a State or local government agency, or a private, non-profit organization that provides assistance to the homeless, and that is authorized under the State law in which the property is located to carry out the activity for which it requests property and enter into an agreement with the

Federal Government for use of property for the purposes of this part. Eligible organizations that are private, non-profit organizations interested in applying for suitable property must be tax exempt under section 501(c)(3) of the Internal Revenue Code at the time of application and remain tax exempt throughout the time the Federal Government retains a reversionary interest in the property.

Encumbrance means any non-approved use by a transferee or a third party that limits the full utilization of the transferred property, regardless of time period, and includes liens, easements, restrictive covenants, licenses, leases, mortgages, informal agreements, and unaddressed trespass.

Excess property means any property under the control of a Federal executive agency that the head of the agency determines is not required to meet the agency's needs or responsibilities, pursuant to 40 U.S.C. 524.

* * * * *

Homeless is defined in 42 U.S.C. 11302. This term is synonymous with "homeless individual" and "homeless person."

* * * * *

HUD website means a website maintained by HUD providing information about HUD, including any successor websites or technologies that are equally accessible and available to the public.

Landholding agency means the Federal department or agency with statutory authority to control property. For purposes of this part, the landholding agency is typically the Federal department or agency that had custody and accountability on behalf of the Federal Government, of a certain piece of property at the time that such property was reported to HUD for a suitability determination pursuant to 42 U.S.C. 11411.

Lease means an agreement in writing between either HHS for surplus property or landholding agencies for underutilized and unutilized properties and the applicant giving rise to the relationship of lessor and lessee for the use of Federal property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization recognized as a non-profit by the State in which the organization operates, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with

generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time, usually one year or less, under terms and conditions determined by the landholding agency. A permit does not grant to the recipient an estate in land or any interest in the property.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

Related personal property means any personal property that is located on real property and is either an integral part of or useful in the operation of that property or is determined by GSA to be otherwise related to the property.

* * * * *

Screen means the process by which GSA surveys Federal executive agencies to determine if they have an interest in using excess Federal property to carry out a particular agency mission, and then surveys State, local, and non-profit entities, to determine if any such entity has an interest in using surplus Federal property to carry out a specific public use.

State means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

Suitable property means that HUD has determined that a certain property satisfies the criteria listed in § 581.6.

Surplus property means any excess property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by GSA.

Transfer document means a lease, deed, or permit transferring surplus, unutilized, or underutilized property.

Transferee means an eligible entity that acquires Federal property by lease, deed, or permit.

* * * * *

■ 3. Revise §§ 581.2 through 581.12 to read as follows:

Sec.

* * * * *

581.2 Applicability.

581.3 Collecting the information.

581.4 Suitability determination.

581.5 Real property reported excess to GSA.

581.6 Suitability criteria.

581.7 Determination of availability for suitable properties.

581.8 Public notice of determination.

581.9 General policies of HHS.

581.10 Expression of interest process.

581.11 Application process and requirements.

581.12 Action on approved applications.

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§ 581.2 Applicability.

(a) This part applies to Federal property that has been designated by Federal landholding agencies as unutilized, underutilized, excess, or surplus and is therefore subject to the provisions of Title V of the McKinney Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this part (regardless of whether they may be unutilized or underutilized):

(1) Buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) Machinery and equipment not determined to be related personal property by the landholding agency or GSA or determined to be related personal property that the landholding agency or GSA chooses to dispose of separate from real property.

(3) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(4) Properties subject to special legislation directing a particular action.

(5) Properties subject to a court order that is binding on the Federal Government and, for any reason, precludes transfer for use to assist the homeless under the authority of 42 U.S.C. 11411.

(6) Property not subject to Federal Real Property Council reporting requirements in accordance with 40 U.S.C. 623(i).

(7) Mineral rights interests independent of surface rights.

(8) Air space interests independent of surface rights.

(9) Indian Reservation land subject to 40 U.S.C. 523.

(10) Property interests subject to reversion.

(11) Easements.

(12) Any building or fixture that is excess, or surplus, that is on land under the control of a landholding agency, where the underlying land is not excess or surplus.

(13) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this part.

§ 581.3 Collecting the information.

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass each landholding agency to collect information about property described as unutilized, underutilized, excess or surplus in accordance with 40 U.S.C. 524; however, HUD will accept property information between canvasses. Each canvass will collect information on properties not previously reported, and about property reported previously where the status or classification of the property has changed, or improvements have been made to the property. HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described in this section, of the suitability of a property for use to assist the homeless. Landholding agencies must report property information to HUD using the property checklist developed by HUD for that purpose. Property checklists submitted in response to a canvass must be submitted to HUD within 25 days of receipt of the canvass.

(b) *Agency annual suitable property report.* By December 31 of each year, each landholding agency must notify HUD of the current availability status and classification of each property controlled by the agency that:

(1) Was included in a list of suitable properties published that year by HUD; and

(2) Remains available for application for use to assist the homeless or has become available for application during that year.

(c) *GSA inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in status.* If the information provided on the property checklist changes subsequent to HUD's determination of suitability, including any improvements or other alterations to the physical condition of the land or the buildings on the property, and the property remains unutilized, underutilized, excess, or surplus, the landholding agency must submit a revised property checklist in response to the next quarterly canvass. HUD will review for suitability and, if it differs from the previous determination, repost the property information on the HUD website. For example, property determined unsuitable due to extensive deterioration may have had improvements, or property determined suitable may subsequently be found to be extensively deteriorated.

§ 581.4 Suitability determination.

(a) *Suitability determination.* Within 30 days after the receipt of a completed property checklist from landholding agencies either in response to a quarterly canvass, or between canvasses, HUD will determine, using the criteria set forth in § 581.6 whether a property is suitable for use to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in § 581.6.

(d) *Record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § 581.7(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication of a notice of unsuitability on the HUD website.

(f) *Procedures for appealing unsuitability determinations.* (1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD, in writing, through the U.S. Mail, email, or the HUD website, or such other method as HUD may require, within 20 days of publication of the notice of unsuitability.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless.

(3) The request for review must specify the grounds on which it is based, *i.e.*, HUD has improperly applied the criteria or HUD has relied on

incorrect or incomplete information in making the determination (*e.g.*, that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency or GSA that such a request has been made. The landholding agency or GSA shall have 20 days from receipt of the notice from HUD, or an extended period agreed to between HUD and the landholding agency or GSA, to provide any information pertinent to the review. The landholding agency or GSA must refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability. If the landholding agency or GSA fails to meet the deadline, HUD will move forward with the appeal review with the property information it already has and information submitted in the appeal request provided by the representative of the homeless.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's or GSA's response, or, if the landholding agency or GSA failed to meet the deadline, within 30 days of such deadline, and will notify the representative of the homeless and the landholding agency or GSA in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's or GSA's determination of availability pursuant to § 581.7, upon receipt of which HUD will promptly publish the determination on the HUD website.

§ 581.5 Real property reported excess to GSA.

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports an excess property to GSA that HUD has already determined to be suitable for use to assist the homeless, GSA will screen the property pursuant to paragraph (h) of this section and will advise HUD of the availability of the property for use by the homeless as provided in paragraph (e) of this section. In lieu of the preceding sentence, GSA may submit a new checklist to HUD and follow the procedures in paragraphs (c) through (h) of this section.

(c) If a landholding agency reports an excess property to GSA that has not been reviewed by HUD for homeless assistance suitability, GSA will

complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, such as from unutilized or underutilized to excess or surplus.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives notification from HUD listing suitable excess properties, GSA will transmit a response to HUD within 45 days regarding the availability of the property. GSA's response will include the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When GSA submits a checklist to HUD in accordance with paragraphs (b) and (c) of this section, the information regarding the availability of the property, as specified in paragraph (e)(1) and (2) of this section, may be included with the checklist if it is known at the time of submittal.

(g) When a surplus property is determined as suitable, confirmed as available by GSA, and notice is published on the HUD website, GSA will concurrently notify HHS, State and local government units, and known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(h) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible non-profit organizations to determine interest in the property in accordance with 41 CFR part 102–75. (See 41 CFR 102–75.1220, 102–75.255, and 102–75.350.)

(i) The landholding agency will retain custody and accountability and will protect and maintain any property that is reported excess to GSA as provided in 41 CFR 102–75.965.

§ 581.6 Suitability criteria.

(a) In general, properties will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *Flammable or explosive hazards.* Property located less than an acceptable separation distance (under the standards in 24 CFR part 51, subpart C, and the HUD Guidebook, "Siting of HUD-Assisted Projects Near Hazardous Facilities" or successor guidebook) from any stationary above-ground container or facility which stores, handles, or processes hazardous substances of an explosive or fire prone nature (excluding containers and facilities that are not hazards as defined in 24 CFR 51.201), unless HUD can determine during the review period based on information provided by the landholding agency that appropriate mitigating measures, as defined in 24 CFR 51.205, are already in place.

(2) *Coastal barriers.* Property located in a System Unit, as defined at 16 U.S.C. 3502(7), under the Coastal Barrier Resources Act, as amended (16 U.S.C. 3501 *et seq.*).

(3) *Site safety conditions.* Property with a documented and extensive condition(s) that represents a clear threat to personal physical safety or health. Such conditions may include, but are not limited to, significant contamination from hazardous substances, as defined by 42 U.S.C. 9601, periodic flooding, sinkholes, or landslides.

(b) In the cases in paragraphs (b)(1) through (4) of this section, properties will be determined unsuitable, unless the landholding agencies provide information to enable HUD to determine the property is suitable:

(1) *Inaccessible.* Property that is inaccessible, meaning that the property is not accessible by road (including property on small offshore islands) or is landlocked (*e.g.*, can be reached only by crossing private property and there is no established right or means of entry).

(2) *National security.* Property located in an area to which the general public is denied access in the interest of national security (*e.g.*, where a special pass or security clearance is a condition of entry to the property), unless there is an alternative method to gain access without compromising national security.

(3) *Runway clear zones.* Property located within a runway clear zone or a military airfield clear zone.

(4) *Floodway.* Property located in a floodway, unless only an incidental portion of the property is in the floodway and that incidental portion does not affect the use of the remainder of the property to assist the homeless.

§ 581.7 Determination of availability for suitable properties.

Within 45 days after receipt of notification from HUD pursuant to § 581.4(a) that a property has been determined to be suitable, each landholding agency or GSA must transmit to HUD a statement of one of the following:

(a) In the case of unutilized or underutilized property—

(1) An intention to declare the property excess;

(2) An intention to make the property available for use to assist the homeless; or

(3) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different from those listed as suitability criteria in § 581.6.

(b) In the case of excess property which has been reported to GSA—

(1) A statement that there is no compelling Federal need for the property, and, therefore, the property will be determined surplus; or

(2) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and therefore, the property is not presently available for use to assist the homeless.

§ 581.8 Public notice of determination.

(a) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding availability, HUD will post on the HUD website a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) HUD will establish and maintain a toll-free number for the public to obtain specific information about properties in paragraph (a) of this section.

(c) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding availability, HUD will transmit to the United States Interagency Council on Homelessness (USICH) a copy of the list of all properties in paragraph (a) of this section. The USICH will immediately distribute to all State and regional homeless coordinators area-relevant portions of the list. The USICH will

encourage the State and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD will publish in the **Federal Register** a list of all properties in the agency annual suitable property reports, reported to HUD pursuant to § 581.3(b).

(e) HUD will publish an annual list of properties determined suitable, but which agencies reported unavailable including the reasons such properties are not available.

§ 581.9 General policies of HHS.

(a) It is the policy of HHS to foster and assure maximum utilization of surplus property for homeless assistance purposes.

(b) Transfers may be made only to eligible organizations.

(c) Property will be requested for assignment only when HUD has made a final determination that the property is suitable for use to assist the homeless, GSA has determined it is available, and HHS has determined it is needed for homeless assistance purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for homeless assistance purposes or will be so needed within the immediate or foreseeable future.

(d) Transfers by deed will be made only after the applicant's financial plan is approved and the applicant provides certification that the proposed program is permissible under all applicable State and local zoning restrictions, building codes, and similar limitations.

(e) In instances of noncompliance, transferees are provided an opportunity to cure the noncompliance pursuant to 45 CFR 12a.10.

§ 581.10 Expression of interest process.

(a) Properties published by HUD as suitable and available, pursuant to § 581.8, for application for use to assist the homeless shall not be available for any other purpose for a period of 30 days beginning on the date the list of properties is published on the HUD website. Any eligible organization interested in any underutilized, unutilized, excess, or surplus property for use to assist the homeless must send HHS a written expression of interest in that property within 30 days after the property has been published on the HUD website.

(b) Although a property may be determined suitable by HUD, HUD's determination does not mean a property is necessarily fit for use for the

purpose(s) stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

(c) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 30-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(d)(1) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private, non-profit organization. The expression of interest must be sent to HHS by email, rpb@psc.hhs.gov, or by mail at the following address: Department of Health and Human Services, Program Manager, Federal Real Property Assistance Program, Real Estate Logistics and Operations, 5600 Fishers Lane, Rockville, Maryland 20852.

(2) HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a certain property.

(e) An expression of interest may be sent to and accepted by HHS any time after the 30-day holding period has expired only if the property remains available as determined by GSA or the landholding agency for application to assist the homeless. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(1) There are no pending applications or written expressions of interest made under any law for use of the property for any purpose; and

(2) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

§ 581.11 Application process and requirements.

(a) Upon receipt of an expression of interest, HHS will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following—

(1) *Acquisition type.* The applicant must state whether it is requesting acquisition of the property by lease, deed, or permit. A lease of one year, extendable at HHS's discretion, with the concurrence of GSA or the landholding agency, may be granted when the

applicant's initial application is approved and the applicant's final application outlining the applicant's financial plan is found to be otherwise reasonable based on the criteria in paragraph (a)(7) of this section, but either a change in zoning is required or the financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing. Applicants that initially apply for transfer by lease or permit and subsequently request transfer by deed will follow the same bifurcated application process, including deadlines, contained in 42 U.S.C. 11411. Should an applicant wish to transition from acquisition by lease to acquisition by deed, HHS will issue a letter of commitment to a lessee indicating that, provided its application meets all application criteria, including securing of all necessary financing that complies with Federal Government requirements, HHS will issue a deed.

(2) *Description of the applicant organization.* The applicant must document that it satisfies the definition of an *eligible organization* as specified in § 581.1.

(3) *Description of the property desired.* The applicant must describe the listed property desired, including existing zoning. Applicants must certify that any modification(s) made to and use of the property will conform to all applicable building codes, and local use restrictions, or similar limitations. In accordance with GSA policy, determinations regarding parcelization are made prior to screening. Therefore, expressions of interest and applications for portions of listed properties will not be accepted.

(4) *Description of the proposed program.* The applicant must fully describe the proposed program and plan of use, including implementation plans.

(5) *Demonstration of need.* The applicant must demonstrate that the property is needed for homeless assistance purposes at the time of application and how the program will address the needs of the homeless population to be assisted. The applicant must demonstrate that it has an immediate need and ability to utilize all of the property for which it is applying.

(6) *Demonstrate that the property is suitable and adaptable for the proposed program and plan of use.* The applicant must fully explain why the property is suitable and describe what, if any, modification(s) will be made to the property before the program becomes operational.

(7) *Ability to finance and operate the proposed program.* If the applicant's

initial application is approved, the applicant must set forth a reasonable plan to finance the approved program within 45 days of the initial approval. To be considered reasonable, the plan must, at a minimum:

(i) Specifically describe all anticipated costs and sources of funding for the proposed program, including any property modifications;

(ii) Be accompanied by supporting documentation which demonstrates that the proposed plan is likely to succeed;

(iii) Demonstrate that the applicant is ready, willing, able, and authorized to assume care, custody, and maintenance of the property;

(iv) Demonstrate that it has secured the necessary dedicated funds, or will obtain such funds, to carry out the approved proposed program and plan of use for the property, including administrative expenses incident to the transfer by deed, lease, or permit;

(v) Not diminish the value of the Federal Government's interest in the property nor impair the Federal Government's ability to revert and immediately dispose of the property free of any and all liens, encumbrances, or anything else which renders the property unmarketable. Deed transfers will only be made after an applicant demonstrates its financial plan adequately protects the Federal Government's interest in the property; and

(vi) Neither subject the Federal Government's interest in the property to foreclosure nor impose obligations (e.g., extended use agreements) on the Federal Government.

(8) *Compliance with non-discrimination requirements.* Each applicant under this part must certify in writing that it will comply with all requirements of Federal law and HHS policy, as amended, relating to non-discrimination, including the following: the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR part 100; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Non-discrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; section 1557 of the Affordable Care Act and implementing regulations at 45 CFR part 92; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146; and the prohibitions against discrimination against otherwise qualified individuals

with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and Titles II or III of the Americans with Disabilities Act and implementing regulations at 28 CFR part 35 or 36, as applicable. The applicant must maintain the required records to demonstrate compliance with all applicable Federal laws and HHS policies related to non-discrimination.

(9) *Insurance and indemnification.* The applicant must certify that it will insure the property against loss, damage, or destruction to protect the residual financial interest of the United States. The United States shall be named as an additional insured. Applicants must provide proof of insurance annually or upon request. Failure to maintain sufficient insurance may result in adverse action, including reversion of the property, at the discretion of HHS. In the event of a covered loss, the transferee must hold all insurance proceeds in trust and obtain written concurrence from HHS before disbursing the funds. Applicants, and all affiliated parties utilizing the property, as approved by HHS, must indemnify the United States and hold the United States harmless for all actions involving use of the property.

(10) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(11) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency. However, the burden is on the applicant to submit sufficient documentation for analysis by HHS.

(12) *Local government notification.* The applicant must certify that it has notified the applicable unit of general local government responsible for sewer, water, police, and fire services, in writing, of its proposed program for the specific property and submit a copy of that written notification.

(13) *Zoning and local use restrictions.* An applicant requesting a deed must certify that it has consulted all State and local governmental entities that will have jurisdiction over the property and that the proposed use will comply with all applicable zoning and local use restrictions, including local building code requirements. An applicant that

applies for a lease or permit is not required to comply with local zoning requirements, as long as the Federal Government retains ownership of the property. Deed transfers will only be made after the applicant has provided acceptable written proof that the proposed program is not in conflict with State or local zoning laws and restrictions, building codes, or similar limitations.

(b) *Scope of evaluations.* Due to the short time frame imposed by statute for evaluating applications, HHS's evaluation will, generally, be limited to the information contained in the application. It is therefore incumbent on applicants to provide thorough and complete applications.

(c) *Deadline for initial application.* An initial application must be received by HHS, at the email address in § 581.10(d)(1) or other address indicated by HHS, within 75 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may, in its discretion, grant extensions authorized by 42 U.S.C. 11411(e)(2)(A), provided that the appropriate landholding agency or GSA concurs with the extension.

(d) *Evaluation of initial application.* (1) Upon receipt of an initial application, HHS will review it for completeness, and, if incomplete and time permits, may, in its discretion, return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the initial application.

(2) HHS will evaluate each initial application within 10 days of receipt and will promptly advise the applicant of its decision. All initial applications will be reviewed on the basis of the following elements:

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program, the program's ability to satisfy unmet needs of the community, and the degree to which the available property will be fully utilized.

(iii) *Experience.* Demonstrated ability to provide the services, such as prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(e) *Deadline and evaluation of final application.* (1) If HHS approves an initial application, HHS will notify the applicant and provide the applicant 45 days in which to provide a final application. The final application shall set forth a reasonable plan to finance, as

specified in paragraph (a)(7) of this section, the approved program as set forth in the initial application.

Applicants may not modify the approved initial application within its final application proposal.

(2) Upon receipt of the final application, HHS will make a determination within 15 days and notify the applicant.

(3) Unlike with initial applications, requests for extensions are not authorized by 42 U.S.C. 11411 and thus will not be considered for final applications.

(4) Applications are evaluated on a first-come, first-served basis. HHS will notify all organizations that have submitted expressions of interest for a particular property whether an earlier application received for that property has been approved.

(f) *Competing applications.* If HHS receives more than one final application simultaneously, HHS will evaluate all applications and make a determination based on each application's merit. HHS will rank approved applications based on the elements listed in paragraph (a) of this section, and notify the landholding agency, or GSA, as appropriate, of the approved applicant.

§ 581.12 Action on approved applications.

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available.

(ii) The terms and conditions of the lease or permit document (except that a landholding agency may not charge any fees or impose any costs).

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for transfer. Requests to GSA for the assignment of surplus property to HHS for homeless assistance purposes will be based on the following conditions:

(i) HHS has a fully approved application for the property;

(ii) The applicant is able, willing, and authorized to assume immediate care, custody, and maintenance of the property;

(iii) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer; and

(iv) The applicant has secured the necessary funds, or had demonstrated

the ability to obtain such funds, to carry out the approved program of use of the property.

(2) Upon receipt of an acceptable assignment, HHS will execute the transfer document in accordance with the procedures and requirements set out in this part and any other terms and conditions HHS and GSA determine are appropriate or necessary. Custody and accountability of the property will remain throughout the lease term with the landholding agency (*i.e.*, the agency which initially reported the property as excess) and throughout the deed term with the transferee.

(3) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs in deciding the disposition of surplus property. Priority of consideration will normally be given to uses to assist the homeless. However, both GSA and HHS may consider any competing request for the property made under 40 U.S.C. 550 that is so meritorious and compelling that it outweighs the needs of the homeless.

(4) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance, the agency making the decision will transmit to the appropriate committees of Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

■ 4. Add §§ 581.14 through 581.23 to read as follows:

Sec.

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581.14 Surplus property transfer documents.

581.15 Unsuitable properties.

581.16 Compliance with the National Environmental Policy Act of 1969 and other related Acts (environmental impact).

581.17 No applications approved.

581.18 Utilization and enforcement.

581.19 Other uses.

581.20 Abrogation.

581.21 Compliance inspections and reports.

581.22 No right of administrative review for agency decisions.

581.23 Severability.

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§ 581.14 Surplus property transfer documents.

(a) Surplus property may be conveyed to eligible organizations pursuant to 40 U.S.C. 550(d) and 42 U.S.C. 11411, as amended, by lease or deed, at the applicant's discretion.

(b) Transfers of surplus property for homeless assistance purposes are in

exchange for the transferee's agreement to fully utilize the property for homeless assistance purposes in accordance with the terms specified in the transfer document.

(c) A transfer of surplus property for homeless assistance purposes is subject to the disapproval of GSA within 30 days after notice is given to GSA of the proposed transfer.

(d) Surplus property transferred pursuant to this part will be disposed on an "as is, where is" basis without warranty of any kind except as may be stated in the transfer document.

(e) Unless excepted by GSA in its assignment, the disposal of property includes mineral rights associated with the surface estate.

(f) Transfers of surplus property under this part will be made with the following general terms and conditions:

(1) For the period provided in the transfer document, the transferee shall utilize all the surplus property it receives solely and continuously for the approved program and plan of use, in accordance with 42 U.S.C. 11411 and this part, except that:

(i) The transferee has 12 months from the date of transfer to place the surplus property into use, if HHS did not approve in writing, construction of new facilities or major renovation of the property when it approved the final application;

(ii) The transferee has 48 months from the date of transfer to place the surplus property into use, if the transferee proposes construction of new facilities or major renovation of the property and HHS approves it in writing at the time it approves the final application;

(iii) If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Federal Government for each month thereafter during which the proposed use has not been implemented or take such other action as set forth at § 581.18 as is deemed appropriate by HHS. Such monthly payments shall be computed on the basis of the current fair market value of the property, as conveyed, at the time of the first payment and dividing it by 360 months. At HHS's discretion, the payment may be waived if the transferee makes a sufficient showing of continued progress to place the property into use or if an unforeseeable event occurs which prevents the property from being put into use within the applicable timeframe; and

(iv) HHS may permit use of surplus property at any time during the period of restriction by an entity other than the transferee in accordance with § 581.19.

(2) The transferee will not be permitted to encumber, or dispose of the property, or impair full utilization thereof, without the prior written authorization of HHS. In the event the property is encumbered, sold, or disposed of, or is used for any purposes other than those set forth in an approved plan without the written consent of HHS, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by HHS, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of HHS. The provisions of this paragraph (f)(2) shall not impair or affect the rights reserved to the United States in paragraph (f)(8) of this section, or the right of HHS to impose conditions to its consent.

(3) The transferee will file with HHS such reports on its maintenance and use of the transferred property and any other reports or information deemed necessary by HHS.

(4) The transferee shall pay all administrative costs incidental to the transfer, including but not limited to—transfer taxes; surveys; appraisals; title searches; the transferee's legal fees; and recordation expenses. Transferee is solely responsible for such costs and may not seek reimbursement from the Federal Government for any reason.

(5) The transferee shall protect, preserve, maintain, and repair the property to ensure that the property remains in as good a condition as when received.

(6) The transferee shall protect the residual financial interest of the United States in the surplus property by insurance or such other means as HHS directs.

(7) The transferee shall abide by all applicable Federal civil rights laws including those specified in the covenants and conditions contained in the transfer document, prohibiting the transferee from discriminating on the basis of, including but not limited to, race, color, national origin, religion, sex, familial status, or disability in the use of the property.

(8) In the event of noncompliance with any conditions of the deed as determined by HHS, whether caused by the legal or other inability of the transferee, its successors and assigns, to perform any of the obligations of the transfer document, the Federal Government has an immediate right of reentry thereon, and to cause all right, title, and interest in and to the property to revert to the United States, and the transferee shall forfeit all right, title, and

interest in and to the property. In such event, transferee shall execute a quitclaim deed and take all other actions necessary to return the property to the United States within ninety (90) days of a written request from the Federal Government, extended only at the discretion of the Federal Government. Transferee shall cooperate with the United States in the event of a reversion and agrees that the United States need not seek judicial intervention before exercising its right to revert, reenter, and reconvey the property.

(9) In the event title is reverted to the United States for noncompliance or voluntarily reconveyed to the United States, the transferee shall, at the option of HHS, be required to: reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the transferee to adapt the property to the homeless use for which the property was transferred; and reimburse the United States for any costs incurred in reverting title to or possession of the property, including reasonable attorneys' fees.

(10) With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by HHS or the landholding agency, the right of occupancy and possession shall, at the option of HHS or the landholding agency, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required, at the option of HHS, to reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the lessee to adapt the property to the homeless use for which the property was leased. With respect to any termination of leasehold resulting from noncompliance, the United States, shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering possession of the property, including reasonable attorneys' fees.

(11) Any other term or condition that HHS and GSA determine appropriate or necessary.

(12) With respect to surplus property transferred by deed, the terms and conditions including those in this paragraph (f), apply for a period of three hundred sixty (360) months of use in accordance with a program of use approved in writing by HHS. The three hundred sixty months (360) period may, in HHS's sole discretion, be extended or

restarted in the event the property is not fully utilized or is retransferred to a successor entity. Expiration of the terms and conditions in this paragraph (f) does not release the transferee from continuing compliance, as appropriate, with any conditions that may run with the land, *e.g.*, environmental conditions and/or historic preservation covenants. Such conditions will continue to be the responsibility of the transferee and successors.

(13) With respect to surplus property transferred by lease, the terms and conditions including those in this paragraph (f), extend for the entire initial lease and for any subsequent renewal periods, unless specifically excluded in writing by HHS.

(g) Related personal property may be transferred or leased as a part of the realty and in accordance with real property procedures.

(h) Transferees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the United States, the transferee will be responsible for removing improvements made to the property if directed to by the United States and, in such event, will be responsible for restoration of the property or the costs associated with restoring the property. If improvements made by the transferee are not voluntarily removed by the transferee and the United States consents, they will become the property of the United States. If the United States does not consent, the transferee shall reimburse the United States for reasonable costs of removal. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

(i) Transferees, by obtaining the written consent of HHS, may abrogate the restrictions set forth in paragraph (f) of this section for all or any portion of the property in accordance with the provisions of § 581.20.

§ 581.15 Unsuitable properties.

The landholding agency or GSA will defer action to dispose of properties determined unsuitable for homeless assistance for 20 days after the date that notice of a property is posted on the HUD website. HUD will inform landholding agencies or GSA if an appeal of an unsuitability determination is filed by a representative of the homeless pursuant to § 581.4(f). HUD will advise the agency to refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability.

Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

§ 581.16 Compliance with the National Environmental Policy Act of 1969 and other related Acts (environmental impact).

(a) HHS, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus property for homeless purposes, will act in accordance with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No lease to use surplus property shall allow the lessee to make, or cause to be made, any irreversible change in the conditions of said property, and no lease shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts, unless approved by the United States.

(b) Applicants shall be required to provide such information as HHS deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by HHS, as well as other relevant information, will be used by HHS in making said assessment.

(c) If the assessment reveals:

(1) That the proposed Federal action involved properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places; or

(2) That a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action; or

(3) That the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, HHS will, except as provided for in paragraph (d) of this section, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the Acts cited in paragraph (a) of this section.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, HHS may enter into and support a lead agency agreement to designate a single lead agency which will assume primary

responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the Acts cited in paragraph (a) of this section. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between HHS and another Federal agency, HHS will reserve the right to abrogate the lead agency agreement with the other Federal agency.

§ 581.17 No applications approved.

(a) At the end of the 30-day holding period described in § 581.10(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a certain property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon notice from HHS that all applications have been disapproved, or if no initial applications have been received within 75 days after an expression of interest, or no final application has been received within 45 days after an approved initial application, disposal may proceed in accordance with applicable law.

§ 581.18 Utilization and enforcement.

(a) *Sanctions.* For instances of noncompliance relating to surplus property transfers, HHS may impose, after providing an opportunity to cure to the transferee, any or all of the following sanctions in its sole discretion, as applicable:

(1) Where property or any portion thereof was not used or is not being used for the purposes for which transferred, or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of HHS, HHS may require the transferee to—

(i) Place the property into immediate use for an approved purpose and extend the period of restriction in the transfer document for an additional term as determined by HHS;

(ii) Hold in trust all revenues and the reasonable value of other benefits received by the transferee directly or indirectly from that use for the United States subject to the direction and control of HHS;

(iii) Return title to such property to the United States or to relinquish any leasehold interest therein;

(iv) Abrogate the conditions and restrictions of the transfer, as set forth in § 581.20;

(v) Make cash payments to the United States, as directed by HHS, equivalent to the current fair market rental value of the surplus property, as transferred, for each month during which the program and plan of use has not been implemented and continues to not be implemented; or

(vi) Any other remedy that HHS determines appropriate or necessary.

(2) Where the transferee desires to place the property into temporary use to assist the homeless other than that for which the property was transferred, written approval from HHS must be obtained, and will be conditioned upon HHS's authority to permit the use and such terms as HHS may impose.

(3) If HHS or the landholding agency determines that a lessee or sublessee of a transferee is in noncompliance with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, HHS may require termination of the lease and impose sanctions described in paragraph (a)(1) of this section, as appropriate.

(b) *Reversion.* When HHS recommends reversion of the property for noncompliance, HHS will seek GSA's concurrence. GSA will respond to HHS's concurrence request within 30 days of its receipt. If GSA concurs, GSA will work with HHS to complete the reversion of the property. If GSA does not concur to the reversion recommendation, GSA will issue, to HHS, a written determination: stating the reason(s) for the disapproval; and acknowledging that HHS has recommended reversion and, therefore, the property is no longer within HHS's Title V program. The Federal Government will implement a response to the noncompliance that is in its best interests.

§ 581.19 Other uses.

(a) A transferee may permit the use of all or a portion of the surplus property by another eligible entity as described in § 581.1 for homeless assistance purposes, only upon those terms and conditions HHS determines appropriate, if:

(1) The transferee submits a written request to HHS explaining the purpose of and need for another eligible entity's use of the property, program plan, and other relevant information requested by HHS;

(2) HHS determines that the proposed use would not substantially limit the program and plan of use by the transferee and that the use will not unduly burden the Federal Government;

(3) HHS's written consent is obtained by the transferee in advance;

(4) HHS approves the use instrument in advance and in writing;

(5) The transferee agrees to lengthen the period of restrictions as determined by HHS; and

(6) HHS advises GSA and there is no disapproval by GSA within thirty (30) days.

(b) A transferee that does not follow paragraph (a) of this section will be deemed to be not in compliance with the terms and conditions of the Title V program and subject to enforcement action, including reversion of the property.

§ 581.20 Abrogation.

(a) HHS may abrogate the conditions and restrictions in the transfer document if:

(1) The transferee submits to HHS a written request that HHS abrogate the conditions and restrictions in the transfer document as to all or any portion of the surplus property;

(2) HHS determines the terms and conditions of the proposed abrogation and determines that the proposed abrogation is in the best interest of the United States; and

(3) HHS transmits the abrogation request to GSA and there is no disapproval by GSA within 30 days after notice is given. If GSA disapproves, GSA will state, in writing, to HHS the reason(s) for the disapproval.

(b) HHS abrogates the conditions and restrictions in the transfer document only upon receipt of the appropriate consideration, including cash payment, to the United States, as directed by HHS, which is based on the formula contained in the transfer document, and any other terms and conditions HHS deems appropriate to protect the interest of the United States.

§ 581.21 Compliance inspections and reports.

Transferees are required to allow HHS to conduct compliance inspections and to submit such compliance reports and actions as are deemed necessary by HHS. At a minimum, the transferee will be required to submit an annual utilization report regarding the operation and maintenance of the property, including current images of the entire property and such information as HHS shall require.

§ 581.22 No right of administrative review for agency decisions.

There is no right to administrative review within HHS, including requests for reconsideration or appeal, of agency decisions on applications and other discretionary decisions.

§ 581.23 Severability.

Any provision of this part held to be invalid or unenforceable with respect to certain parties or circumstances shall be construed so as to continue to give the maximum effect to the provision permitted by law unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof.

GENERAL SERVICES ADMINISTRATION

Accordingly, for the reasons stated above, GSA amends 41 CFR part 102–75 as follows:

PART 102–75—REAL PROPERTY DISPOSAL

■ 5. The authority citation for part 102–75 continues to read as follows:

Authority: 40 U.S.C. 121(c), 521–523, 541–559; E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

■ 6. Revise subpart H to read as follows:

Subpart H—Use of Federal Real Property To Assist the Homeless

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Definitions

§ 102–75.1160 What definitions apply to this subpart?

Applicant means any eligible organization that has submitted an application to the Department of Health and Human Services to obtain use of a certain suitable property to assist the homeless.

Checklist or property checklist means the form developed by HUD for use by landholding agencies to report the information to be used by HUD in making determinations of suitability.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day, including weekends and holidays.

Eligible organization means a State or local government agency, or a private, non-profit organization that provides assistance to the homeless, and that is authorized under the State law in which the property is located to carry out the activity for which it requests property and enter into an agreement with the Federal Government for use of property for the purposes of this part. Eligible organizations that are private, non-profit organizations interested in applying for suitable property must be tax exempt under section 501(c)(3) of the Internal Revenue Code at the time of application and remain tax exempt throughout the time the Federal Government retains a reversionary interest in the property.

Encumbrance means any non-approved use by a transferee or a third party that limits the full utilization of the transferred property, regardless of time period, and includes liens, easements, restrictive covenants, licenses, leases, mortgages, informal agreements, and unaddressed trespass.

Excess property means any property under the control of a Federal executive agency that the head of the agency determines is not required to meet the agency's needs or responsibilities, pursuant to 40 U.S.C. 524.

GSA means the General Services Administration.

HHS means the Department of Health and Human Services.

Homeless is defined in 42 U.S.C. 11302. This term is synonymous with "homeless individual" and "homeless person."

HUD means the Department of Housing and Urban Development.

HUD website means a website maintained by HUD providing information about HUD, including any successor websites or technologies that are equally accessible and available to the public.

Landholding agency means the Federal department or agency with

statutory authority to control property. For purposes of this subpart, the landholding agency is typically the Federal department or agency that had custody and accountability on behalf of the Federal Government, of a certain piece of property at the time that such property was reported to HUD for a suitability determination pursuant to 42 U.S.C. 11411.

Lease means an agreement in writing between either HHS for surplus property or landholding agencies for underutilized and unutilized properties and the applicant giving rise to the relationship of lessor and lessee for the use of Federal property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization recognized as a non-profit by the State in which the organization operates, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time, usually one year or less, under terms and conditions determined by the landholding agency. A permit does not grant to the recipient an estate in land or any interest in the property.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

Related personal property means any personal property that is located on real property and is either an integral part of or useful in the operation of that property or is determined by GSA to be otherwise related to the property.

Representative of the homeless means a State or local government agency, or private nonprofit organization that provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal executive agencies to determine if they have an interest in using excess Federal property to carry out a particular agency mission, and then surveys State, local and non-profit entities, to determine if any such entity has an interest in using surplus Federal

property to carry out a specific public use.

State means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

Suitable property means that HUD has determined that a certain property satisfies the criteria listed in § 102–75.1165.

Surplus property means any excess property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by GSA.

Transfer document means a lease, deed, or permit transferring surplus, unutilized, or underutilized property.

Transferee means an eligible entity that acquires Federal property by lease, deed, or permit.

Underutilized means an entire property or portion thereof, with or without improvements which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

Unsuitable property means that HUD has determined that a particular property does not satisfy the criteria in § 102–75.1165.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

Applicability

§ 102–75.1161 What is the applicability of this subpart?

(a) This subpart applies to Federal property that has been designated by Federal landholding agencies as unutilized, underutilized, excess, or surplus and is therefore subject to the provisions of Title V of the McKinney Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized):

(1) Buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) Machinery and equipment not determined to be related personal property by the landholding agency or GSA or determined to be related personal property that the landholding

agency or GSA chooses to dispose of separate from real property.

(3) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(4) Properties subject to special legislation directing a particular action.

(5) Properties subject to a court order that is binding on the Federal Government and, for any reason, precludes transfer for use to assist the homeless under the authority of 42 U.S.C. 11411.

(6) Property not subject to Federal Real Property Council reporting requirements in accordance with 40 U.S.C. 623(i).

(7) Mineral rights interests independent of surface rights.

(8) Air space interests independent of surface rights.

(9) Indian Reservation land subject to 40 U.S.C. 523.

(10) Property interests subject to reversion.

(11) Easements.

(12) Any building or fixture that is excess, or surplus, that is on land under the control of a landholding agency, where the underlying land is not excess or surplus.

(13) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this subpart.

Collecting the Information

§ 102–75.1162 How will information be collected?

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass each landholding agency to collect information about property described as unutilized, underutilized, excess or surplus in accordance with 40 U.S.C. 524; however, HUD will accept property information between canvasses. Each canvass will collect information on properties not previously reported, and about property reported previously where the status or classification of the property has changed, or improvements have been made to the property. HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described in this section, of the suitability of a property for use to assist the homeless. Landholding agencies must report property information to HUD using the property checklist developed by HUD for that purpose. Property checklists submitted in response to a canvass must be submitted

to HUD within 25 days of receipt of the canvass.

(b) *Agency annual suitable property report.* By December 31 of each year, each landholding agency must notify HUD of the current availability status and classification of each property controlled by the agency that:

(1) Was included in a list of suitable properties published that year by HUD; and

(2) Remains available for application for use to assist the homeless or has become available for application during that year.

(c) *GSA inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in status.* If the information provided on the property checklist changes subsequent to HUD's determination of suitability, including any improvements or other alterations to the physical condition of the land or the buildings on the property, and the property remains unutilized, underutilized, excess, or surplus, the landholding agency must submit a revised property checklist in response to the next quarterly canvass. HUD will review for suitability and, if it differs from the previous determination, repost the property information on the HUD website. For example, property determined unsuitable due to extensive deterioration may have had improvements, or property determined suitable may subsequently be found to be extensively deteriorated.

Suitability Determination

§ 102–75.1163 Who issues the suitability determination?

(a) *Suitability determination.* Within 30 days after the receipt of a completed property checklist from landholding agencies either in response to a quarterly canvass, or between canvasses, HUD will determine, using the criteria set forth in 24 CFR 581.6 whether a property is suitable for use to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in § 102–75.1166.

(d) *Record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § 102–75.1166(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication of a notice of unsuitability on the HUD website.

(f) *Procedures for appealing unsuitability determinations.* (1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD, in writing, through the U.S. Mail, email, or the HUD website, or such other method as HUD may require, within 20 days of publication of the notice of unsuitability.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless.

(3) The request for review must specify the grounds on which it is based, *i.e.*, HUD has improperly applied the criteria or HUD has relied on incorrect or incomplete information in making the determination (*e.g.*, that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency or GSA that such a request has been made. The landholding agency or GSA shall have 20 days from receipt of the notice from HUD, or an extended period agreed to between HUD and the landholding agency or GSA, to provide any information pertinent to the review. The landholding agency or GSA must refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability. If the landholding agency or GSA fails to meet the deadline, HUD will move forward with the appeal review with the property information it already has and information submitted in the appeal

request provided by the representative of the homeless.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's or GSA's response, or, if the landholding agency or GSA failed to meet the deadline, within 30 days of such deadline, and will notify the representative of the homeless and the landholding agency or GSA in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's or GSA's determination of availability pursuant to § 102–75.1166, upon receipt of which HUD will promptly publish the determination on the HUD website.

Real Property Reported Excess to GSA

§ 102–75.1164 For the purposes of this subpart, what is the policy concerning real property reported excess to GSA?

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports an excess property to GSA that HUD has already determined to be suitable for use to assist the homeless, GSA will screen the property pursuant to paragraph (h) of this section and will advise HUD of the availability of the property for use by the homeless as provided in paragraph (e) of this section. In lieu of the preceding sentence, GSA may submit a new checklist to HUD and follow the procedures in paragraphs (c) through (h) of this section.

(c) If a landholding agency reports an excess property to GSA that has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, such as from unutilized or underutilized to excess or surplus.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives notification from HUD listing suitable excess properties, GSA will transmit a response to HUD within 45 days. GSA's response will include the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When GSA submits a checklist to HUD in accordance with paragraphs (b) and (c) of this section, the information regarding the availability of the property, as specified in paragraph (e)(1) and (2) of this section, may be included with the checklist if it is known at the time of submittal.

(g) When a surplus property is determined as suitable, confirmed as available by GSA, and notice is published on the HUD website, GSA will concurrently notify HHS, State and local government units, and known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(h) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible non-profit organizations to determine interest in the property in accordance with this part. (See §§ 102–75.1220, 102–75.255, and 102–75.350.)

(i) The landholding agency will retain custody and accountability and will protect and maintain any property that is reported excess to GSA as provided in § 102–75.965.

Suitability Criteria

§ 102–75.1165 What are suitability criteria?

(a) In general, properties will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *Flammable or explosive hazards.* Property located less than an acceptable separation distance (under the standards in 24 CFR part 51, subpart C, and the HUD Guidebook, "Siting of HUD-Assisted Projects Near Hazardous Facilities" or successor guidebook) from any stationary aboveground container or facility which stores, handles, or processes hazardous substances of an explosive or fire prone nature (excluding containers and facilities that are not hazards as defined in 24 CFR 51.201), unless HUD can determine during the review period based on information provided by the landholding agency that appropriate mitigating measures, as defined in 24 CFR 51.205, are already in place.

(2) *Coastal barriers.* Property located in a System Unit, as defined at 16 U.S.C. 3502(7), under the Coastal Barrier

Resources Act, as amended (16 U.S.C. 3501 *et seq.*).

(3) *Site safety conditions.* Property with a documented and extensive condition(s) that represents a clear threat to personal physical safety or health. Such conditions may include, but are not limited to, significant contamination from hazardous substances, as defined by 42 U.S.C. 9601, periodic flooding, sinkholes, or landslides.

(b) In the cases in paragraphs (b)(1) through (4) of this section, properties will be determined unsuitable, unless the landholding agencies provide information to enable HUD to determine the property is suitable:

(1) *Inaccessible.* Property that is inaccessible, meaning that the property is not accessible by road (including property on small offshore islands) or is landlocked (*e.g.*, can be reached only by crossing private property and there is no established right or means of entry).

(2) *National security.* Property located in an area to which the general public is denied access in the interest of national security (*e.g.*, where a special pass or security clearance is a condition of entry to the property), unless there is an alternative method to gain access without compromising national security.

(3) *Runway clear zones.* Property located within a runway clear zone or a military airfield clear zone.

(4) *Floodway.* Property located in a floodway, unless only an incidental portion of the property is in the floodway and that incidental portion does not affect the use of the remainder of the property to assist the homeless.

Determination of Availability

§ 102–75.1166 What is the policy concerning determination of availability statements for suitable properties?

Within 45 days after receipt of notification from HUD pursuant to § 102–75.1162(a) that a property has been determined to be suitable, each landholding agency or GSA must transmit to HUD a statement of one of the following:

(a) In the case of unutilized or underutilized property—

(1) An intention to declare the property excess;

(2) An intention to make the property available for use to assist the homeless; or

(3) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different from those listed as suitability criteria in § 102–75.1165.

(b) In the case of excess property which has been reported to GSA—

(1) A statement that there is no compelling Federal need for the property, and, therefore, the property will be determined surplus; or

(2) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and therefore, the property is not presently available for use to assist the homeless.

Public Notice of Determination

§ 102–75.1167 What is the policy concerning making public the notice of determination?

(a) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding availability, HUD will post on the HUD website a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) HUD will establish and maintain a toll-free number for the public to obtain specific information about properties in paragraph (a) of this section.

(c) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding availability, HUD will transmit to the United States Interagency Council on Homelessness (USICH) a copy of all properties in paragraph (a) of this section. The USICH will immediately distribute to all State and regional homeless coordinators area-relevant portions of the list. The USICH will encourage the State and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD will publish in the **Federal Register** a list of all properties in the agency annual suitable property reports, reported to HUD pursuant to § 102–75.1162(b).

(e) HUD will publish an annual list of properties determined suitable, but which agencies reported unavailable including the reasons such properties are not available.

General Policies of HHS

§ 102–75.1168 What are the general policies of HHS?

(a) It is the policy of HHS to foster and assure maximum utilization of surplus property for homeless assistance purposes.

(b) Transfers may be made only to eligible organizations.

(c) Property will be requested for assignment only when HUD has made a final determination that the property is suitable for use to assist the homeless, GSA has determined it is available, and HHS has determined it is needed for homeless assistance purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for homeless assistance purposes or will be so needed within the immediate or foreseeable future.

(d) Transfers by deed will be made only after the applicant's financial plan is approved and the applicant provides certification that the proposed program is permissible under all applicable State and local zoning restrictions, building codes, and similar limitations.

(e) In instances of noncompliance, transferees are provided an opportunity to cure the noncompliance pursuant to 45 CFR 12a.10.

Expression of Interest Process

§ 102–75.1169 How may eligible organizations express interest in properties to assist the homeless?

(a) Properties published by HUD as suitable and available, pursuant to § 102–75.1167, for application for use to assist the homeless shall not be available for any other purpose for a period of 30 days beginning on the date the list of properties is published on the HUD website. Any eligible organization interested in any underutilized, unutilized, excess, or surplus property for use to assist the homeless must send HHS a written expression of interest in that property within 30 days after the property has been published on the HUD website.

(b) Although a property may be determined suitable by HUD, HUD's determination does not mean a property is necessarily fit for use for the purpose(s) stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

(c) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 30-day holding period, such property may not be made available for

any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(d)(1) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private, non-profit organization. The expression of interest must be sent to HHS by email, rpb@psc.hhs.gov, or by mail at the following address: Department of Health and Human Services, Program Manager, Federal Real Property Assistance Program, Real Estate Logistics and Operations, 5600 Fishers Lane, Rockville, Maryland 20852.

(2) HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a certain property.

(e) An expression of interest may be sent to and accepted by HHS any time after the 30-day holding period has expired only if the property remains available as determined by GSA or the landholding agency for application to assist the homeless. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(1) There are no pending applications or written expressions of interest made under any law for use of the property for any purpose; and

(2) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

Application Process and Requirements

§ 102–75.1170 How may eligible organizations apply for the use of properties to assist the homeless?

(a) Upon receipt of an expression of interest, HHS will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following—

(1) *Acquisition type.* The applicant must state whether it is requesting acquisition of the property by lease, deed, or permit. A lease of one year, extendable at HHS's discretion, with the concurrence of GSA or the landholding agency, may be granted when the applicant's initial application is approved and the applicant's final application outlining the applicant's financial plan is found to be otherwise reasonable based on the criteria in paragraph (a)(7) of this section, but

either a change in zoning is required or the financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing. Applicants that initially apply for transfer by lease or permit and subsequently request transfer by deed will follow the same bifurcated application process, including deadlines, contained in 42 U.S.C. 11411. Should an applicant wish to transition from acquisition by lease to acquisition by deed, HHS will issue a letter of commitment to a lessee indicating that, provided its application meets all application criteria, including securing of all necessary financing that complies with Federal Government requirements, HHS will issue a deed.

(2) *Description of the applicant organization.* The applicant must document that it satisfies the definition of an *eligible organization* as specified in § 102–75.1160.

(3) *Description of the property desired.* The applicant must describe the listed property desired, including existing zoning. Applicants must certify that any modification(s) made to and use of the property will conform to all applicable building codes, and local use restrictions, or similar limitations. In accordance with GSA policy, determinations regarding parcelization are made prior to screening. Therefore, expressions of interest and applications for portions of listed properties will not be accepted.

(4) *Description of the proposed program.* The applicant must fully describe the proposed program and plan of use, including implementation plans.

(5) *Demonstration of need.* The applicant must demonstrate that the property is needed for homeless assistance purposes at the time of application and how the program will address the needs of the homeless population to be assisted. The applicant must demonstrate that it has an immediate need and ability to utilize all of the property for which it is applying.

(6) *Demonstrate that the property is suitable and adaptable for the proposed program and plan of use.* The applicant must fully explain why the property is suitable and describe what, if any, modification(s) will be made to the property before the program becomes operational.

(7) *Ability to finance and operate the proposed program.* If the applicant's initial application is approved, the applicant must set forth a reasonable plan to finance the approved program within 45 days of the initial approval. To be considered reasonable, the plan must, at a minimum:

(i) Specifically describe all anticipated costs and sources of funding for the proposed program, including any property modifications;

(ii) Be accompanied by supporting documentation which demonstrates that the proposed plan is likely to succeed;

(iii) Demonstrate that the applicant is ready, willing, able, and authorized to assume care, custody, and maintenance of the property;

(iv) Demonstrate that it has secured the necessary dedicated funds, or will obtain such funds, to carry out the approved proposed program and plan of use for the property, including administrative expenses incident to the transfer by deed, lease, or permit;

(v) Not diminish the value of the Federal Government's interest in the property nor impair the Federal Government's ability to revert and immediately dispose of the property free of any and all liens, encumbrances, or anything else which renders the property unmarketable. Deed transfers will only be made after an applicant demonstrates its financial plan adequately protects the Federal Government's interest in the property; and

(vi) Neither subject the Federal Government's interest in the property to foreclosure nor impose obligations (e.g., extended use agreements) on the Federal Government.

(8) *Compliance with non-discrimination requirements.* Each applicant under this part must certify in writing that it will comply with all requirements of Federal law and HHS policy, as amended, relating to non-discrimination, including the following: the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR part 100; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Non-discrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1 and 45 CFR part 80; section 1557 of the Affordable Care Act and implementing regulations at 45 CFR part 92; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146 and 44 CFR part 91; and the prohibitions against discrimination against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and 45 CFR part 84. The applicant must maintain the required

records to demonstrate compliance with all applicable Federal laws and HHS policies related to non-discrimination.

(9) *Insurance and indemnification.* The applicant must certify that it will insure the property against loss, damage, or destruction to protect the residual financial interest of the United States. The United States shall be named as an additional insured. Applicants must provide proof of insurance annually or upon request. Failure to maintain sufficient insurance may result in adverse action, including reversion of the property, at the discretion of HHS. In the event of a covered loss, the transferee must hold all insurance proceeds in trust and obtain written concurrence from HHS before disbursing the funds. Applicants, and all affiliated parties utilizing the property, as approved by HHS, must indemnify the United States and hold the United States harmless for all actions involving use of the property.

(10) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(11) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency. However, the burden is on the applicant to submit sufficient documentation for analysis by HHS.

(12) *Local government notification.* The applicant must certify that it has notified the applicable unit of general local government responsible for sewer, water, police, and fire services, in writing, of its proposed program for the specific property and submit a copy of that written notification.

(13) *Zoning and local use restrictions.* An applicant requesting a deed must certify that it has consulted all State and local governmental entities that will have jurisdiction over the property and that the proposed use will comply with all applicable zoning and local use restrictions, including local building code requirements. An applicant that applies for a lease or permit is not required to comply with local zoning requirements, as long as the Federal Government retains ownership of the property. Deed transfers will only be made after the applicant has provided acceptable written proof that the proposed program is not in conflict with

State or local zoning laws and restrictions, building codes, or similar limitations.

(b) *Scope of evaluations.* Due to the short time frame imposed by statute for evaluating applications, HHS's evaluation will, generally, be limited to the information contained in the application. It is therefore incumbent on applicants to provide thorough and complete applications.

(c) *Deadline for initial application.* An initial application must be received by HHS, at the email address in § 102–75.1169(d)(1) or other address indicated by HHS, within 75 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may, in its discretion, grant extensions authorized by 42 U.S.C. 11411(e)(2)(A), provided that the appropriate landholding agency or GSA concurs with the extension.

(d) *Evaluation of initial application.* (1) Upon receipt of an initial application, HHS will review it for completeness, and, if incomplete and time permits, may, in its discretion, return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the initial application.

(2) HHS will evaluate each initial application within 10 days of receipt and will promptly advise the applicant of its decision. All initial applications will be reviewed on the basis of the following elements:

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program, the program's ability to satisfy unmet needs of the community, and the degree to which the available property will be fully utilized.

(iii) *Experience.* Demonstrated ability to provide the services, such as prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(e) *Deadline and evaluation of final application.* (1) If HHS approves an initial application, HHS will notify the applicant and provide the applicant 45 days in which to provide a final application. The final application shall set forth a reasonable plan to finance, as specified in paragraph (a)(6) of this section, the approved program as set forth in the initial application. Applicants may not modify the approved initial application within its final application proposal.

(2) Upon receipt of the final application, HHS will make a

determination within 15 days and notify the applicant.

(3) Unlike with initial applications, requests for extensions are not authorized by 42 U.S.C. 11411 and thus will not be considered for final applications.

(4) Applications are evaluated on a first-come, first-served basis. HHS will notify all organizations that have submitted expressions of interest for a particular property whether an earlier application received for that property has been approved.

(f) *Competing applications.* If HHS receives more than one final application simultaneously, HHS will evaluate all applications and make a determination based on each application's merit. HHS will rank approved applications based on the elements listed in paragraph (a) of this section, and notify the landholding agency, or GSA, as appropriate, of the approved applicant.

Action on Approved Applications

§ 102–75.1171 What action must be taken on approved applications?

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available.

(ii) The terms and conditions of the lease or permit document (except that a landholding agency may not charge any fees or impose any costs).

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for transfer. Requests to GSA for the assignment of surplus property to HHS for homeless assistance purposes will be based on the following conditions:

(i) HHS has a fully approved application for the property;

(ii) The applicant is able, willing, and authorized to assume immediate care, custody, and maintenance of the property;

(iii) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer; and

(iv) The applicant has secured the necessary funds, or had demonstrated the ability to obtain such funds, to carry out the approved program of use of the property.

(2) Upon receipt of an acceptable assignment, HHS will execute the

transfer document in accordance with the procedures and requirements set out in this subpart and any other terms and conditions HHS and GSA determines are appropriate or necessary. Custody and accountability of the property will remain throughout the lease term with the landholding agency (*i.e.*, the agency which initially reported the property as excess) and throughout the deed term with the transferee.

(3) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs in deciding the disposition of surplus property. Priority of consideration will normally be given to uses to assist the homeless. However, both GSA and HHS may consider any competing request for the property made under 40 U.S.C. 550 that is so meritorious and compelling that it outweighs the needs of the homeless.

(4) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance, the agency making the decision will transmit to the appropriate committees of Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

Surplus Property Transfer Documents

§ 102–75.1172 What documents are used for the transfer of surplus property for use to assist the homeless?

(a) Surplus property may be conveyed to eligible organizations pursuant to 40 U.S.C. 550(d) and 42 U.S.C. 11411, as amended, by lease or deed, at the applicant's discretion.

(b) Transfers of surplus property for homeless assistance purposes are in exchange for the transferee's agreement to fully utilize the property for homeless assistance purposes in accordance with the terms specified in the transfer document.

(c) A transfer of surplus property for homeless assistance purposes is subject to the disapproval of GSA within 30 days after notice is given to GSA of the proposed transfer.

(d) Surplus property transferred pursuant to this subpart will be disposed on an "as is, where is" basis without warranty of any kind except as may be stated in the transfer document.

(e) Unless excepted by GSA in its assignment, the disposal of property includes mineral rights associated with the surface estate.

(f) Transfers of surplus property under this subpart will be made with the following general terms and conditions:

(1) For the period provided in the transfer document, the transferee shall utilize all the surplus property it receives solely and continuously for the approved program and plan of use, in accordance with 42 U.S.C. 11411 and this subpart, except that:

(i) The transferee has 12 months from the date of transfer to place the surplus property into use, if HHS did not approve in writing, construction of new facilities or major renovation of the property when it approved the final application;

(ii) The transferee has 48 months from the date of transfer to place the surplus property into use, if the transferee proposes construction of new facilities or major renovation of the property and HHS approves it in writing at the time it approves the final application;

(iii) If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Federal Government for each month thereafter during which the proposed use has not been implemented or take such other action as set forth at § 102–75.1176 as is deemed appropriate by HHS. Such monthly payments shall be computed on the basis of the current fair market value of the property, as conveyed, at the time of the first payment and dividing it by 360 months. At HHS's discretion, the payment may be waived if the transferee makes a sufficient showing of continued progress to place the property into use or if an unforeseeable event occurs which prevents the property from being put into use within the applicable timeframe; and

(iv) HHS may permit use of surplus property at any time during the period of restriction by an entity other than the transferee in accordance with § 102–75.1177.

(2) The transferee will not be permitted to encumber, or dispose of the property, or impair full utilization thereof, without the prior written authorization of HHS. In the event the property is encumbered, sold, or disposed of, or is used for any purposes other than those set forth in an approved plan without the written consent of HHS, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by HHS, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of HHS. The provisions of this paragraph (f)(2) shall not impair or affect the rights reserved to the United States in paragraph (f)(8)

of this section, or the right of HHS to impose conditions to its consent.

(3) The transferee will file with HHS such reports on its maintenance and use of the surplus property and any other reports or information deemed necessary by HHS.

(4) The transferee shall pay all administrative costs incidental to the transfer, including but not limited to—transfer taxes; surveys; appraisals; title search; the transferee's legal fees; recordation expenses, etc. Transferee is solely responsible for such costs and may not seek reimbursement from the Federal Government for any reason.

(5) The transferee shall protect, preserve, maintain, and repair the property to ensure that the property remains in as good a condition as when received.

(6) The transferee shall protect the residual financial interest of the United States in the surplus property by insurance or such other means as HHS directs.

(7) The transferee shall abide by all applicable Federal civil rights laws including those specified in the covenants and conditions contained in the transfer document, prohibiting the transferee from discriminating on the basis of, including but not limited to, race, color, national origin, religion, sex, familial status, or disability in the use of the property.

(8) In the event of noncompliance with any conditions of the deed as determined by HHS, whether caused by the legal or other inability of the transferee, its successors and assigns, to perform any of the obligations of the transfer document, the Federal Government has an immediate right of reentry thereon, and to cause all right, title, and interest in and to the property to revert to the United States, and the transferee shall forfeit all right, title, and interest in and to the property. In such event, transferee shall execute a quitclaim deed and take all other actions necessary to return the property to the United States within ninety (90) days of a written request from the Federal Government, extended only at the discretion of the Federal Government. Transferee shall cooperate with the United States in the event of a reversion and agrees that the United States need not seek judicial intervention before exercising its right to revert, reenter, and reconvey the property.

(9) In the event title is reverted to the United States for noncompliance or voluntarily reconveyed to the United States, the transferee shall, at the option of HHS, be required to: reimburse the United States for the decrease in value

of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the transferee to adapt the property to the homeless use for which the property was transferred; and reimburse the United States for any costs incurred in reverting title to or possession of the property, including reasonable attorneys' fees.

(10) With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by HHS or the landholding agency, the right of occupancy and possession shall, at the option of HHS or the landholding agency, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required, at the option of HHS, to reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the lessee to adapt the property to the homeless use for which the property was leased. With respect to any termination of leasehold resulting from noncompliance, the United States, shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering possession of the property, including reasonable attorneys' fees.

(11) Any other term or condition that HHS and GSA determine appropriate or necessary.

(12) With respect to surplus property transferred by deed, the terms and conditions including those in this paragraph (f), apply for a period of three hundred sixty (360) months of use in accordance with a program of use approved in writing by HHS. The three hundred sixty months (360) period may, in HHS's sole discretion, be extended or restarted in the event the property is not fully utilized or is retransferred to a successor entity. Expiration of the terms and conditions in this paragraph (f) does not release the transferee from continuing compliance, as appropriate, with any conditions that may run with the land, *e.g.*, environmental conditions and/or historic preservation covenants. Such conditions will continue to be the responsibility of the transferee and successors.

(13) With respect to surplus property transferred by lease, the terms and conditions including those in this paragraph (f), extend for the entire initial lease and for any subsequent renewal periods, unless specifically excluded in writing by HHS.

(g) Related personal property may be transferred or leased as a part of the

realty and in accordance with real property procedures.

(h) Transferees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the United States, the transferee will be responsible for removing improvements made to the property if directed to by the United States and, in such event, will be responsible for restoration of the property or the costs associated with restoring the property. If improvements made by the transferee are not voluntarily removed by the transferee and the United States consents, they will become the property of the United States. If the United States does not consent, the transferee shall reimburse the United States for reasonable costs of removal. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

(i) Transferees, by obtaining the written consent of HHS, may abrogate the restrictions set forth in paragraph (f) of this section for all or any portion of the property in accordance with the provisions of § 102–75.1178.

Unsuitable Properties

§ 102–75.1173 What action must be taken on properties determined unsuitable for homeless assistance?

The landholding agency or GSA will defer action to dispose of properties determined unsuitable for homeless assistance for 20 days after the date that notice of a property is posted on the HUD website. HUD will inform landholding agencies or GSA if an appeal of an unsuitability determination is filed by a representative of the homeless pursuant to § 102–75.1163(f). HUD will advise the agency to refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

Compliance With the National Environmental Policy Act of 1969 and Other Related Acts (Environmental Impact)

§ 102–75.1174 What are the requirements for compliance with the National Environmental Policy Act of 1969 and other related Acts (environmental impact) for the transfer of Federal real property for use to assist the homeless?

(a) HHS, prior to making a final decision to convey or lease, or to

amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus property for homeless purposes, will act in accordance with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No lease to use surplus property shall allow the lessee to make, or cause to be made, any irreversible change in the conditions of said property, and no lease shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts, unless approved by the United States.

(b) Applicants shall be required to provide such information as HHS deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by HHS, as well as other relevant information, will be used by HHS in making said assessment.

(c) If the assessment reveals:

(1) That the proposed Federal action involved properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places; or

(2) That a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action; or

(3) That the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, HHS will, except as provided for in paragraph (d) of this section, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the Acts cited in paragraph (a) of this section.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, HHS may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the Acts cited in paragraph (a) of this section. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between HHS and

another Federal agency, HHS will reserve the right to abrogate the lead agency agreement with the other Federal agency.

No Applications Approved

§ 102–75.1175 What action must be taken if there is no expression of interest or approved application?

(a) At the end of the 30-day holding period described in § 102–75.1169(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a certain property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon notice from HHS that all applications have been disapproved, or if no initial applications have been received within 75 days after an expression of interest, or no final application has been received within 45 days after an approved initial application, disposal may proceed in accordance with applicable law.

Utilization and Enforcement

§ 102–75.1176 What are the utilization and enforcement requirements for property transferred for use to assist the homeless?

(a) *Sanctions.* For instances of noncompliance relating to surplus property transfers, HHS may impose, after providing an opportunity to cure to the transferee, any or all of the following sanctions in its sole discretion, as applicable:

(1) Where property or any portion thereof was not used or is not being used for the purposes for which transferred, or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of HHS, HHS may require the transferee to—

(i) Place the property into immediate use for an approved purpose and extend the period of restriction in the transfer document for an additional term as determined by HHS;

(ii) Hold in trust all revenues and the reasonable value of other benefits received by the transferee directly or indirectly from that use for the United States subject to the direction and control of HHS;

(iii) Return title to such property to the United States or to relinquish any leasehold interest therein;

(iv) Abrogate the conditions and restrictions of the transfer, as set forth in § 102–75.1178;

(v) Make cash payments to the United States, as directed by HHS, equivalent to

the current fair market rental value of the surplus property, as transferred, for each month during which the program and plan of use has not been implemented and continues to not be implemented; or

(vi) Any other remedy that HHS determines appropriate or necessary.

(2) Where the transferee desires to place the property into temporary use to assist the homeless other than that for which the property was transferred, written approval from HHS must be obtained, and will be conditioned upon HHS's authority to permit the use and such terms as HHS may impose.

(3) If HHS or the landholding agency determines that a lessee or sublessee of a transferee is in noncompliance with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, HHS may require termination of the lease and impose sanctions described in paragraph (a)(1) of this section, as appropriate.

(b) *Reversion.* When HHS recommends reversion of the property for noncompliance, HHS will seek GSA's concurrence. GSA will respond to HHS's concurrence request within 30 days of its receipt. If GSA concurs, GSA will work with HHS to complete the reversion of the property. If GSA does not concur to the reversion recommendation, GSA will issue, to HHS, a written determination: stating the reason(s) for the disapproval; and acknowledging that HHS has recommended reversion and, therefore, the property is no longer within HHS's Title V program. The Federal Government will implement a response to the noncompliance that is in its best interests.

Other Uses

§ 102–75.1177 What are the requirements for other uses of a transferred property?

(a) A transferee may permit the use of all or a portion of the surplus property by another eligible entity as described in § 102–75.1160 for homeless assistance purposes, only upon those terms and conditions HHS determines appropriate, if:

(1) The transferee submits a written request to HHS explaining the purpose of and need for another eligible entity's use of the property, program plan, and other relevant information requested by HHS;

(2) HHS determines that the proposed use would not substantially limit the program and plan of use by the transferee and that the use will not unduly burden the Federal Government;

(3) HHS's written consent is obtained by the transferee in advance;

(4) HHS approves the use instrument in advance and in writing;

(5) The transferee agrees to lengthen the period of restrictions as determined by HHS; and

(6) HHS advises GSA and there is no disapproval by GSA within thirty (30) days.

(b) A transferee that does not follow paragraph (a) of this section will be deemed to be not in compliance with the terms and conditions of the Title V program and subject to enforcement action, including reversion of the property.

Abrogation

§ 102–75.1178 What are the conditions of abrogation for property transferred to assist the homeless?

(a) HHS may abrogate the conditions and restrictions in the transfer document if:

(1) The transferee submits to HHS a written request that HHS abrogate the conditions and restrictions in the transfer document as to all or any portion of the surplus property;

(2) HHS determines the terms and conditions of the proposed abrogation and determines that the proposed abrogation is in the best interest of the United States; and

(3) HHS transmits the abrogation request to GSA and there is no disapproval by GSA within 30 days after notice is given. If GSA disapproves, GSA will state, in writing, to HHS the reason(s) for the disapproval.

(b) HHS abrogates the conditions and restrictions in the transfer document only upon receipt of the appropriate consideration, including cash payment, to the United States, as directed by HHS, which is based on the formula contained in the transfer document, and any other terms and conditions HHS deems appropriate to protect the interest of the United States.

Compliance Inspections and Reports

§ 102–75.1179 What compliance inspections and reports are required?

Transferees are required to allow HHS to conduct compliance inspections and to submit such compliance reports and actions as are deemed necessary by HHS. At a minimum, the transferee will be required to submit an annual utilization report regarding the operation and maintenance of the property, including current images of the entire property and such information as HHS shall require.

No Right of Administrative Review for Agency Decisions

§ 102–75.1180 Is there a right of administrative review for agency decisions within HHS?

There is no right to administrative review within HHS, including requests for reconsideration or appeal, of agency decisions on applications and other discretionary decisions.

Waivers

§ 102–75.1181 May any requirement of this subpart be waived??

The Secretary of HUD may waive any requirement of this subpart (over which the Secretary of HUD has jurisdiction) that is not required by law, whenever it is determined that undue hardship would result from applying the requirement, or where application of the requirement would adversely affect the purposes of the program. Each waiver will be in writing and will be supported by documentation of the pertinent facts and grounds. The Secretary periodically will publish notice of granted waivers on the HUD website.

Severability

§ 102–75.1182 Are the provisions of this subpart severable?

Any provision of this subpart held to be invalid or unenforceable with respect to certain parties or circumstances shall be construed so as to continue to give the maximum effect to the provision permitted by law unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this subpart and shall not affect the remainder thereof.

§§ 102–75.1183–102–75.1219 [Reserved]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Accordingly, for the reasons stated above, HHS amends 45 CFR part 12a as follows:

■ 7. Revise part 12a to read as follows:

PART 12a—USE OF FEDERAL REAL PROPERTY TO ASSIST THE HOMELESS

Sec.

- 12a.1 Definitions.
- 12a.2 Applicability.
- 12a.3 General policies.
- 12a.4 Expression of interest process.
- 12a.5 Application process and requirements.
- 12a.6 Action on approved applications.
- 12a.7 Transfer documents.
- 12a.8 Compliance with the National Environmental Policy Act of 1969 and

other related Acts (environmental impact).

- 12a.9 No applications approved.
- 12a.10 Utilization and enforcement.
- 12a.11 Other uses.
- 12a.12 Abrogation.
- 12a.13 Compliance inspections and reports.
- 12a.14 No right of administrative review for agency decisions.
- 12a.15 Severability.

Authority: 42 U.S.C. 11411; 40 U.S.C. 550.

§ 12a.1 Definitions.

Applicant means any eligible organization that has submitted an application to the Department of Health and Human Services to obtain use of a certain suitable property to assist the homeless.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day, including weekends and holidays.

Eligible organization means a State or local government agency, or a private, non-profit organization that provides assistance to the homeless, and that is authorized under the State law in which the property is located to carry out the activity for which it requests property and enter into an agreement with the Federal Government for use of property for the purposes of this part. Eligible organizations that are private, non-profit organizations interested in applying for suitable property must be tax exempt under section 501(c)(3) of the Internal Revenue Code at the time of application and remain tax exempt throughout the time the Federal Government retains a reversionary interest in the property.

Encumbrance means any non-approved use by a transferee or a third party that limits the full utilization of the transferred property, regardless of time period, and includes liens, easements, restrictive covenants, licenses, leases, mortgages, informal agreements, and unaddressed trespass.

Excess property means any property under the control of a Federal executive agency that the head of the agency determines is not required to meet the agency's needs or responsibilities, pursuant to 40 U.S.C. 524.

GSA means the General Services Administration.

HHS means the Department of Health and Human Services.

Homeless is defined in 42 U.S.C. 11302. This term is synonymous with "homeless individual" and "homeless person."

HUD means the Department of Housing and Urban Development.

HUD website means a website maintained by HUD providing information about HUD, including any successor websites or technologies that

are equally accessible and available to the public.

Landholding agency means the Federal department or agency with statutory authority to control property. For purposes of this part, the landholding agency is typically the Federal department or agency that had custody and accountability on behalf of the Federal Government, of a certain piece of property at the time that such property was reported to HUD for a suitability determination pursuant to 42 U.S.C. 11411.

Lease means an agreement in writing between either HHS for surplus property or landholding agencies for underutilized and unutilized properties and the applicant giving rise to the relationship of lessor and lessee for the use of Federal property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization recognized as a non-profit by the State in which the organization operates, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time, usually one year or less, under terms and conditions determined by the landholding agency. A permit does not grant to the recipient an estate in land or any interest in the property.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

Related personal property means any personal property that is located on real property and is either an integral part of or useful in the operation of that property or is determined by GSA to be otherwise related to the property.

Representative of the homeless means a State or local government agency, or private nonprofit organization that provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal executive agencies to determine if they have an interest in using excess Federal property to carry out a particular agency mission, and

then surveys State, local, and non-profit entities, to determine if any such entity has an interest in using surplus Federal property to carry out a specific public use.

State means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

Suitable property means that HUD has determined that a certain property satisfies the criteria listed in 24 CFR 581.6.

Surplus property means any excess property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by GSA.

Transfer document means a lease, deed, or permit transferring surplus, unutilized, or underutilized property.

Transferee means an eligible entity that acquires Federal property by lease, deed, or permit.

Underutilized means an entire property or portion thereof, with or without improvements which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

§ 12a.2 Applicability.

(a) This part applies to Federal property that has been designated by Federal landholding agencies as unutilized, underutilized, excess, or surplus and is therefore subject to the provisions of Title V of the McKinney Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this part (regardless of whether they may be unutilized or underutilized):

(1) Buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) Machinery and equipment not determined to be related personal property by the landholding agency or GSA or determined to be related personal property that the landholding agency or GSA chooses to dispose of separate from real property.

(3) Government-owned, contractor-operated machinery, equipment, land,

and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(4) Properties subject to special legislation directing a particular action.

(5) Properties subject to a court order that is binding on the Federal Government and, for any reason, precludes transfer for use to assist the homeless under the authority of 42 U.S.C. 11411.

(6) Property not subject to Federal Real Property Council reporting requirements in accordance with 40 U.S.C. 623(i).

(7) Mineral rights interests independent of surface rights.

(8) Air space interests independent of surface rights.

(9) Indian Reservation land subject to 40 U.S.C. 523.

(10) Property interests subject to reversion.

(11) Easements.

(12) Any building or fixture that is excess, or surplus, that is on land under the control of a landholding agency, where the underlying land is not excess or surplus.

(13) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this part.

§ 12a.3 General policies.

(a) It is the policy of HHS to foster and assure maximum utilization of surplus property for homeless assistance purposes.

(b) Transfers may be made only to eligible organizations.

(c) Property will be requested for assignment only when HUD has made a final determination that the property is suitable for use to assist the homeless, GSA has determined it is available, and HHS has determined it is needed for homeless assistance purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for homeless assistance purposes or will be so needed within the immediate or foreseeable future.

(d) Transfers by deed will be made only after the applicant's financial plan is approved and the applicant provides certification that the proposed program is permissible under all applicable State and local zoning restrictions, building codes, and similar limitations.

(e) In instances of noncompliance, transferees are provided an opportunity to cure the noncompliance pursuant to § 12a.10.

§ 12a.4 Expression of interest process.

(a) Properties published by HUD as suitable and available, pursuant to 24 CFR 581.8, for application for use to assist the homeless shall not be available for any other purpose for a period of 30 days beginning on the date the list of properties is published on the HUD website. Any eligible organization interested in any underutilized, unutilized, excess, or surplus property for use to assist the homeless must send HHS a written expression of interest in that property within 30 days after the property has been published on the HUD website.

(b) Although a property may be determined suitable by HUD, HUD's determination does not mean a property is necessarily fit for use for the purpose(s) stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

(c) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 30-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(d)(1) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private, non-profit organization. The expression of interest must be sent to HHS by email, rpb@psc.hhs.gov, or by mail at the following address: Department of Health and Human Services, Program Manager, Federal Real Property Assistance Program, Real Estate Logistics and Operations, 5600 Fishers Lane, Rockville, Maryland 20852.

(2) HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a certain property.

(e) An expression of interest may be sent to and accepted by HHS any time after the 30-day holding period has expired only if the property remains available as determined by GSA or the landholding agency for application to assist the homeless. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(1) There are no pending applications or written expressions of interest made under any law for use of the property for any purpose; and

(2) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

§ 12a.5 Application process and requirements.

(a) Upon receipt of an expression of interest, HHS will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following—

(1) *Acquisition type.* The applicant must state whether it is requesting acquisition of the property by lease, deed, or permit. A lease of one year, extendable at HHS's discretion, with the concurrence of GSA or the landholding agency, may be granted when the applicant's initial application is approved and the applicant's final application outlining the applicant's financial plan is found to be otherwise reasonable based on the criteria in paragraph (a)(7) of this section, but either a change in zoning is required or the financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing. Applicants that initially apply for transfer by lease or permit and subsequently request transfer by deed will follow the same bifurcated application process, including deadlines, contained in 42 U.S.C. 11411. Should an applicant wish to transition from acquisition by lease to acquisition by deed, HHS will issue a letter of commitment to a lessee indicating that, provided its application meets all application criteria, including securing of all necessary financing that complies with Federal Government requirements, HHS will issue a deed.

(2) *Description of the applicant organization.* The applicant must document that it satisfies the definition of an *eligible organization* as specified in § 12a.1.

(3) *Description of the property desired.* The applicant must describe the listed property desired, including existing zoning. Applicants must certify that any modification(s) made to and use of the property will conform to all applicable building codes, and local use restrictions, or similar limitations. In accordance with GSA policy, determinations regarding parcelization are made prior to screening. Therefore, expressions of interest and applications for portions of listed properties will not be accepted.

(4) *Description of the proposed program.* The applicant must fully

describe the proposed program and plan of use, including implementation plans.

(5) *Demonstration of need.* The applicant must demonstrate that the property is needed for homeless assistance purposes at the time of application and how the program will address the needs of the homeless population to be assisted. The applicant must demonstrate that it has an immediate need and ability to utilize all of the property for which it is applying.

(6) *Demonstrate that the property is suitable and adaptable for the proposed program and plan of use.* The applicant must fully explain why the property is suitable and describe what, if any, modification(s) will be made to the property before the program becomes operational.

(7) *Ability to finance and operate the proposed program.* If the applicant's initial application is approved, the applicant must set forth a reasonable plan to finance the approved program within 45 days of the initial approval. To be considered reasonable, the plan must, at a minimum:

(i) Specifically describe all anticipated costs and sources of funding for the proposed program, including any property modifications;

(ii) Be accompanied by supporting documentation which demonstrates that the proposed plan is likely to succeed;

(iii) Demonstrate that the applicant is ready, willing, able, and authorized to assume care, custody, and maintenance of the property;

(iv) Demonstrate that it has secured the necessary dedicated funds, or will obtain such funds, to carry out the approved proposed program and plan of use for the property, including administrative expenses incident to the transfer by deed, lease, or permit;

(v) Not diminish the value of the Federal Government's interest in the property nor impair the Federal Government's ability to revert and immediately dispose of the property free of any and all liens, encumbrances, or anything else which renders the property unmarketable. Deed transfers will only be made after an applicant demonstrates its financial plan adequately protects the Federal Government's interest in the property; and

(vi) Neither subject the Federal Government's interest in the property to foreclosure nor impose obligations (e.g., extended use agreements) on the Federal Government.

(8) *Compliance with non-discrimination requirements.* Each applicant under this part must certify in writing that it will comply with all requirements of Federal law and HHS

policy, as amended, relating to non-discrimination, including the following: the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR part 100; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Non-discrimination in Federally Assisted Programs) and implementing regulations at 45 CFR part 80; section 1557 of the Affordable Care Act and implementing regulations at 45 CFR part 92; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 45 CFR part 91; and the prohibitions against discrimination against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 45 CFR part 84. The applicant must maintain the required records to demonstrate compliance with all applicable Federal laws and HHS policies related to non-discrimination.

(9) *Insurance and indemnification.* The applicant must certify that it will insure the property against loss, damage, or destruction to protect the residual financial interest of the United States. The United States shall be named as an additional insured. Applicants must provide proof of insurance annually or upon request. Failure to maintain sufficient insurance may result in adverse action, including reversion of the property, at the discretion of HHS. In the event of a covered loss, the transferee must hold all insurance proceeds in trust and obtain written concurrence from HHS before disbursing the funds. Applicants, and all affiliated parties utilizing the property, as approved by HHS, must indemnify the United States and hold the United States harmless for all actions involving use of the property.

(10) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(11) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency. However, the burden is on the applicant

to submit sufficient documentation for analysis by HHS.

(12) *Local government notification.* The applicant must certify that it has notified the applicable unit of general local government responsible for sewer, water, police, and fire services, in writing, of its proposed program for the specific property and submit a copy of that written notification.

(13) *Zoning and local use restrictions.* An applicant requesting a deed must certify that it has consulted all State and local governmental entities that will have jurisdiction over the property and that the proposed use will comply with all applicable zoning and local use restrictions, including local building code requirements. An applicant that applies for a lease or permit is not required to comply with local zoning requirements, as long as the Federal Government retains ownership of the property. Deed transfers will only be made after the applicant has provided acceptable written proof that the proposed program is not in conflict with State or local zoning laws and restrictions, building codes, or similar limitations.

(b) *Scope of evaluations.* Due to the short time frame imposed by statute for evaluating applications, HHS's evaluation will, generally, be limited to the information contained in the application. It is therefore incumbent on applicants to provide thorough and complete applications.

(c) *Deadline for initial application.* An initial application must be received by HHS, at the email address in § 12a.4(d)(1) or other address indicated by HHS, within 75 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may, in its discretion, grant extensions authorized by 42 U.S.C. 11411(e)(2)(A), provided that the appropriate landholding agency or GSA concurs with the extension.

(d) *Evaluation of initial application.* (1) Upon receipt of an initial application, HHS will review it for completeness, and, if incomplete and time permits, may, in its discretion, return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the initial application.

(2) HHS will evaluate each initial application within 10 days of receipt and will promptly advise the applicant of its decision. All initial applications will be reviewed on the basis of the following elements:

(i) *Services offered.* The extent and range of proposed services, such as

meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program, the program's ability to satisfy unmet needs of the community, and the degree to which the available property will be fully utilized.

(iii) *Experience.* Demonstrated ability to provide the services, such as prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(e) *Deadline and evaluation of final application.* (1) If HHS approves an initial application, HHS will notify the applicant and provide the applicant 45 days in which to provide a final application. The final application shall set forth a reasonable plan to finance, as specified in paragraph (a)(7) of this section, the approved program as set forth in the initial application. Applicants may not modify the approved initial application within its final application proposal.

(2) Upon receipt of the final application, HHS will make a determination within 15 days and notify the applicant.

(3) Unlike with initial applications, requests for extensions are not authorized by 42 U.S.C. 11411 and thus will not be considered for final applications.

(4) Applications are evaluated on a first-come, first-served basis. HHS will notify all organizations that have submitted expressions of interest for a particular property whether an earlier application received for that property has been approved.

(f) *Competing applications.* If HHS receives more than one final application simultaneously, HHS will evaluate all applications and make a determination based on each application's merit. HHS will rank approved applications based on the elements listed in paragraph (a) of this section, and notify the landholding agency, or GSA, as appropriate, of the approved applicant.

§ 12a.6 Action on approved applications.

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available.

(ii) The terms and conditions of the lease or permit document (except that a

landholding agency may not charge any fees or impose any costs).

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for transfer. Requests to GSA for the assignment of surplus property to HHS for homeless assistance purposes will be based on the following conditions:

(i) HHS has a fully approved application for the property;

(ii) The applicant is able, willing, and authorized to assume immediate care, custody, and maintenance of the property;

(iii) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer; and

(iv) The applicant has secured the necessary funds, or had demonstrated the ability to obtain such funds, to carry out the approved program of use of the property.

(2) Upon receipt of an acceptable assignment, HHS will execute the transfer document in accordance with the procedures and requirements set out in this part and any other terms and conditions HHS and GSA determine are appropriate or necessary. Custody and accountability of the property will remain throughout the lease term with the landholding agency (*i.e.*, the agency which initially reported the property as excess) and throughout the deed term with the transferee.

(3) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs in deciding the disposition of surplus property. Priority of consideration will normally be given to uses to assist the homeless. However, both GSA and HHS may consider any competing request for the property made under 40 U.S.C. 550 that is so meritorious and compelling that it outweighs the needs of the homeless.

(4) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance, the agency making the decision will transmit to the appropriate committees of Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

§ 12a.7 Transfer documents.

(a) Surplus property may be conveyed to eligible organizations pursuant to 40 U.S.C. 550(d) and 42 U.S.C. 11411, as amended, by lease or deed, at the applicant's discretion.

(b) Transfers of surplus property for homeless assistance purposes are in exchange for the transferee's agreement to fully utilize the property for homeless assistance purposes in accordance with the terms specified in the transfer document.

(c) A transfer of surplus property for homeless assistance purposes is subject to the disapproval of GSA within 30 days after notice is given to GSA of the proposed transfer.

(d) Surplus property transferred pursuant to this part will be disposed on an "as is, where is" basis without warranty of any kind except as may be stated in the transfer document.

(e) Unless excepted by GSA in its assignment, the disposal of property includes mineral rights associated with the surface estate.

(f) Transfers of surplus property under this part will be made with the following general terms and conditions:

(1) For the period provided in the transfer document, the transferee shall utilize all the surplus property it receives solely and continuously for the approved program and plan of use, in accordance with 42 U.S.C. 11411 and this part, except that:

(i) The transferee has 12 months from the date of transfer to place the surplus property into use, if HHS did not approve in writing, construction of new facilities or major renovation of the property when it approved the final application;

(ii) The transferee has 48 months from the date of transfer to place the surplus property into use, if the transferee proposes construction of new facilities or major renovation of the property and HHS approves it in writing at the time it approves the final application;

(iii) If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Federal Government for each month thereafter during which the proposed use has not been implemented or take such other action as set forth at § 12a.10 as is deemed appropriate by HHS. Such monthly payments shall be computed on the basis of the current fair market value of the property, as conveyed, at the time of the first payment and dividing it by 360 months. At HHS's discretion, the payment may be waived if the transferee makes a sufficient showing of continued progress to place the property into use or if an unforeseeable event occurs which prevents the property from being put into use within the applicable timeframe; and

(iv) HHS may permit use of surplus property at any time during the period

of restriction by an entity other than the transferee in accordance with § 12a.11.

(2) The transferee will not be permitted to encumber, or dispose of the property, or impair full utilization thereof, without the prior written authorization of HHS. In the event the property is encumbered, sold, or disposed of, or is used for any purposes other than those set forth in an approved plan without the written consent of HHS, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by HHS, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of HHS. The provisions of this paragraph (f)(2) shall not impair or affect the rights reserved to the United States in paragraph (f)(8) of this section, or the right of HHS to impose conditions to its consent.

(3) The transferee will file with HHS such reports on its maintenance and use of the transferred property and any other reports or information deemed necessary by HHS.

(4) The transferee shall pay all administrative costs incidental to the transfer, including but not limited to—transfer taxes; surveys; appraisals; title searches; the transferee's legal fees; and recordation expenses. Transferee is solely responsible for such costs and may not seek reimbursement from the Federal Government for any reason.

(5) The transferee shall protect, preserve, maintain, and repair the property to ensure that the property remains in as good a condition as when received.

(6) The transferee shall protect the residual financial interest of the United States in the surplus property by insurance or such other means as HHS directs.

(7) The transferee shall abide by all applicable Federal civil rights laws including those specified in the covenants and conditions contained in the transfer document, prohibiting the transferee from discriminating on the basis of, including but not limited to, race, color, national origin, religion, sex, familial status, or disability in the use of the property.

(8) In the event of noncompliance with any conditions of the deed as determined by HHS, whether caused by the legal or other inability of the transferee, its successors and assigns, to perform any of the obligations of the transfer document, the Federal Government has an immediate right of reentry thereon, and to cause all right, title, and interest in and to the property

to revert to the United States, and the transferee shall forfeit all right, title, and interest in and to the property. In such event, transferee shall execute a quitclaim deed and take all other actions necessary to return the property to the United States within ninety (90) days of a written request from the Federal Government, extended only at the discretion of the Federal Government. Transferee shall cooperate with the United States in the event of a reversion and agrees that the United States need not seek judicial intervention before exercising its right to revert, reenter, and reconvey the property.

(9) In the event title is reverted to the United States for noncompliance or voluntarily reconveyed to the United States, the transferee shall, at the option of HHS, be required to: reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the transferee to adapt the property to the homeless use for which the property was transferred; and reimburse the United States for any costs incurred in reverting title to or possession of the property, including reasonable attorneys' fees.

(10) With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by HHS or the landholding agency, the right of occupancy and possession shall, at the option of HHS or the landholding agency, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required, at the option of HHS, to reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the lessee to adapt the property to the homeless use for which the property was leased. With respect to any termination of leasehold resulting from noncompliance, the United States, shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering possession of the property, including reasonable attorneys' fees.

(11) Any other term or condition that HHS and GSA determine appropriate or necessary.

(12) With respect to surplus property transferred by deed, the terms and conditions including those in this paragraph (f), apply for a period of three hundred sixty (360) months of use in accordance with a program of use approved in writing by HHS. The three

hundred sixty months (360) period may, in HHS's sole discretion, be extended or restarted in the event the property is not fully utilized or is retransferred to a successor entity. Expiration of the terms and conditions in this paragraph (f) does not release the transferee from continuing compliance, as appropriate, with any conditions that may run with the land, *e.g.*, environmental conditions and/or historic preservation covenants. Such conditions will continue to be the responsibility of the transferee and successors.

(13) With respect to surplus property transferred by lease, the terms and conditions including those in this paragraph (f), extend for the entire initial lease and for any subsequent renewal periods, unless specifically excluded in writing by HHS.

(g) Related personal property may be transferred or leased as a part of the realty and in accordance with real property procedures.

(h) Transferees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the United States, the transferee will be responsible for removing improvements made to the property if directed to by the United States and, in such event, will be responsible for restoration of the property or the costs associated with restoring the property. If improvements made by the transferee are not voluntarily removed by the transferee and the United States consents, they will become the property of the United States. If the United States does not consent, the transferee shall reimburse the United States for reasonable costs of removal. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

(i) Transferees, by obtaining the written consent of HHS, may abrogate the restrictions set forth in paragraph (f) of this section for all or any portion of the property in accordance with the provisions of § 12a.12.

§ 12a.8 Compliance with the National Environmental Policy Act of 1969 and other related Acts (environmental impact).

(a) HHS, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus property for homeless purposes, will act in accordance with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National

Archeological Data Preservation Act, and other related acts. No lease to use surplus property shall allow the lessee to make, or cause to be made, any irreversible change in the conditions of said property, and no lease shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts, unless approved by the United States.

(b) Applicants shall be required to provide such information as HHS deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by HHS, as well as other relevant information, will be used by HHS in making said assessment.

(c) If the assessment reveals:

(1) That the proposed Federal action involved properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places; or

(2) That a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action; or

(3) That the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, HHS will, except as provided for in paragraph (d) of this section, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the Acts cited in paragraph (a) of this section.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, HHS may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the Acts cited in paragraph (a) of this section. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between HHS and another Federal agency, HHS will reserve the right to abrogate the lead agency agreement with the other Federal agency.

§ 12a.9 No applications approved.

(a) At the end of the 30-day holding period described in § 12a.4(a), HHS will

notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a certain property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon notice from HHS that all applications have been disapproved, or if no initial applications have been received within 75 days after an expression of interest, or no final application has been received within 45 days after an approved initial application, disposal may proceed in accordance with applicable law.

§ 12a.10 Utilization and enforcement.

(a) *Sanctions.* For instances of noncompliance relating to surplus property transfers, HHS may impose, after providing an opportunity to cure to the transferee, any or all of the following sanctions in its sole discretion, as applicable:

(1) Where property or any portion thereof was not used or is not being used for the purposes for which transferred, or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of HHS, HHS may require the transferee to—

(i) Place the property into immediate use for an approved purpose and extend the period of restriction in the transfer document for an additional term as determined by HHS;

(ii) Hold in trust all revenues and the reasonable value of other benefits received by the transferee directly or indirectly from that use for the United States subject to the direction and control of HHS;

(iii) Return title to such property to the United States or to relinquish any leasehold interest therein;

(iv) Abrogate the conditions and restrictions of the transfer, as set forth in § 12a.12;

(v) Make cash payments to the United States, as directed by HHS, equivalent to the current fair market rental value of the surplus property, as transferred, for each month during which the program and plan of use has not been implemented and continues to not be implemented; or

(vi) Any other remedy that HHS determines appropriate or necessary.

(2) Where the transferee desires to place the property into temporary use to assist the homeless other than that for which the property was transferred, written approval from HHS must be obtained, and will be conditioned upon

HHS's authority to permit the use and such terms as HHS may impose.

(3) If HHS or the landholding agency determines that a lessee or sublessee of a transferee is in noncompliance with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, HHS may require termination of the lease and impose sanctions described in paragraph (a)(1) of this section, as appropriate.

(b) *Reversion.* When HHS recommends reversion of the property for noncompliance, HHS will seek GSA's concurrence. GSA will respond to HHS's concurrence request within 30 days of its receipt. If GSA concurs, GSA will work with HHS to complete the reversion of the property. If GSA does not concur to the reversion recommendation, GSA will issue, to HHS, a written determination: stating the reason(s) for the disapproval; and acknowledging that HHS has recommended reversion and, therefore, the property is no longer within HHS's Title V program. The Federal Government will implement a response to the noncompliance that is in its best interests.

§ 12a.11 Other uses.

(a) A transferee may permit the use of all or a portion of the surplus property by another eligible entity as described in § 12a.1 for homeless assistance purposes, only upon those terms and conditions HHS determines appropriate, if:

(1) The transferee submits a written request to HHS explaining the purpose of and need for another eligible entity's use of the property, program plan, and other relevant information requested by HHS;

(2) HHS determines that the proposed use would not substantially limit the program and plan of use by the transferee and that the use will not unduly burden the Federal Government;

(3) HHS's written consent is obtained by the transferee in advance;

(4) HHS approves the use instrument in advance and in writing;

(5) The transferee agrees to lengthen the period of restrictions as determined by HHS; and

(6) HHS advises GSA and there is no disapproval by GSA within thirty (30) days.

(b) A transferee that does not follow paragraph (a) of this section will be deemed to be not in compliance with the terms and conditions of the Title V program and subject to enforcement action, including reversion of the property.

§ 12a.12 Abrogation.

(a) HHS may abrogate the conditions and restrictions in the transfer document if:

(1) The transferee submits to HHS a written request that HHS abrogate the conditions and restrictions in the transfer document as to all or any portion of the surplus property;

(2) HHS determines the terms and conditions of the proposed abrogation and determines that the proposed abrogation is in the best interest of the United States; and

(3) HHS transmits the abrogation request to GSA and there is no disapproval by GSA within 30 days after notice is given. If GSA disapproves, GSA will state, in writing, to HHS the reason(s) for the disapproval.

(b) HHS abrogates the conditions and restrictions in the transfer document only upon receipt of the appropriate consideration, including cash payment, to the United States, as directed by

HHS, which is based on the formula contained in the transfer document, and any other terms and conditions HHS deems appropriate to protect the interest of the United States.

§ 12a.13 Compliance inspections and reports.

Transferees are required to allow HHS to conduct compliance inspections and to submit such compliance reports and actions as are deemed necessary by HHS. At a minimum, the transferee will be required to submit an annual utilization report regarding the operation and maintenance of the property, including current images of the entire property and such information as HHS shall require.

§ 12a.14 No right of administrative review for agency decisions.

There is no right to administrative review within HHS, including requests for reconsideration or appeal, of agency

decisions on applications and other discretionary decisions.

§ 12a.15 Severability.

Any provision of this part held to be invalid or unenforceable with respect to certain parties or circumstances shall be construed so as to continue to give the maximum effect to the provision permitted by law unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof.

Adrianne Todman,
Acting Secretary, HUD.

Robin Carnahan,
Administrator, GSA.

Xavier Becerra,
Secretary, HHS.

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